

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

*CRM(M) No. 465/2022*

*IA No. 1329/2022*

**Reserved on: 09.11.2022**

**Pronounced on: 26.12.2022**

**M/S Rashmi Metaliks Ltd. & Anr.**

...Petitioner(s)

Through: Mr. Shuja ul Haq, Advocate.

**Vs.**

**M/S Jindal Saw Ltd. & Ors.**

...Respondent(s)

Through: Mr. Himanshu Dubey, Advocate for No.1.

Mr. S.A.Makroo, Sr. Advocate with

Mr. Shahbaz Sikandar, Advocate, for No.2 & 3.

**CORAM: HON'BLE MR. JUSTICE MD. AKRAM CHOWDHARY, JUDGE**

**JUDGMENT**

1. This petition has been filed under Section 482 CrPC seeking quashment of the order dated 20.09.2022 (for short 'impugned order') passed by the court of learned Special Mobile Magistrate PT & E Srinagar in a Criminal Complaint No. 2/2022 titled **M/S Jindal Saw Ltd. Vs. M/S Rashmi Metaliks Ltd. & Ors.**, under Sections 499, 500 IPC, wherein the petitioners-accused persons were found involved in the commission of offence punishable under Section 500 IPC.
2. It has been claimed that the petitioner-Company is one of the largest manufacturers of ductile iron (DI) pipes and, as such, is providing the same throughout the country for transporting drinking water and for sanitation systems with excellent quality.

**3. Petitioners/accused pleaded following facts:-**

i) That, the Government of J&K through the office of Chief Engineer, Jal Shakti (PHE) department Kashmir issued e-NIT bearing No.JSD/PHE-K/JJM/e-tender/2021-22/127 dated 14.01.2022 inviting e-tenders on item rate basis in two cover system from Govt. registered/GEM approved OEM's (Original Equipment Manufacturers only) for supply of ISI marked centrifugally cast (spun) duct iron pipes conforming to IS: 8329/2000 read with upto date amendments for water application in assorted sizes and classes and have supplied such items in India and possess satisfactory performance and excellent track record in the said field with documentary evidence from respective Govt./Semi Govt. Departments /PSU's/Corporations/State or national level undertakings for the subject item.

ii) That, as many as eight companies including petitioner-Company and respondent-Company participated in the tendering process. Amongst them two bidders were excluded from the tendering process as they failed to qualify the technical bid in the tendering process.

iii) That, the petitioner-Company, being the lowest bidder in ductile iron e-procurement bagged the e-tender.

**4.** It was further pleaded that a complaint came to be filed by respondent No. 2 herein, wherein it was alleged that one Manesh Kumar, Senior Vice President (Marketing) of M/S Jindal Saw Ltd. attempted bid rigging as the said person was also holding the post of Director of DISPUN Research & Development Association and by

resorting to fraud and misrepresentation tried to compromise the entire bidding process in favour of his company i.e., respondent No.1. He was also carrying out negative campaign against the petitioner-Company in every State in the capacity of Director of DISPUN Research & Development Association regarding the quality issues in supply of DI pipes by the petitioner company only to keep the petitioner company out of the competition and make way for award of contract in favour of his company.

5. It was alleged that when the Development Commissioner(Works) U.T. Level Purchase Committee failed to take action against the said person for violation of the code of integrity of the bid process, the respondent No.2 filed a complaint before the court of 2<sup>nd</sup> Addl. Munsiff Srinagar, wherein allegation about rigging in the bidding process were made. The court, vide order dated 23.04.2022, ordered an enquiry and directed Crime Branch to investigate the matter. Accordingly, the authorities successfully prevented the alleged bid-rigging and ensured a fool proof tendering process in a fair and transparent manner.
6. It was further alleged that in retaliation to the complaint filed by respondent No.2 against one Manesh Kumar, who happened to be Senior Vice President (Marketing) of M/S Jindal Saw Ltd., for allegedly compromising the entire bidding process in favour of his company (respondent No.1), who filed complaint under Section 499, 500 IPC against the petitioner-Company along-with proforma respondents herein wherein allegations about defamatory and libellous statements have been made, the defamatory statements have been published by the proforma respondent No.3 against the

respondent No.1 at the behest of and in connivance with the proforma respondent No.2; that, consequent upon filing of the complaint by respondent No.1 against the petitioners and proforma respondents herein before the court of CJM Srinagar, the same was transferred to the court of Special Magistrate PT & E Srinagar. Consequently, the court of Special Magistrate PR & E Srinagar vide order dated 20.09.2022, impugned herein, took cognizance of offence under Section 500 IPC against the petitioners and the proforma respondents and the summons came to be issued upon them.

7. The order dated 20.09.2022 passed by the learned Magistrate has been assailed *inter alia* on the following grounds:-

a) That, in the complaint filed by respondent No.1 against the petitioners and proforma respondents, no offence under Section 500 has been alleged against the petitioners which is *prima facie* established from the mere fact that upon receipt of the complaint and examination of the same, the court below was not satisfied to take cognizance in the matter and as a result of which cognizance of the matter was deferred and the Court below proceeded in the matter under Section 202 Cr.PC by direction conducting of inquiry by SP City South;

b) That, the report dated 11.08.2022 was filed before the court below which became basis for taking cognizance of the complaint filed by respondent no.1 against the petitioners and the proforma respondents, and the entire cognizance order has been based on the police report. It is stated that for attracting the offence under Section 500 IPC, conditions prescribed

under Section 499 IPC are to be fulfilled and unless the alleged act fall within the definition of Section 499 IPC, cognizance cannot be taken of the offence under Section 500 IPC;

c) That, with regard to the complaint in question, there is neither any intent on part of the petitioners to cause harm to the reputation of the respondent, nor can it be discerned any actual harm done to its reputation. In short, both the elements i.e., “mens rea” and “actus reus” are missing. It is stated that the statement of petitioner No.3 published in the news item is a general endorsement of alleged malpractices in tendering process and the said remarks are not directed at any company or an association or collection of persons. It is difficult to understand how the petitioner’s views can be construed as an attack on the reputation of the company or even anyone in particular;

d) That, the petitioner-Company is the competitor of respondent No.1 and has recently earned the contract in the UT of J&K thereby throwing out respondent No.1 on the basis of competition. The fact of the matter is that respondent No.1 wanted to bag the contract at higher rates as a result of which Mr. Maneesh Kumar was employed by them to file complaints in the shape of suggestions so as to discredit the petitioner-company. All this was done only to put healthy competition at bay and pave way for allotment of contract in favour of respondent no.1 at higher rates thereby causing huge loss to the public exchequer. Since respondent no.1 has failed to give

healthy competition to the petitioner-company, a false and frivolous complaint came to be filed and a report came to be managed by respondent No.1, which even does not disclose the commission of offences by the petitioner-Company;

e) That, the statements which form the basis of the complaint are based on the tweets published by the DDC Chairman and as such are a matter of fact, and petitioners No.1 and 2 have been arrayed as accused persons without any cogent reason or justification as the said persons are not in any way connected with regard to the alleged defamation of respondent No.1. It is stated that the proforma respondent No.2 had made a fair and reasonable comment as a prudent person, and therefore, the opinion expressed by proforma respondent No.2 is fully protected under Article 19(1)(a) of the Constitution of India, which guarantees freedom of speech and expression to all the citizens. Even if the allegations in the complaint are taken on their face value and accepted in its entirety, the same does not disclose any offence whatsoever against the petitioner No.1 & 2 and the opinion of the proforma respondent no.2 does not, by any means, fall within the ambit of Sections 499 and 500 IPC;

f) That, the police authorities have not investigated the factual sanctity of the alleged derogatory statements against which the instant complaint has been filed against the petitioners. No effort was made by the investigating authorities to find out whether the financial offer made by the petitioner no. 1 (Rashmi Metaliks Ltd.) was actually less than

the other competitors by 20% or not. Also, no Government officials were questioned as to the possibility of bid rigging by DISPRDA. Besides, no efforts were made by the investigating agency to find out the real intention of DISPRDA to level allegations against petitioner No.1;

g) That, the impugned complaint in question has been filed against the petitioners under Section 500 IPC with an ulterior motive for wreaking vengeance against the petitioners and with a view to spite them due to private and personal grudge. It has also been stated that the police investigating agency has taken the investigation in a different angle trying to establish a link between the accused persons, rather finding the truth of the statements so made. The complaint filed against the petitioners does not support or even draw a *prima facie* case for any of the statutory offences as alleged and on this very count only the complaint deserves to be dismissed;

h) That, it is evident that the allegations levelled in the complaint in question are false and baseless and are clearly an attempt to defame the petitioner herein and cause damage to it, in view of the business rivalry. Hence, the impugned order and the complaint filed by the respondent herein against the petitioners is liable to be quashed.

8. On being satisfied that the complaint bearing No. 2/2022 made out a *prima facie* case against the petitioners, the court of learned Special Mobile Magistrate PT&E Srinagar passed the impugned order dated 20.09.2022, taking cognizance of the charges against the petitioners and issuing summons to them.

9. Earlier, the petitioners herein have filed petition under Section 482 CrPC bearing CRM(M) No. 442/2022 before this Court, but owing to formal defects in the title of the said petition and that some of the documents were not appended therewith, the said petition was dismissed as withdrawn on 17.10.2022 with liberty to file fresh one. Hence the instant petition.

10. Heard learned counsel for the parties and considered the matter. I have also perused the material available on record.

11. According to learned counsel for petitioners, allegations leveled in the complaint are totally baseless, malicious and do not disclose any offence. It is contended that there being manifest, patent injustice apparent on the face of record of complaint and there is non-application of mind in passing the impugned order inasmuch as there is no evidence with regard to the allegations against the petitioners as is disclosed in the complaint or in investigation of the police. It is averred that allegations made in the complaint, even if are taken in their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the petitioners and despite the fact that petitioners are being harassed by respondents just to jeopardize their business and this is a beaten law of the land that where a criminal proceeding is manifestly attended with *mala fide* or maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spit them due to private or personal or some special grudge, the superior courts should with their inherent powers intervene in the matter to prevent miscarriage of justice and abuse of process of law.



12. Before analyzing the facts emanating from the record of the trial court, it would be apt to notice the legal position as regards the scope of powers of the High Court under Section 482 of the Code of 1973, to interfere with the proceedings/complaint filed before a Magistrate.
13. The power under Section 482 of CrPC can be exercised by the High Court to prevent the abuse of process of the Court and otherwise to secure the ends of justice. The authority of the Court exists for advancement of justice and if any attempt is made to abuse the said authority, the Court has the power to prevent that abuse. These inherent powers of the High Court are wide in their scope. Wider the power, higher the degree of responsibility upon the authority vested with such power to exercise it with circumspection. These powers are generally exercised to secure the ends of justice.
14. The Supreme Court in the case of **State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors** reported as **1992 Suppl (1) SCC 335**, has dealt with the scope of power of High Court under Section 482 CrPC 1973 in an elaborate manner. Paragraphs 102 and 103, which enumerates seven categories of cases, where power can be exercised under **Section 482** CrPC, are extracted 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 channelized 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 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 concerned Act (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 concerned Act, 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.*

*103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made*

*in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”*

**11. In Pepsi Foods Ltd. & Anr vs. Special Judicial Magistrate & Ors**

reported as (1998) 5 SCC 749, the Supreme Court relying upon the ratio laid down by it in **Bhajan Lal’s** case (supra), observed as under:

*“22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to the followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers.”*

**12. From the foregoing analysis of law on the subject, it is clear that**

in a case where allegations made in the complaint and evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused, the High

Court can exercise its powers under Section 482 of CrPC to quash the proceedings against an accused. The inherent powers cannot be, however, exercised to stifle or impinge upon the proceedings.

13. It is the contention of the petitioners/accused that the complaint that has been made by the complainant/respondent before the trial Magistrate against them together with the material in support thereof do not disclose commission of any offence by the petitioners/accused. But before determining the merits of this contention, it is necessary to understand as to what constitutes an offence of “defamation”.
14. Section 499 RPC (which is applicable to the instant case) defines the offence of defamation whereas Section 500 of the said Code provides for its punishment. Section 499 RPC reads as under:-

*“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.*

*Explanation 1. – It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his family or other near relatives.*

*Explanation 2. – It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*

*Explanation 3. – An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

*Explanation 4. – No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or*

*lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

*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 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 a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.*

*Explanation* – *A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.*

*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.*

*Explanation – A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.*

*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.*

*Eight Exception – Accusation preferred in good faith to authorized 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 interest – 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 interest 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 of 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.”*

- 15.** A bare reading of the afore-quoted provision makes it clear that an offence of defamation is made out whenever a person by words spoken etc. 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. The offence, however, would not get attracted if a case falls under any of the ten exceptions quoted hereinabove.

16. The Supreme Court in the case of **Subramanian Swamy v. Union of India**, reported as (2016) 7 SCC 221, while considering the constitutional validity of Section 499 IPC, had an occasion to discuss the anatomy of aforesaid provision and its field of operation. Para 168 of the judgment is relevant to the context and the same is reproduced as under:-

*“168. For the aforesaid purpose, it is imperative to analyze in detail what constitutes the offence of “defamation” as provided under Section 499 of IPC. To constitute the offence, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasizes on the intention or harm. Section 44 of IPC defines “injury”. It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. Thus, the word “injury” encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person’s body and mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant.”*

17. From a perusal of the afore-quoted observations of the Supreme Court, it is clear that for constituting an offence of defamation, it must be shown that the accused had intention or had reason to believe that such imputation would harm reputation of the complainant. So, mens rea is a condition precedent to constitute the offence. There has to be an intention or knowledge on the part

of the accused to cause harm to the reputation of the complainant. Without intention or knowledge, the offence would not be constituted.

**18.** The complainant-respondent (M/S Jindal Saw Ltd.) has based its complaint for the commission of offences punishable under Sections 499, 500 read with Section 120-B IPC for defamatory and libelous statements allegedly made and published by the proforma respondents at the instance of petitioner against the complainant on the Internet on the following links:

- a) "[https://www.knskashmir.com/700-cr-woth-di-pipes-bidding-strict-vigilance-by-some-citizens-and-the-officials-ensured-fair tendering-ddc-chairman-135522](https://www.knskashmir.com/700-cr-woth-di-pipes-bidding-strict-vigilance-by-some-citizens-and-the-officials-ensured-fair-tendering-ddc-chairman-135522);
- b) <https://www.knskashmir.com/srinagar-court-asks-cb-to-investigate-alleged-malpractice-in-tendering-process-by-jal-shakti-deptt-133238>."

**19.** It was alleged that the statements had been made with the specific purpose for defaming the complainant to bring him to disrepute. It was highlighted that *"700 crore worth DI pipes bidding; strict vigilance by some citizens and the official ensured fair tendering"*; *"Rashmi Metaliks makes the lowest bid in ductile iron e-procurement tenders company defeats its traditional rival Jindal Saw Ltd."*; *"finally the tendering process for procuring DI pipes worth 700 crores by the PHE department of Jal Shaki in Jammu & Kashmir has been completed fairly"*. *"Kolkata-based Reshmi Metaliks Ltd. has bagged the tender. Earlier, a controversy about the tendering process erupted when the reports about alleged malpractice in the bidding process came to fore. A strict vigilance by a few citizens and department officials made it possible to happen. It is reported similar efforts have been tried*



*and are being tried with Jal Jeevan Mission tenders in states of Maharashtra, Himachal Pradesh, Uttar Pradesh and Haryana”.*

- 20.** Ghulam Qadir Mir one of the accused in the complaint had alleged that Manesh Kumar Senior Vice President (Marketing) of the complainant company had committed bid rigging by impersonation as Director of DI Spun Pipe Research and Development Association and through fraud and misrepresentation has attempted to compromise the entire bidding process in favour of his company. The news with regard to the facts of the complaint were also published on the aforesaid links.
- 21.** The complainant-respondent No.1 had alleged that all what has been done by raising false, baseless and malicious allegations against the complainant, the accused had under a conspiracy committed defamation to bring disrepute to the reputed company.
- 22.** Learned Magistrate, after discussing all the facts made in the complaint, and having regard to the enquiry conducted by a senior police officer under Section 202 CrPC came to the conclusion, after hearing the complainant, perusal of the complaint and statement of complainant and other allied material, and agreed with the report filed by SP South Srinagar, concluding that accused No.4 Ghulam Qadir Mir in a selective and planned manner portrayed sending of suggestions/objectives issued by M/S Jindal Saw Ltd. in a different manner from the actual facts and further the report reflects that the selective news was also published by KNS News Agency(accused No.4) and Ghulam Qadir Mir and M/S Rashmi Metaliks Ltd. made a written representatives in a selective way against the complainant-

company to harm its repute. The Court vide impugned order has drawn its satisfaction that the complainant sufficiently disclosed the facts i.e., the accused persons made and published imputation concerning the complainant with intention and having knowledge, to harm its repute. It was further recorded that keeping in view the facts and circumstances of the case, there are sufficient grounds from proceeding against the accused persons for commission of offences punishable under Section 500 IPC, as such, summons were issued to the accused for their appearance. Learned Magistrate has only summoned the petitioner after taking cognizance of the complaint and all the accused shall have a right of being heard before the Magistrate.

23. So far as the contention raised by learned counsel for the petitioners that the complaint suffers from exception provided under Section 499 IPC as the actions of the petitioners making publication was in a good faith, as such, the offence of defamation is not constituted, in view of the explanation is concerned, the petitioner, as accused shall have an opportunity of being heard on this point by the learned Magistrate. The jurisdiction of this Court under Section 482 CrPC which has been invoked by the petitioners is limited and has to be used sparingly. The Court has to make the balance to save the innocent accused from unleashed vendetta by private complaint and also to ensure that the prosecution is not short-circuited without any full-fledged enquiry.

24. Hon'ble Apex Court in a case titled **State of Andhra Pradesh Vs. Gourishetty Mahesh & Ors.** reported as (2010) 11 SCC 226

has held that though the powers possessed by the High Court under [Section 482 CrPC](#) are wide, however, such powers require care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. It was clarified that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it was open to the High Court to quash the same in exercise of inherent powers under [Section 482 CrPC](#).

25. Hon'ble Apex Court again in a case titled **Jeffrey J. Diermeier & Anr. Vs. State of West Bengal & Anr.** reported as (2010) 6 SCC 243 held that the plea of good faith and public interest as has been raised in the petition on hand that these and host of other considerations would be relevant and require to be considered for deciding the plea raised by the petitioners, however, unfortunately all these are the questions of fact and matters for evidence.

26. In the instant case, the stage for recording of evidence has not reached and therefore, in the absence of any evidence on record, I find it difficult to return a finding whether or not the petitioner had satisfied requirement of good faith and public good so as to fall within the ambit of Tenth Exception to Section 499 IPC. Similarly it will neither be possible nor appropriate to comment over the allegations leveled by the accused and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, I find it difficult to hold that a case, for quashing of the complaint under Section 482 CrPC, has been made out. Criminal proceedings cannot be nipped in the bud

by exercise of jurisdiction under Section 482 CrPC only because the compliant has been lodged by the business rival. It is possible that a false compliant may have been lodged at the behest of the business opponent, however, such possibility would not justify interference under Section 482 CrPC to quash criminal proceedings. In exercise of power under Section 482 CrPC, the Court does not examine the correctness of the allegations in a compliant except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The compliant before the learned Magistrate is not such a case which should be quashed at the inception without further trial.

27. In the considered opinion of this Court and having regard to the context of the facts of the compliant regarding printed defamatory material, based on detailed enquiry under Section 202 CrPC by a senior police officer of the rank of Superintendent of Police, *prima facie* it has been found by the learned Magistrate that same falls within the meaning of the expression under Section 499 IPC.

28. For the reasons discussed hereinabove, this Court is not inclined to interfere with the impugned order, accordingly, this petition, for want of merit and substance, is dismissed along-with connected application(s).

**(MD. AKRAM CHOWDHARY)**  
**JUDGE**

Srinagar  
26.12.2022  
Muzammil. Q

***Whether the order is reportable: Yes / No***