IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 17TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.101127 OF 2015

BETWEEN

SRI RAJEEV CHANDRASEKHAR

... PETITIONER

(BY SRI C V NAGESH, SR. COUNSEL FOR
SMT.NALINA MAYEGOWDA, ADV. &
M/S POOVAYYA & CO., (VIDEO CONFERENCING))

AND

SRI K.KOTESWAR RAO

... RESPONDENT

(BY SRI S.S.YADRAMI, SR. COUNSEL (VIDEO
CONFERENCING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO QUASH THE ORDER DATED 01.09.2012 PASSED BY THE PRL. CIVIL JUDGE & JMFC COURT, BELLARY, TAKING COGNIZANCE OF THE COMPLAINT AND ISSUING SUMMONS TO THE PETITIONER AT ANNEXURE-A AND TO QUASH THE ORDER ISSUING NBW TO THE PETITONER AT ANNEXURE-A AND TO QUASH THE COMPLAINT BEARING C.C.NO.1243/2012 PENDING ON THE FILE OF THE PRL. CIVIL JUDGE & JMFC COURT, BELLARY, AT ANNEXURE-B, FOR THE OFENCES P/U/S 499 AND 500 OF IPC, INSOFAR AS PETITIONER IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.01.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.1243 of 2012 initiated against him for offences punishable under Sections 499 and 500 of the Indian Penal Code.

2. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:

The petitioner, at the relevant point in time, was functioning as a Managing Director of Suvarna News 24/7 Kannada Television Channel. A complaint came to be registered against the petitioner and several others on 14-03-2012 on an

incident that happened on 02-03-2012. It transpires that one of the prominent personalities was being brought before the competent criminal Court at Bangalore, at which point in time, Advocates gathered in large numbers and created ruckus. This was telecast in television and electronic media, more particularly, in the channel in which the petitioner was the Managing Director along with other channels as breaking news wherein the Advocates were allegedly compared to hooligans. The petitioner was accused of airing certain programmes allegedly portraying community of Advocates at large as rowdies, vagabonds, scoundrels and goondas. On the said incident a complaint of mass defamation was registered by the respondent one Sri K.Koteswar Rao by invoking Section 200 of the Cr.P.C. before the competent Court at Bellary. On the complaint being registered, cognizance was taken for the aforesaid offence punishable under Sections 499 and 500 of the IPC on 15-03-2012. Pursuant to taking of cognizance, the Police investigated into the matter and criminal trial is set in motion by an order of the competent Court dated 01-09-2012. On issuance of process

in C.C.No.1243 of 2012 and conduct of trial, the petitioner has knocked the doors of this Court in the subject petition.

3. This Court by an order dated 07-08-2015 stayed all further proceedings in C.C.No.1243 of 2012 insofar as it related to the petitioner in the subject petition and the said interim order is in operation even as on date. It is therefore further proceedings are not conducted and concluded against the petitioner.

4. Heard the learned senior counsel Sri C.V.Nagesh appearing for the petitioner and the learned senior counsel Sri S.S.Yadrami appearing for the respondent.

5. The learned senior counsel for the petitioner would urge the following contentions:

The complaint registered was not even maintainable as the petitioner is only a Managing Director of the company. Neither the TV News Channel nor the company which owns the News Channel is made an accused in the proceedings and therefore,

the very complaint is vitiated; cognizance is taken by the learned Magistrate without even looking into the averments in the complaint; order taking cognizance on 15-03-2012 suffers from want of application of mind on the part of the learned Magistrate; the procedure as contemplated under Section 202 of the Cr.P.C. is not complied with by the learned Magistrate as the complaint is registered at Bellary though the petitioner is a resident of Bangalore and therefore, the procedure under Section 202 of the Cr.P.C. ought to have been followed by the learned Magistrate prior to issuance of process; the order passed under Section 204 of the Cr.P.C. again suffers from want of application of mind as there is no reason indicated with regard to existence of sufficient ground to set the criminal trial in motion.

6. On merits of the matter, the learned senior counsel would submit that there can be no mass defamation in criminal law as the complaint is not against the petitioner but against several others and it is not the case of the complainant that he is

defamed but the entire community of Advocates is defamed. Therefore, even on merits there is no warrant for registration of any criminal case.

7. On the other hand, the learned senior counsel Sri S.S.Yadrami in defence of registration of the complaint would contend that at the stage of taking cognizance there need not be application of mind. Procedure stipulated under Section 202 of Cr.P.C. cannot be pressed into service in every case as the allegation was against several of the TV channels and not only the petitioner. Insofar as Section 204 of the Cr.P.C. is concerned, the learned senior counsel would emphasize that a perusal at the order would clearly indicate that it does bear application of mind and does indicate existence of sufficient ground and on technicalities the petitioner cannot be left scot free. He would further submit that the complaint against defaming a community is entertainable and maintainable. He would lay the blame on the petitioner as he was in the capacity

of Managing Director of the channel and becomes vicariously liable for the offences committed by him.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and perused the material on record. In furtherance whereof, the following points arise for my consideration:

(i) Whether the complaint was maintainable against the petitioner without arraigning the company as an accused?

(ii) Whether the order issuing process is in violation of Section 202 of the Cr.P.C?

(iii) Whether the order setting the criminal trial in motion under Section 204 of the Cr.P.C. does bear existence of sufficient ground?

(iv) Whether there can be defamation of an indeterminate group?

I deem it appropriate to consider the points that have arisen in their seriatim.

Point No.(i): *Whether the complaint was maintainable against the petitioner without arraigning the company as an accused?*

9. A complaint is registered of an incident that takes place on 02-03-2012 when one of the accused politician was brought before the competent criminal Court, at which point in time, there was huge gathering of Advocates and there was complete chaos in the area. This was aired by several television channels under the caption 'breaking news'. All the channels were allegedly portraying the community of Advocates as rowdies, vagabonds, scoundrels and goondas. A private complaint thereon was registered before the competent criminal Court at Bellary invoking Section 200 of the Cr.P.C. for offences punishable under Sections 499 and 500 read with Section 34 of the IPC. The complaint is against several television channels. The accused are the Managing Directors or editors of the said television channels. The present case concerns the petitioner who was the Managing Director at the relevant point in time of Suvarna News 24/7 Kannada Television Channel.

10. The broadcast in a television channel is regulated under the Cable Television Networks (Regulation) Act, 1995 ('the

Act' for short). In terms of the Act permission is required to be granted for uplink and downlink news to a current affairs TV channel. The permission was initially granted to the channel on 05-12-2008 which is continued from time to time and the licence to air such news is extended from 09-07-2017 for a further period of ten years to be in subsistence up to 09-07-2027. This is depicted in the communication issued by the Ministry of Information and Broadcasting, Government of India dated 28-03-2019. Permission to uplink and downlink news is not granted to the petitioner. It is granted to Asianet News Network Private Limited, a company which owns Suvarna News, a television network channel. The complaint though registered invoking Section 500 of the Cr.P.C. it is registered without arraigning M/s Asianet News Network Private Limited or even Suvarna News, as the broadcaster of the programme is Asianet News Network Private Limited and not the petitioner and therefore, at the outset, the complaint without making the company a party was not even maintainable as there can be no vicarious liability in IPC offences.

11. The submission of the learned senior counsel representing the respondent that for the acts of the company the petitioner would become vicariously liable, is unacceptable, as there cannot be vicarious liability in criminal law under the Indian Penal Code. The issue whether vicarious liability is attributable under the Indian Penal Code need not detain this Court for long or delve deep into the matter. The Apex Court in the case of ***MAKSUD SAIYED v. STATE OF GUJARAT***[1] holds as follows:

> *"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind.* ***The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.*** *The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence.* ***The Bank is a***

[1] ***(2008) 5 SCC 668***

body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

(Emphasis supplied)

Later the Apex Court in the case of ***S.K. ALAGH v. STATE OF U.P***[2] holds as follows:

"16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

... ...

19. *As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides*

[2] ***(2008) 5 SCC 662***

specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581 : (2007) 1 SCC (Cri) 621] .)"

(Emphasis supplied)

In ***MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED, v. DATAR SWITCHGEAR LIMITED***[3], the Apex Court holds as follows:

*"**30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned.** In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh [(2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] : (SCC p. 667, para 19)*

[3] ***(2010) 10 SCC 479***

> *"19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself."*
>
> *(Emphasis supplied)*

Following all the aforementioned judgments, the Apex Court in a later judgment in the case of ***SHARAD KUMAR SANGHI v. SANGITA RANE***[4] holds as follows:

> ***"9. The allegations which find place against the Managing Director in his personal capacity seem to be absolutely vague. When a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it has been held, thus: (SCC p. 674, para 13)***

[4] ***(2015) 12 SCC 781***

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. ***The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."***

10. In this regard, reference to a three-Judge Bench decision in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] would be apposite. While dealing with an offence under Section 138 of the Negotiable Instruments Act, 1881, the Court explaining the duty of a

Magistrate while issuing process and his power to dismiss a complaint under Section 203 without even issuing process observed thus: (SCC p. 96, para 5)

"5.... a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words 'if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding'. The words 'sufficient ground for proceeding' again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

After so stating, the Court analysed Section 141 of the Act and after referring to certain other authorities answered a referent and relevant part of the answer reads as follows: (S.M.S. Pharmaceuticals Ltd. case [S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975] , SCC p. 103, para 19)

"19. … (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

The same principle has been reiterated in S.K. Alagh v. State of U.P. [S.K. Alagh v. State of U.P., (2008) 5 SCC 662 : (2008) 2 SCC (Cri) 686] , Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. [Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd., (2010) 10 SCC 479 : (2011) 1 SCC (Cri) 68] and GHCL Employees Stock Option Trust v. India Infoline Ltd. [GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414]

11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even

where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881."

(Emphasis supplied)

On the bedrock of the aforesaid law laid down by the Apex Court, if the facts obtaining in the case at hand are noticed, it would become unmistakably clear that the very complaint was not maintainable as it is blatantly obvious that there is no allegation against the petitioner that he was privy to the publication of such imputation or that he was directly responsible for publication or airing of the incident as alleged. The Managing Director is supposed to have control over the management of the television channel and its financial aspects; he cannot be seen to be directly concerned with the airing of the news items except when there are no materials to draw such conclusion that the Managing Director was also privy to the airing of the said news. The petitioner could not have been roped

in for having committed the offence under Sections 499 and 500 of the IPC.

12. As held by the Apex Court, the principle of vicarious liability is not applicable to criminal offences in the absence of any provision laid down in the statute. The statute applicable in the case at hand is the Act or the IPC. The Managing Director thus cannot be held to be vicariously liable for the acts committed by the Company or its employees merely because he happens to be the Managing Director of the TV news channel. Therefore, the first point that has arisen for consideration is answered against the prosecution holding that complaint itself was not maintainable against the petitioner.

Point No.(ii): *Whether the order issuing process is in violation of Section 202 of the Cr.P.C?*

13. Section 202 of Cr.P.C. undergoes an amendment with effect from 22-06-2006 wherein the learned Magistrate before whom the private complaint is presented would be empowered to

take cognizance of an offence where the accused is residing at a place beyond the area over which he exercises his jurisdiction, only after holding an inquiry into the case or directing investigation to be made by a Police Officer for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 202 of the Cr.P.C. reads as follows:

> *"202. **Postponement of issue of process**.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,-*
>
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

Interpreting Section 202 of the Cr.P.C., the Apex Court in the case of ***UDAYA SHANKAR AWASTHI v. STATE OF UTTAR PRADESH AND ANOTHER***[5] has held as follows:

"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. ***The provisions of Section 202 CrPC were***

[5] ***(2013) 4 SCC 433***

amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases. *(See also Shivjee Singh v. Nagendra Tiwary [(2010) 7 SCC 578: (2010) 3 SCC (Cri) 452: AIR 2010 SC 2261], SCC p. 584, para 11 and National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488: JT (2012) 12 SC 432].)"*

(Emphasis supplied)

Later, in the case of ***VIJAY DHANUKA AND OTHERS v. NAJIMA MAMTAJ AND OTHERS***[6] the Apex Court holds as follows:

"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

[6] ***(2014) 14 SCC 638***

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.***

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:

"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."

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.

… … …

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:

> *"2(g) "**inquiry"** means every inquiry, other than a trial, conducted under this Code by a Magistrate or court"*
>
> *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, 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."***
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> *(Emphasis supplied)*

The aforesaid judgments are followed by the Apex Court in the subsequent judgment in the case of ***ABHIJIT PAWAR v. HEMANT MADHUKAR NIMBALKAR***[7] wherein the Apex Court holds as follows:

> *"23. Admitted position in law is that in those cases where the accused is residing at a place beyond the area*

[7] ***(2017) 3 SCC 528***

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.

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)

> *"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.

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:

'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.'

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."

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 emphasized 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],

30. No doubt, the argument predicated on Section 202 CrPC was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court

could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad [National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, (2011) 12 SCC 695 : (2012) 2 SCC (Civ) 791] .)"

(Emphasis supplied)

The law laid down by the Apex Court being thus, the facts obtaining in the case at hand are required to be noticed and considered on the touchstone of the principles enunciated by the Apex Court interpreting Section 202 of the Cr.P.C.

14. Section 202 of the Cr.P.C. touches upon the jurisdiction of the learned Magistrate to issue process on a complaint, if the accused are residing beyond the area in which he is conferred jurisdiction. The complaint is registered by the respondent at Bellary. The accused No.1/petitioner is a resident of Bangalore. The TV channel in which the news was aired has its head office at Kerala, though the said channel is not a party. Therefore, the accused does not reside within the jurisdiction

over which the learned Magistrate exercises his jurisdiction. Therefore, it was mandatory on the part of the learned Magistrate to have postponed issuance of process and to do so, only after holding an enquiry as contemplated under Section 202 of the Cr.P.C. which admittedly has not been complied with by the learned Magistrate. Therefore, the said point is also answered against the prosecution.

Point No.(iii): *Whether the order setting the criminal trial in motion under Section 204 of the Cr.P.C. does bear existence of sufficient ground?*

15. Section 204 of Cr.P.C. in terms of which criminal trial is set in motion reads as follows:

> *"204.* ***Issue of process****.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-*
>
> *(a) a summons- case, he shall issue his summons for the attendance of the accused, or*
>
> *(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the*

accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

Section 204 of the Cr.P.C. mandates that there should be existence of sufficient ground to issue process. The process in the case at hand is issued by an order dated 01-09-2012. The order passed under Section 204 of the Cr.P.C., as contended by

learned senior counsel for the petitioner, does not suffer from want of application of mind. A detailed order is passed formulating the point whether there was sufficient material to issue process, registered the case and issued process in terms of Section 204. The reason assigned by the competent Court reads as follows:

> *"8) The point that arise for my consideration is:*
>
> *1) Is there sufficient material to believe that, accused persons have defamed the complainant Advocate and Advocate's community?*
>
> *2) What order?*
>
> *9) My answer to the above point is as under:*
> *Point No.1: In the affirmative*
> *Point No.2: As per final order.*
>
> ***REASONS***
>
> *10)* ***Point No.1:*** *It is clear from the allegations made in the complaint, forthcoming from the sworn statement of complainant and words forthcoming from one of the C.D's produced by the complainant that, Suvarna 24x7 and TV 9 Kannada channel has used the alleged defamatory words against the advocates in general. The words used by the*

said channel definitely defame the person who is practicing as an advocate. If is a common man reads words used by the accused channel, definitely he comes to a conclusion that, advocates are rowdy's and goondas and thereby the dignity and reputation of the advocates' community will be tarnished. No material is there to hold that, accused channel has used the said wordings against the particular person who is an advocate or particular group of advocates but they are against all the persons who are practicing as an advocate. Hence, I am of the opinion that, sufficient material is there to hold that, Suvarna 24x7 Kannada Channel has used defamatory words against the advocates.

11. Complainant being practicing advocate has filed this complaint and relied upon a judgment reported in AIR 1972 SC 2609 G.Narasimhan and others v. T.V.Chokkappa.

12. Index Note-(A) Criminal P.C. (1985), S.198-Scope of, in cases of defamation-complainant himself must be aggrieved-Section is mandatory (X-Ref:Penal Code (1860), Sections 500-501).

13. Index Note-(B) Criminal P.C. (1898), S 198-Aggrieved Person in cases of defamation-Who is-Imputation Concerning collection of persons-Complaint by individual member of that collection-Collection of persons must be

identified, definite and determinate in relation to the imputations.

14. If a well-defined class is defamed, every person of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

15. It is undisputed fact that the advocates community is well defined class, wordings used by the Suvarna 24x7 and TV 9 Kannada Channel defame the advocates class. Accused persons being the owner, chief editor and anchor are responsible for publication of the news published against the advocates community. Sufficient material is there to hold that accused channel has defamed the advocates community by using the defamatory words. Accordingly point No.1 is answered in affirmative.

16. ***Point No.2:*** *For the foregoing reasons I proceed to pass the following order:*

ORDER

Register a case as C.C. against the accused No.1 to 12 in register No.III (crl) for an offence punishable U/s 499 and 500 r/w Section 34 of IPC.

Issue summons against the accused No.1 to 12 subject to compliance of Section 204 by the complainant."

(emphasis added)

Therefore, the order issuing process and summoning the accused does contain some reasons but not application of mind to the law. Perhaps the order taking cognizance could be in tune with the existence of sufficient material to issue summons, but the same cannot be held to be in tune with law. The order though contains reasons, the same are erroneous in the light of my finding on point No.(iv). Therefore, the said point is also answered against the prosecution.

Point No.(iv): *Whether there can be defamation of an indeterminate group?*

16. The incident triggered registration of a complaint was airing of news on the television channel which did not happen only on Suvarna News but on several television channels. The statement of defamation according to the complaint made in the news channel was referring to the Advocates "Goondas, Hooligans, Scoundrels and Rowdies". It is not the allegation that

was defaming a particular person but defaming an indefinite class. It is not defaming a definite association but an indefinite mass. Defamation is dealt with under Section 490 of the IPC. Section 499 of the IPC reads as follows:

> *"499. **Defamation.**- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes a 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 expected, 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 hartful 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."*

Section 499 carries along with it certain explanations. Explanation 2 quoted (supra) with emphasis depicts that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. It would have been a circumstance altogether different if Section 499 did not carry this explanation. The explanation further qualifies Section 499 to be defamation against a company or an association or collection of persons as such. Therefore, it is a definite group of people and not indefinite group of people. Further airing of news with regard to Advocates being described as aforesaid would not amount to defamation as it is made against an indefinite class of people. It is neither made against the association nor a definite collection of persons.

17. Therefore, Explanation-2 saves the act of defamation under Section 499 insofar as the case at hand is concerned. The legal position with regard to such defamation has emerged in Courts of England in certain judgments rendered by their law Lords. The celebrated judgment in the case of ***EASTWOOD v.***

HOLMES – ***(1858) 1 F & F 347*** wherein the House of Lords was considering a statement in the press quoting as "***all lawyers were thieves***". It was held therein that unless there is something to point to a particular individual, in the opinion of the Court, it would not amount to defamation. This is subsequently followed and affirmed by another judgment of House of Lords in the case of ***KNUPFFER v. LONDON EXPRESS NEWS PAPER LIMITED – 1944 Appeal Cases 116*** wherein the offending passage read as follows:

> *"he quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an émigré group called Miado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable fuehrer – I know with what success... ..."*

On the aforesaid publication a Russian resident in England brought an action for libel. The trial Court therein had upheld complainant's plea but Court of Appeal reversed it following the dictum in Eastwood (supra). Both these judgments are followed by the Apex Court in ***G.NARASIMHAN v. T.V. CHOKKAPPA***[8] –

[8] ***(1972) 2 SCC 680***

wherein the Apex Court considered Explanation-2 to Section 499 of the IPC. The Apex Court was considering an imputation published in Hindu Newspaper concerning Dravida Munnetta Kazhakam which was complained of by one of its members. The Apex Court quashed the complaint laying down that a defamatory imputation against collection of persons falls within Explanation-2 to Section 499 of the IPC. When the explanation speaks of a collection of persons it must be definite and determinate body so that the imputation in question can be said to relate to its individual members or components. The relevant paragraph of the judgment of the Apex Court reads as follows:

> *"15. Prima facie, therefore, if Section 198 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually.* ***Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to***

defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing in weighs against mankind in general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. *[(1969) 3 Salk 224, cited in Ratanlal and Dhirajlal; Law of Crimes (22nd Edn.) 1317] In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite e.g. men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. [see Kenny's Outlines of Criminal Law (19th Edn.) 235]. If a well-defined class is defamed, every particular of that class can file a complaint even if the defamatory imputation in question does not mention him by name.*

16. In this connection, counsel for the appellants leaned heavily on Knupffer v. London Express Newspaper Ltd. [(1944) AC 116] The passage printed and published by the respondents and which was the basis of the action there read as follows:

"The quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an emigre group called Mlado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable Fuehrer — I know with what success."

The appellant, a Russian resident in London, brought the action alleging that the aforesaid words had been falsely and maliciously printed and published of him by the respondents. The evidence was that the Young Russia party had a total membership of 2000, that the headquarters of the party were first in Paris but in 1940 were shifted to America. The evidence, however, showed that the appellant had joined the party in 1928, that in 1935 he acted as the representative of the party and as the head of the branch in England, which had 24 members. The appellant had examined witnesses, all of whom had said that when they read the said article their minds went up to the appellant. The House of Lords rejected the action, Lord Simon saying that it was an essential element of the cause of action in a libel action that the words complained of should be published of the plaintiff, that where he was not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact would not arise if they could not in law be regarded as capable of referring to him, and that that was not so as the imputations were in respect of the party which was in Paris and America. Lord Porter agreed with the dismissal of the action but based his decision on the ground that the body defamed had a membership of 2000, which was considerable, a fact vital in considering whether the words in question referred in fact to the appellant. The principle laid down there was that there can be no civil action for libel if it relates to a class of persons who are too numerous and unascertainable to join as plaintiffs. A single one of them could maintain such an action only if the words

complained of were published "of the plaintiff", that is to say, if the words were capable of a conclusion that he was the person referred to. [See Gatley on Libel and Slander (6th Edn.) 288] Mr Anthony, however, was right in submitting that the test whether the members of a class defamed are numerous or not would not be apt in a criminal prosecution where technically speaking it is not by the persons injured but by the state that criminal proceedings are carried on and a complaint can lie in a case of libel against a class of persons provided always that such a class is not indeterminate or indefinite but a definite one. [Kenny's Outlines of Criminal Law (19th Edn.) p. 235]. It is true that where there is an express statutory provision, as in Section 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body.

17. This was the construction of Explanation (2) to Section 499 adopted in Sahib Singh Mehra v. State of U.P., [AIR 1965 SC 1451 : (1965) 2 SCR 823, 828 : (1966) 1 SCJ 294] and which guided the decision in that case. The article complained of there was one printed and published in the appellant's newspaper called Kalivug of Aligarh which contained the following:

"How the justice stands at a distance as a helpless spectator of the show as to the manner in which the illicit bribe money from plaintiffs and defendants enters into the pockets of public prosecutors and assistant public prosecutors and the extent to which it reaches and to which use it is put."

This Court held that the prosecuting staff of Aligarh and even the prosecuting staff in the State of U.P. formed an identifiable group or "collection of persons" within the meaning of Section 499, Explanation (2) in the sense that one could with certainty say that a group of persons has been defamed as distinguished from the rest of the community, and therefore, a complaint by the public prosecutor and eleven Assistant Public Prosecutors was a competent complaint. Following the test laid down in this decision, the High Court of Allahabad in Tek Chand v. R.K. Karanjia [1969 Cri LJ 536] held that the Rashtriya Swayam Sevak was a definite and an identifiable body, that defamatory imputations regarding it would be defamation within the meaning of Section 499, Explanation (2), that such imputations would be defamation of the individual members of that body or class and that a complaint by an individual member of such a body was maintainable. (See also the dictum of Kendall, J., in Wahid Ullah Ansari v. Emperor [AIR 1935 All 743])

18. This being the position in law, the question upon which these appeals must be decided is : which was the class or body in respect of which defamatory words were used and whether that body was a definite and an identifiable body or class so that the imputations in question can be said to relate to its individual components enabling an individual member of it to maintain a complaint?

... ...

20. The news item complained of clearly stated that the resolution was passed by the conference and not by the Dravida Kazhagam. In his very first letter, dated January 28, 1971, which the respondent signed describing himself as the chairman of the reception committee and not as an important member of the Dravida Kazhagam, the respondent complained that the news item had distorted

the resolution passed by the conference and asked the editor to publish his "correction and clarification" of that resolution. There is no grievance there that the Dravida Kazhagam suffered injury in reputation or otherwise by that alleged distortion. In his advocate's letter, dated February 1, 1971, the respondent's complaint was that the news item was highly defamatory and had tarnished the image of the conference, of whose reception committee he was the chairman. In his evidence before the Magistrate also he clearly stated that the resolution was the resolution moved by the president of and passed by the conference. Thus, his case throughout was that the publication of the said resolution reported in the said news item in a distorted form had tarnished the image not of the Dravida Kazhagam but of the conference.

21. That being so, the High Court completely missed the real issue viz. whether the conference was a determinate and an identifiable body so that defamatory words used in relation to the resolution passed by it would be defamation of the individuals who composed it, and the respondent, as one such individual and chairman of its reception committee could maintain a complaint under Section 500 of the Penal Code. Whether the Dravida Kazhagam was an identifiable group or not was beside the point, for, what had to be decided was whether the conference which passed the resolution in question and which was said to have been distorted was such a determinate body, like the Rashtriya Swayam Sevak in Tek Chand case or the body of public prosecutors in Sahib Singh Mehra case as to make defamation with respect to it a cause of complaint by its individual members. In our view the High Court misdirected itself by missing the real and true issue arising in the applications before it and deciding an issue which did not arise from those applications.

The judgment of the High Court, based on an extraneous issue, therefore, cannot be sustained.

(Emphasis supplied)

Therefore, this is a case where not a definite class of people is alleged to be defamed but an indefinite class. The very concept of defaming an indefinite class cannot lead to the offence punishable under Section 500 of the IPC as the purport of Section 499 and the Explanation is that it should be against a definite class of people.

18. Section 199 of the Cr.P.C. reads as follows:

> ***"199. Prosecution for defamation****. (1) No Court shall take cognizance of an offence punishable* ***under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:***
>
> *(Emphasis supplied)*

Section 199 of the Cr.P.C. deals with prosecution for defamation as Chapter XXI of the IPC concerns defamation and mandates that no Court shall take cognizance of an offence punishable under Chapter XXI of the Code except upon a complaint made by some "person aggrieved" of the offence. Some person

aggrieved of the offence assumes significance as it would depict particular person or persons. A definite collection of persons is an expression which will not relate to huge mass of people, such a construction cannot be rendered to either Section 499 or Explanation-2 to Section 499. Therefore, in the light of preceding analysis on point No.4, I am of the considered view that the statements made would not amount to defamation as obtaining under Sections 499 and 500 of the IPC. The very substratum of the offence gets vanished and, therefore, no purpose would be served by remitting the matter to the hands of the learned Magistrate to consider the issue from the stage of compliance with Section 202. Hence, point No.4 arising is also answered against the prosecution.

19. In view of the preceding analysis, it would be highly unjust to permit the prosecution to continue with the proceedings against the petitioner and if so permitted, it would without doubt lead to miscarriage of justice and become an abuse of the process of law. This view of mine draws support

from the latest judgment of the Apex Court in the case of ***SHAFIYA KHAN ALIAS SHAKUNTALA PRAJAPATI V. STATE OF U.P.***[9] wherein the Apex Court has followed the earlier judgment in the case of ***BHAJANLAL*** and has held as follows:

> ***"15.*** *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.PC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana v. Bhajan Lal (supra) as under:*
>
> > ***"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***

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[9] ***2022 SCC OnLine SC 167***

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 noncognizable 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."*
>
> ***16.*** *The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*[2]*.*
>
> *(Emphasis supplied)*

It is further germane to notice the judgment in the case of ***MANOJ MAHAVIR PRASAD KHAITAN V. RAM GOPAL PODDAR***[10]wherein the Apex Court holds as follows:

> ***"12.*** *We reiterate that when the criminal court looks into the complaint, it has to do so with an open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same,* ***the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 CrPC is a guarantee against injustice. The High Court is invested with the tremendous powers thereunder to pass any order in the interests of justice. Therefore, this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interests of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482 CrPC."***
>
> *(Emphasis supplied)*

[10] ***(2010)10 SCC 673***

In the light of the judgments of the Apex Court afore-quoted, this is a fit case where this Court will have to exercise its jurisdiction under Section 482 of the Cr.P.C. and obliterate all further proceedings against the petitioner.

20. A parting observation may not be inapt. Plethora of cases are brought before this Court contending violation of Section 202 of the Cr.P.C. Not for nothing, did the amendment to Section 202 of the Cr.P.C. take place in the year 2006 by making it mandatory for the Magistrates to postpone issuance of process in the event the accused resides outside the jurisdiction of the Magistrate before whom the private complaint is registered. Despite it being mandatory to be followed, the learned Magistrates seldom follow it. Therefore, the learned Magistrates should bear in mind that when a complaint is presented in which the accused reside beyond their jurisdiction, an inquiry as contemplated under Section 202 of the Cr.P.C. shall be followed; this direction is rendered in the light of the fact that the learned Magistrates seldom follow the mandate of

Section 202 of the Cr.P.C. and straightaway entertain complaints presented before them against such accused persons who reside beyond their jurisdiction.

21. For the aforesaid reasons, I pass the following:

O R D E R

(i) The Criminal Petition is allowed.

(ii) Impugned proceedings in C.C.No.1243 of 2012 pending before the Principal Civil Judge and JMFC, Bellary stand quashed *qua* the petitioner.

(iii) The Registry shall circulate the order to all the Courts for compliance with the observations made in the course of the order with regard to Section 202 of the Cr.P.C.

Sd/-
JUDGE

bkp
CT:MJ