2023INSC880

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1959 OF 2012

M/S IVECO MAGIRUS
BRANDSCHUTZTECHNIK GMBH ... APPELLANT

VERSUS

NIRMAL KISHORE BHARTIYA & ANR. ... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. This appeal, by special leave, is at the instance of a German company ("the appellant", hereafter). It assails a short five-line order of a learned Judge of the High Court of Delhi ("learned Judge", hereafter) dated 10th December 2010. By such order, the learned Judge dismissed a petition[1] under section 482 of the Code

[1] CRL. M.C. 2845/2010

of Criminal Procedure, 1973 ("Cr. PC", hereafter) presented by the appellant as not maintainable relying on the decision of this Court in **Iridium India Telecom Ltd. v. Motorola Incorporated & Ors.**[2] and a Bench decision of the High Court of Delhi in **Morgan Tetronics Ltd. v. State & Anr.**[3].

CHALLENGE BEFORE THE HIGH COURT OF DELHI

2. Appellant had approached the High Court of Delhi taking exception to an order dated 25th March 2010 passed by the Additional Chief Metropolitan Magistrate (SE), New Delhi ("Trial Court", hereafter) on a complaint[4] lodged under section 200, Cr. PC by the respondent ("complainant", hereafter). The Trial Court upon considering the complaint returned a *prima facie* finding in the said order that Mr. M.C. Aggarwal (accused no.1), the appellant (accused no. 2) and its District Manager (Asia), Mr. Lorenzo Boninsegna (accused no.3) were *"jointly and severally responsible for writing, sending, publishing the above said letters containing malicious and defamatory statements and imputation against the complainant"* and consequently summoned the three accused for offences under sections 500/107/34, Indian Penal Code ("IPC", hereafter).

[2] (2011) 1 SCC 74
[3] LPA-668/2010 dt. 17th September 2010
[4] CC No.465/1/09

FACTS

3. The undisputed and relevant facts leading to the summoning order impugned before the learned Judge is noticed hereunder:

i. Global Tender No. EQ/Global/2007-09/01 was floated by the Airports Authority of India ("AAI", hereafter) for supply of 40 (forty) Airfield Crash Fire Tenders at various airports across the country. The appellant, a Germany-based manufacturer of fire safety equipment, executed a Power of Attorney in favour of Mr. M.C. Aggarwal, the respondent no. 2 ("Aggarwal", hereafter), who happened to be the Managing Director of Brijbasi Hi-Tech Udyog Ltd. Aggarwal was appointed to be the local representative of the appellant in India and he was empowered, *inter alia*, to file suits and take all steps which were deemed expedient in furtherance of the tender process.

ii. The company of the complainant, Bhartiya Vehicles & Engineering Pvt. Ltd, was the Indian associate of one Rosenbauer International AG ("Rosenbauer", hereafter), another bidder in the aforementioned tender process.

iii. On 21st July 2008, AAI rejected the bid of the appellant and eventually awarded it to Rosenbauer. In the aftermath of the rejection, on various occasions in 2008, Aggarwal issued four letters in the nature of complaints to different authorities including the Minister of Civil Aviation,

Government of India, the Chairman of AAI, the Chief Vigilance Officer, AAI, and the Central Vigilance Commissioner, Government of India, *inter alia,* complaining of favouritism and irregularities in the tender process. These letters allege that the complainant, through illegal and wrongful methods, persuaded AAI to award the tender to Rosenbauer. Enumeration of the contents of such letters is avoided, lest the same prejudices the rights of the parties.

iv. Dissatisfied with the inaction of the aforementioned authorities to look into the letters of complaint, Aggarwal, in his capacity as the local authorised representative of the appellant, invoked the writ jurisdiction of the High Court on or about 12th August 2008 by presenting a writ petition[5] against the Union of India and AAI. It is pertinent to note that Bhartiya Vehicles & Engineering Pvt. Ltd., and Rosenbauer were also made parties to the proceedings. The writ petition was finally dismissed on 13th February 2009 *vide* a detailed order, which was not challenged thereafter.

v. On 30th April 2009, the complainant addressed a legal notice to the appellant and Aggarwal *inter alia* alleging that the contents of the aforementioned four letters of complaint given to the concerned authorities were defamatory. Pertinently, on 20th May 2009, the appellant responded to

[5] WP (C) No.6155/2008

the legal notice *inter alia* stating that it had not authorised Aggarwal to write any such letter, and that the appellant was also not involved in their preparation.

vi. It was in this context that the complainant lodged the complaint before the Trial Court alleging criminal defamation as well as its abetment under sections 107, 499, and 500 read with section 34 of the IPC against the accused.

vii. The Trial Court, after perusing the complaint and examining the witnesses in support thereof, ordered the accused to be summoned as it was of the opinion that a *prima facie* case was made out against them.

viii. The challenge by the appellant to the summoning order was spurned by the High Court *vide* the impugned order.

CONTENTIONS OF THE APPELLANT

4. On behalf of the appellant, learned counsel Ms. Viswanathan argued that the High Court committed grave miscarriage of justice in dismissing the petition by a cryptic order. She contended that several important questions of law were raised in the petition by the appellant. Although the objection as to whether a company is capable of being prosecuted on the ground that it is incapable of possessing necessary *mens rea* stood answered by the decisions relied on by the learned Judge, yet, according to her, the learned Judge should have considered the other objections raised by the

appellant. Not having so considered, it was urged that the impugned order is indefensible.

5. Ms. Viswanathan, in support of the appeal, raised the following specific contentions:

   i. The impugned order of the learned Judge omitted to consider that the complaint did not disclose any oral or written words, spoken or written by the appellant, or sign or visible representation made by it; and, in the absence of disclosure of any imputation made by the appellant, the key ingredient of the offence of defamation did not exist. The impugned order of the learned Judge failed to appreciate that issuance of a Power of Attorney cannot by law constitute an ingredient of an offence under section 499, IPC since agents, under section 188 of the Indian Contract Act, 1872, are authorised to do only lawful acts; and, as a corollary, execution of such power of attorney did not amount to authorisation or consent given to Aggarwal to commit any alleged act of defamation.

   ii. The learned Judge erred in not considering that a writ petition instituted on behalf of the appellant cannot constitute an ingredient of an offence under section 499, IPC, since documents filed in civil cases are protected by an

"absolute privilege" and are also covered under the Fourth Exception to section 499, IPC.

iii. There has been a gross failure of justice in that the learned Judge ought to have corrected the manifest error committed by the Trial Court in issuing process against the accused without the Trial Court considering whether any of the exceptions to section 499, IPC was applicable on facts and in the circumstances of the present case.

iv. The impugned order of the learned Judge fails to explain why the decision of this Court in ***Rajendra Kumar Sitaram Pande v. Uttam***[6] was not followed, whereby law has been settled that issuance of process by a Magistrate without applying the exceptions to section 499, IPC is unreasonable, excessive and palpably wrong resulting in failure of justice.

v. The decision in **Aroon Purie v. State of NCT of Delhi**[7] was also cited for the proposition that there is no rigid principle that the benefit of exception can only be afforded at the stage of trial.

6. Resting on the aforesaid contentions, Ms. Viswanathan prayed that the proceedings emanating from the complaint be quashed.

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[6] (1999) 3 SCC 134
[7] 2022 (15) SCALE 541

CONTENTIONS OF THE FIRST RESPONDENT

7. Mr. Taneja, learned counsel representing the complainant invited our attention to various documents forming part of his counter affidavit to the special leave petition. According to him, the appellant withheld relevant materials from this Court and obtained an *ex parte* interim order on 29th April 2011 as a sequel whereto the entire proceedings before the Trial Court have been brought to a grinding halt.

8. Our notice was first invited to the fact that Aggarwal had independently challenged the summoning order before the High Court of Delhi by presenting a petition[8] under section 482, Cr. PC. By a detailed order dated 10th December 2010, the same learned Judge (who dismissed the petition of the appellant) noted that Aggarwal was taking defence under exceptions to section 499 IPC and that *"the Court cannot take the defence of the petitioner into account to quash the summoning order or to quash the complaint"*. Based on such finding, the learned Judge rejected the challenge.

9. Mr. Taneja contended that the learned Judge on 10th December 2010 had considered the petitions of Aggarwal and the appellant, one after the other; and, although it is true that the learned Judge while dismissing the petition of the appellant dealt with the point

[8] CRL. M.C. 3350/2010

that a company could be proceeded against in view of **Iridium India Telecom Ltd.** (supra) and **Morgan Tetronics Ltd.** (supra) and did not assign separate reasons for spurning the appellant's challenge to the impugned order on the other grounds raised therein, the appellant was duly represented by its learned advocate when Aggarwal's petition was considered and in his presence, the order of dismissal was dictated. What Mr. Taneja hinted at was that the learned Judge having passed a reasoned order rejecting Aggarwal's challenge to the summoning order, the learned Judge may not have considered it necessary to repeat the reasons twice over while dismissing the petition of the appellant.

10. Next, our attention was drawn by Mr. Taneja to the letters of complaint issued by Aggarwal before the various public authorities. It was contended that while acting on behalf of the appellant and also under its instructions, Aggarwal had made reckless and frivolous allegations against the complainant amounting to defamation and, in the process, lowered his reputation and fame in the eyes of the public. He further contended that the appellant cannot feign ignorance of the letters of complaint issued by Aggarwal. Referring to the writ petition of the appellant presented before the High Court of Delhi, he pointed out that the self-same letters of complaint issued by Aggarwal were made part of such petition while challenging the appellant's

disqualification in course of the tender process; and, if indeed, such letters were issued without knowledge and consent of the appellant, it defies logic as to why they were made part of the writ petition in the first place where the appellant was arrayed as the writ petitioner.

11. Relying on the decision of this Court in ***Supriya Jain v. State of Haryana***[9], it was argued by Mr. Taneja that it is not open to the Courts to quash a complaint based on additional material placed by the accused which is not part of the record of proceedings before the court below. According to him, the Power of Attorney is not a piece of evidence that has been admitted or accepted by the complainant and, thus, it requires proof by the appellant. Since the same is yet not proved by the appellant according to law, therefore, the same cannot be considered at this stage by this Court. Also, it is for the appellant to respond to the summons and to raise whatever defence is available to it by appearing before the Trial Court.

12. Reliance was also placed on several decisions by Mr. Taneja, some of which we propose to refer to a little later, to buttress his contention that the petition of the appellant was rightly dismissed and that the appeal deserves dismissal with costs.

[9] (2023) SCC OnLine SC 765

THE QUESTIONS

13. Having heard learned counsel appearing for the appellant and the complainant and on consideration of the materials on record, we are of the view that the following questions of law emerge for an answer:

    i. Whether, while considering a private complaint alleging defamation, the Magistrate before summoning the accused ought to confine himself to the allegations forming part of the petition only or he may, applying his judicial mind to the exceptions to section 499, IPC, dismiss the complaint holding that the facts alleged do not make out a case of defamation?

    AND

    ii. Whether and, if at all, to what extent, is it open to the High Courts to exercise inherent power saved by section 482, Cr. PC to quash proceedings for defamation by setting aside the summoning order upon extending the benefit of any of the Exceptions to section 499, IPC?

14. After answering the aforesaid questions, we wish to answer the following questions emerging from the facts and circumstances of the appeal:

a. Whether the appellant has made out any case for interference with the judicial orders of the Magistrate and the learned Judge under challenge?

b. Whether a company can be prosecuted for defamation when the alleged defamatory statements are made not by it (the company) but by its authorised agent?

c. Depending on the answers to the above, whether the benefit of the Fourth Exception to section 499, IPC, as claimed, should be accorded to the appellant?

ANALYSIS

15. A survey of the decisions of this Court which were cited and those mentioned in the cited decisions as well as some other decisions, which we had the occasion to read and consider while preparing this judgment, would provide guidance and pave the way for us to decide the fate of this appeal.

16. We would first consider the decisions cited by the parties and those decisions, though not cited by them, are traceable in such decisions, by maintaining the sequence of their origin.

17. In ***Balraj Khanna & Ors. v. Moti Ram***[10], the respondent lodged a complaint against the first appellant and 6 (six) others under section 500, IPC, alleging that they had levelled allegations

[10] (1971) 3 SCC 399

against him which were defamatory in character. On 2 (two) grounds, the Magistrate dismissed the complaint. The respondent unsuccessfully applied for revision of the order of dismissal before the Additional Sessions Judge, whereafter he approached the High Court of Delhi with success. The High Court, while setting aside the orders impugned, directed further inquiry. After considering various foreign decisions as well as decisions of the High Courts of Orissa, Nagpur, Allahabad and Mysore that were cited, this Court in paragraph 29 held as follows:

> "29. Before concluding the discussion, it is to be stated that the trial Magistrate has given an additional reason for dismissing the complaint. That reason is that the resolution passed by the Standing Committee on December 11, 1964 and the discussion preceding it by the members of the Standing Committee including the appellants, is covered by the Exceptions to Section 499 IPC. Unfortunately, the High Court also has touched upon this aspect and made certain observations. In our opinion, the question of the application of the Exceptions to Section 499 IPC, does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499 IPC, as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint."
>
> (underlining ours, for emphasis)

18. The next decision is ***Sewakram Sobhani v. R.K. Karanjia***[11], rendered by a Bench of 3 (three) Hon'ble Judges. The appeal was directed against an order passed by the Madhya Pradesh High

[11] (1981) 3 SCC 208

Court in exercise of jurisdiction under section 397, Cr. PC, alternatively under section 482 thereof. The respondent was the Chief Editor, Blitz. An article was published therein which was *per se* defamatory. Prosecution for an offence under section 500, IPC which was launched stood quashed by the impugned order on the ground that the case *"clearly falls within the ambit of Exception 9 of Section 499 of the Indian Penal Code, 1860"*. The appeal was allowed by the majority and the order under challenge quashed. This is what the Court, speaking through Hon'ble A.P. Sen, J., said:

> "6. The order recorded by the High Court quashing the prosecution under Section 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under Section 251 of the Code. The requirements of Section 251 are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or demands to be tried. <u>The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under Section 500 of the Code unless he pleads one of the exceptions to Section 499 of the Code.</u> ***
>
> It is for the respondent to plead that he was protected under Ninth Exception to Section 499 of the Penal Code. The burden, such as it is, to prove that his case would come within that exception is on him. ***
>
> 7. We are completely at a loss to understand the reasons which impelled the High Court to quash the proceedings. ***"

Hon'ble O. Chinnappa Reddy, J., in a concurring judgment, made an illuminating discussion which would also be relevant for answering one of the questions formulated by us touching upon

the facts of this appeal. We quote the concluding paragraph of His Lordship's judgment, reading thus:

> "18. Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verification? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalise the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on."
>
> (underlining ours, for emphasis)

19. The decision of another Bench of 3 (three) Hon'ble Judges in ***Shatrughna Prasad Sinha v. Rajabhau Surajmal Rathu***[12]

[12] (1996) 6 SCC 263

outlined the contours for exercise of jurisdiction to quash a complaint for defamation. Paragraph 13 being relevant is set out below:

> "13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."
>
> (underlining ours, for emphasis)

20. Then followed ***M.N. Damani v. S.K. Sinha***[13] where this Court, after applying the law laid down in ***Sewakram Sobhani*** *(*supra*)*

[13] (2001) 5 SCC 156

and ***Shatrughna Prasad Sinha*** *(*supra*)*, set aside the order of the Karnataka High Court and restored the order of the Magistrate issuing summons to the accused for offence under section 500, IPC.

21. In ***M.A. Rumugam v. Kittu Alias Krishnamoorthy***[14]*,* the respondent filed a private complaint against the appellant for commission of the offence of defamation under section 500, IPC. Taking cognizance of the said complaint, the Magistrate issued summons to the appellant. Aggrieved thereby, he filed a petition before the High Court of Judicature at Madras praying to call for the records pertaining to the complaint petition filed by the respondent and to quash the same. Before the High Court, a contention was raised that the backdrop of events and the manner in which the complaint petition had to be filed by the appellant would clearly establish that the action on his part was not in good faith. The said contention was negatived by the High Court. This Court had the occasion to consider the applicability of the provisions of section 482, Cr. PC for quashing of a complaint petition filed by the respondent against the appellant under section 500, IPC. While dismissing the appeal, the Court went on to apply the well-settled principle of law that those who plead

[14] (2009) 1 SCC 101

exception must prove it and, therefore, the burden of proof that his action was *bona fide* would, thus, be on the appellant alone.

22. In ***Subramanian Swamy v. Union of India***[15], this Court considered the issue from a different angle. We can do no better than reproduce the contention and how the same was unhesitatingly repelled in the following words:

> "209. We will be failing in our duty if we do not take note of the submission of Mr. Bhambhani, learned Senior Counsel. It is submitted by the learned Senior Counsel that Exceptions to Section 499 are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in *M.A. Rumugam* that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to Section 499 IPC, it would be necessary for the person who pleads the Exception to prove it. He has to prove good faith for the purpose of protection of the interests of the person making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same."
>
> (underlining ours, for emphasis)

23. Now, we take up for consideration the first decision cited by Ms. Viswanathan, i.e., ***Rajendra Kumar Sitaram Pande*** *(*supra*)*. The

[15] (2016) 7 SCC 221

facts, the relevant issue and the finding – all are captured in paragraph 7, which we reproduce hereunder:

> "The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201, can it be said that a prima facie case exists for trial or Exception 8 to Section 499 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office using filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold an enquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Penal Code, 1860 defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would

> not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself. This appeal is allowed."
>
> (underlining ours, for emphasis)

24. The aforesaid determination makes it clear that on perusal of the allegations levelled in the petition of complaint, the Court was satisfied that no case of defamation had been made out therein and this precisely seems to be the reason why the Court felt that it would not be in the interest of justice to require the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process. We do not read any law having been laid down by this Court in ***Rajendra Kumar Sitaram Pande*** (supra) that wherever a challenge to a summoning order passed on a complaint for defamation is laid before the High Courts in a petition under section 482, Cr. PC or such challenge travels to this Court, an endeavour must necessarily be made whether any of the exceptions is attracted so that the proceedings may be closed without subjecting the accused to long drawn proceedings. At best, we read the decision as one where, in the given facts and circumstances, the Court felt that requiring the appellants to undergo a trial would be a travesty of justice; hence, the decision must be held to be confined to the facts of the case.

25. Now, it is time to consider the other decision relied on by Ms. Viswanathan, i.e., ***Aroon Purie*** (supra). In such decision, the decision in ***Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar***[16] was considered. Before we look into ***Aroon Purie*** (supra), we propose to ascertain whether ***Jawaharlal Darda*** (supra) lays down a law having the force of a binding precedent.

26. The decision in ***Jawaharlal Darda*** (supra) reveals that the respondent 1 had filed a complaint on 2nd February, 1987 in the court of the relevant Magistrate alleging that by publishing a news item in its newspaper '*Daily Lokmat'*, on 4th February, 1984, the appellant being the then Chief Editor of that daily and 4 (four) others associated with the newspaper in one capacity or the other, had committed offences punishable under sections 499, 500, 501 and 502 read with section, 34 IPC. Process was issued against all the accused by the Magistrate. Upon a challenge being laid to such order, the relevant Sessions Court quashed it being of the opinion that by publishing that news item, none of the accused had committed any offence. That order was challenged by the complainant by filing a petition in the High Court under section 482, Cr. PC. The High Court was of the opinion that the Sessions Court misinterpreted the publication. It was also of the view that

[16] (1998) 4 SCC 112

when the Magistrate had found *prima facie* case against the accused and thought it fit to issue process, it was not proper for the Sessions Court to set aside that order by exercising revisional power. This Court restored the order of the Sessions Court holding as follows:

> "4. As we have stated earlier, the news item was published on 4-2-1984. The complaint in that behalf was filed by the complainant on 2-2-1987. The news item merely disclosed what happened during the debate which took place in the Assembly on 13-12-1983. It stated that when a question regarding misappropriation of government funds meant for Majalgaon and Jaikwadi was put to the Minister concerned, he had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons involved, he had stated the names of five persons, including that of the complainant. The said proceedings came to be published by the accused in its Daily on 4-2-1984. Because the name of the complainant was mentioned as one of the persons involved and likely to be suspended he filed a complaint before the learned CJM alleging that as a result of publication of the said report he had been defamed.
>
> 5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. <u>It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good.</u> All these aspects have been overlooked by the High Court."
>
> (underlining ours, for emphasis)

It is clear from the above reasoning that this Court went on to reverse the order of the High Court and restore that of the

Sessions Court on the grounds that the accused published the report in good faith and *bona fide* believing the version of the Minister to be true, that it cannot be said that they intended to harm the reputation of the complainant, and that the news item was published for public good. Therefore, relief was given to the accused having regard to the facts obtaining therein and without there being any discussion on the point that we are seized of. This decision too appears to have been rendered by this Court considering the special facts and circumstances.

27. Significantly, the precedents which we have referred to at an earlier part of this judgment do not appear to have been cited by the parties in ***Rajendra Kumar Sitaram Pande*** (supra) and ***Jawaharlal Darda*** (supra) and, thus, the Hon'ble Judges on the Bench did not have the benefit of considering the same.

28. What ***Aroon Purie*** (supra) reveals is that the operative part of the Trial Magistrate's order was extracted, wherein the decisions in ***Balraj Khanna*** (supra) and ***M.N. Damani*** (supra) were referred to; however, the case was decided without any express reference by the Court to such precedents.

29. We need not examine the facts in ***Aroon Purie*** (supra) in any great detail in view of the question of law that the Court

formulated and the answer to it. The question, in paragraph 18, reads as follows:

> "We now turn to the question: whether the benefit of any of the exceptions to Section 499 of the IPC can be availed of and on the strength of such exception, the proceedings can be quashed at the stage when an application moved under Section 482 of the Code is considered?"

After quoting paragraphs 5 and 7 from the decisions in ***Jawaharlal Darda*** (supra) and ***Rajendra Kumar Sitaram Pande*** (supra), respectively, and conscious of the legal position, the Court cautiously proceeded to hold as follows:

> "21. It is thus clear that in a given case, if the facts so justify, the benefit of an exception to Section 499 of the IPC has been extended and it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial."
>
> (underlining ours, for emphasis)

30. ***Jawaharlal Darda*** (supra) and ***Rajendra Kumar Sitaram Pande*** (supra), we reiterate, are decisions where the disputes arising before the Court were resolved without laying down any law capable of being treated as precedents within the meaning of Article 141 of the Constitution. However, the approach adopted seems to have persuaded the Court in ***Aroon Purie*** (supra) to proceed to make the observation, highlighted above, which has opened up an arena of debate as to whether, the benefit of an Exception to section 499, IPC could be afforded at the stage of trial only or whether, if the facts of a given case so justify, such

benefit can be extended and proceedings quashed at the stage a petition under section 482, Cr. PC is being dealt with.

31. At this stage, it would not be out of place to refer to and discuss a few other decisions of this Court which are considered relevant for the present adjudication. In all these decisions, the issue of legality of summoning orders was examined and resting on the discussion of the relevant laws *vis-à-vis* the facts of each case, the impugned order was either maintained/interdicted. While the first two decisions are of ancient vintage, *viz*. ***Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar***[17] and ***Chandra Deo Singh v. Prokash Chandra Bose***[18], being decisions rendered by Benches of 3 (three) and 4 (four) Hon'ble Judges, respectively, the remaining three are decisions of not too distant an origin, viz. ***Jeffrey J. Diermeier v. State of West Bengal***[19], ***Manoj Kumar Tiwari v. Manish Sisodia***[20] and ***B.R.K. Aathithan v. Sun Group***[21] rendered by Benches of 2 (two) Hon'ble Judges of this Court.

32. ***Vadilal Panchal*** (supra) arose from the decision of the Bombay High Court reversing an order of the Presidency Magistrate under

[17] (1961) 1 SCR 1
[18] (1964) 1 SCR 639
[19] (2010) 6 SCC 243
[20] 2022 SCC OnLine SC 1434
[21] 2022 SCC OnLine SC 1705

section 203, Cr. PC. In course of a public agitation, one Sitaram died because of a gunshot injury inflicted by the appellant. Upon a complaint being lodged before the Presidency Magistrate, he ordered an inquiry by the Superintendent of Police, CID. Materials collected in course of such inquiry suggested that the appellant, who was accused of murdering Sitaram, had exercised his right of self-defence. Considering the same and after extending due opportunity to the complainant, the Presidency Magistrate dismissed the complaint. The Bombay High Court set aside the order of dismissal and directed the Presidency Magistrate to issue process against the appellant and deal with the case in accordance with law, on the ground that though Sitaram's death was indisputable, the accused would have to establish the necessary ingredients of the right of private defence as laid down in section 96 and onwards of the Indian Penal Code; that there was nothing in any of the sections in Chapter XVI to show that such an exception can be held to be established from the mere report of the police; that there is nothing in sections 202 or 203 of the Cr. PC abrogating the rule as to the presumption laid down in section 105 of the Evidence Act and the mode of proof of exception laid down in imperative language in that section; and that it was not a proper case in which the Presidency Magistrate should have dismissed the complaint under section 203, there being no

evidence before him as and by way of proof to establish the exception of the right of private defence pleaded by the accused.

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

32.2 While setting aside the impugned judgment and restoring the order of the Magistrate, this Court held that the Bombay High Court was in error in holding in such case that as a matter of law, it was not open to the Presidency Magistrate to conclude that no offence had been made out and there was no sufficient ground for proceeding further on the complaint on the materials before him.

32.3 After discussing the scheme of sections 200, 202 and 203, Cr. PC, this is what this Court held:

> "10. Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials

> which he had to consider, before passing his order under Section 203 CrPC. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent-complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct. It is manifestly clear from the provisions of Section 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the Inquiring Officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. <u>If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that if (sic, it) would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses — all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.</u>"
>
> (underlining ours, for emphasis)

33. Profitable reference can next be made to the decision in ***Chandra Deo Singh*** (supra), where a Bench of 4 (four) Hon'ble Judges had the occasion to consider a challenge to a judgment of the High

Court at Calcutta. There, this Court was presented with a circumstance where two complaints alleging murder of a *darwan* were lodged before the Sub-Divisional Magistrate. The first complaint was lodged by a distant relative of the deceased accusing three persons of murder whereas the second complaint was lodged by the appellant accusing the respondent no.1 of murdering his uncle. By separate orders, the Sub-Divisional Magistrate directed a Magistrate, First Class, to conduct judicial inquiry. Separate reports were submitted by the Magistrate, First Class. In his first report, he opined that a *prima facie* case to proceed against the three accused persons had been made out whereas, in his second report, he opined that no *prima facie* case to proceed against the first respondent had been made out. The Sub-Divisional Magistrate, perusing the second report, dismissed the complaint of the appellant against the respondent no.1 without assigning any reason. The Sub-Divisional Magistrate, however, issued summons against the three other accused. Thereafter, the appellant approached the Sessions Judge with a revision who, after hearing the respondent no.1, directed the Sub-Divisional Magistrate to make a further inquiry against him. Thence, the respondent no.1 preferred a revision application before the High Court challenging the direction of the Sessions Judge. The same was allowed by a Single Judge of the High Court and upon grant of certificate under Article 134(1)(c) of the Constitution, the

matter was carried to this Court. It was held that upon a finding of a *prima facie* case, the Magistrate was bound to issue process despite the charged person having a defence. Further, it was held that the matter was to be decided by an appropriate forum at the appropriate stage, and issuance of process could not be refused.

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

> "7. ***, it seems to us clear from the entire scheme of Chapter XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go. … No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the

> material placed before him by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry. ***"
>
> (underlining ours, for emphasis)

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

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

In the same paragraph, after referring to the decision in ***Ramgopal Ganpatrai Ruia v. State of Bombay***[22], the Court proceeded to rule that:

> "*** Thus, where there is a prima facie case, even though much can be said on both sides, a committing Magistrate is bound to commit an accused for trial. All the greater reason, therefore, that where there is prima facie evidence, even though an accused may have a defence like that in the present case that the offence is committed by some other person or persons, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused. Incidentally, we may point out that the offence with which Respondent 1 has been charged with is

[22] 1958 SCR 618

> one triable by jury. The High Court, by dealing with the evidence in the way in which it has done, has in effect sanctioned the usurpation by the Magistrate of the functions of a jury which the Magistrate was wholly incompetent to do."
>
> (underlining ours, for emphasis)

34. It is true that neither ***Vadilal Panchal*** (supra) nor ***Chandra Deo Singh*** (supra) arose out of proceedings for defamation but in both cases defence of the accused was considered in varying circumstances. As noted above, in ***Vadilal Panchal*** (supra) the order of the Presidency Magistrate dismissing the complaint on the ground that the accused had exercised his right of self-defence was restored upon setting aside of the order of the High Court of Bombay; whereas, in ***Chandra Deo Singh*** (supra), the order of the Sub-Divisional Magistrate directing further inquiry was restored upon setting aside the order of the High Court at Calcutta. The decision in ***Vadilal Panchal*** (supra) was not overruled by the larger Bench in ***Chandra Deo Singh*** (supra). Such decisions, in our opinion, assume relevance because the guidance provided thereby carries great weight.

35. In ***Jeffrey J. Diermeier*** (supra), this Court was called upon to consider whether the High Court at Calcutta was right in refusing to quash a private complaint under section 500 read with section 34, IPC. It was held that it is for the accused to demonstrate, by leading evidence during trial, that the purportedly defamatory

statement came under an exception enumerated in section 499, IPC. The appellants therein had issued a public notice against the respondent no. 2, which the respondent no. 2 alleged to be defamatory in nature. The appellants pleaded that the aforesaid notice was published in public interest, and thus it was covered under the Tenth Exception to section 499, IPC. This Court held that it was trite law that the burden of proof for the accused could not be proof beyond reasonable doubt, yet the accused still had to show a preponderance of probability that his statement would be covered under an exception to section 499, IPC. A mere averment by the accused stating that his statement was in public good was not sufficient to accept his defence and he must justify the same by leading evidence during trial. Considering the complaint as a whole as well as for the aforesaid reasons, this Court held that the impugned order did not warrant interference.

36. In ***Manoj Kumar Tiwari*** (supra), an order refusing to quash a summoning order was considered by this Court. Therein, the Additional Chief Metropolitan Magistrate had issued a summons to one of the accused under section 500, IPC without going into the contents of the alleged defamatory statement. The High Court of Delhi, on the other hand, while examining the statements, upheld the summons by simply relying on section 499 of the IPC. This Court held that this was an erroneous approach because the

Magistrate ought to have applied his mind to the complaint and determined whether the statement was *prima facie* defamatory, before issuing summons to the accused. This Court further held that a complaint could not be sustained on statements which were, on the face of it, non-defamatory. Also, it was held that it is a fundamental rule of criminal jurisprudence that if the allegations contained in a complaint do not constitute the offence complained of, then the accused should not be made to undergo the ordeal of a trial.

37. ***B.R.K. Aathithan*** (supra) is the decision of most recent origin. Therein, the factual conspectus was such that certain reportage concerning the appellant was telecast on a television channel of the respondents, and the same was contended as defamatory. This Court emphasised the need for application of judicial mind by the Judicial Magistrate, while noting the consideration of the Fourth Exception to Section 499, IPC at the stage of issuance of process. This Court observed there as follows:

> "16. This essentially involved application of judicial mind to reach a definite conclusion as to whether or not the accused be summoned. In the instant case, the learned Judicial Magistrate having found that the allegations made by the appellant were in the teeth of fourth exception to Section 499 IPC, he declined to issue process to the respondents. Such dismissal cannot be said to be without application of judicial mind. The application of judicial mind and arriving at an erroneous conclusion are two distinct things. The Court even after due application of mind may reach to an erroneous conclusion and such an order is always justiciable before a

superior Court. Even if the said Order is set aside, it does not mean that the trial court did not apply its mind."

38. We note that in a different context, this Court in ***National Bank of Oman v. Barakara Abdul Aziz***[23] summed up the duty of a Magistrate as follows:

> "8. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:
> (*i*) on the materials placed by the complainant before the court;
> (*ii*) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
> (*iii*) for deciding the question purely from the point of view of the complainant <u>without at all adverting to any defence that the accused may have.</u>"
>
> (underlining ours, for emphasis)

39. Undoubtedly, the decisions of this Court proceed on two lines. While there are several decisions where this Court has consistently laid down the law in one particular line that it is for the Magistrate to consider the Exceptions to section 499, IPC for extension of benefit thereof at the trial when a defence is pleaded by the party seeking to avail the same and upon the burden of proof being

[23] (2013) 2 SCC 488

discharged by him and that such Magistrate while deciding the question purely from the point of view of the complainant may not advert to the possible defence of the accused at the time of exercising power under section 202, the other line of decisions seem to proceed on the premise that there is no bar in considering the Exceptions if the accused, even without appearing before the Magistrate in response to the summoning order, lays a challenge thereto under section 482, Cr. PC and satisfies the relevant High Court, by referring to the complaint itself and the statements of the complainant and his witness, that the facts alleged (even if deemed to be true) do not constitute an offence and hence, there was no sufficient ground for proceeding. In fact, ***Aroon Purie*** (supra) has observed that there is no rigid principle that the Exceptions can only be considered at the pre-trial stage; in other words, at the stage of consideration of a petition for quashing, it can be so extended in a given case, and the Court would be empowered to quash the proceedings if extension of such benefit is justified on facts.

40. What applies to Judges of the High Courts faced with decisions of this Court where a cleavage of opinion is discernible, and particularly when the High Courts are technically bound by both decisions, equally applies to Hon'ble Judges of this Court. It would be inappropriate for a Bench, comprised of 2 (two) Judges of this

Court, to hold which line of decisions lays down the correct law. In such a scenario, when there are decisions of this Court not expressing views in sync with each other, the first course to be adopted is to ascertain which is the decision that has been rendered by a larger Bench. Obviously, *inter se* decisions of this Court, a decision of a Constitution Bench would be binding on Benches of lesser strength. None of the decisions that we have considered is rendered by a Constitution Bench. However, a sole judgment rendered by a Bench of 4 (four) Hon'ble Judges and 3 (three) decisions rendered by Benches comprised of 3 (three) Hon'ble Judges are there, which call for deference. Ordinarily, the decision of a larger Bench has to be preferred unless of course a Bench of lesser strength doubts an earlier view, formulates the point for answer and refers the matter for further consideration by a larger Bench in accordance with law. If, however, the decisions taking divergent views are rendered by Benches of co-equal strength, the next course to be adopted is to attempt to reconcile the views that appear to be divergent and to explain those contrary decisions by assuming, to the extent possible, that they applied to different facts. The other course available is to look at whether the previous decision has been noticed, considered and explained in the subsequent decision; if not, the earlier decision continues to remain binding whereas if the answer is in the affirmative, the subsequent decision becomes the binding

decision. We add a caveat that if the subsequent Bench, instead of deciding the matter before it finally upon consideration of the decision of the earlier Bench, formulates the point of difference and makes a reference for a decision by a larger Bench, it is the former decision that continues to govern the field so long the larger Bench does not decide the reference.

41. There is also authority for the proposition that while deciding cases on facts, more so in criminal cases, the courts should bear in mind that each case must rest on its own facts and the similarity of facts in one case cannot be used to bear in mind the conclusion of fact in another case. We may usefully refer to the decision in ***Kalyan Chandra Sarkar v. Rajesh Ranjan***[24] in this context.

42. Bearing the above principles in mind, we have perused the decisions, apparently striking discordant notes, with utmost care. It is observed that the conclusions reached in each of the decisions are based on the particular facts in each case and that the questions arising for decision on this appeal can be answered by harmonising the law as declared upon drawing guidance therefrom.

[24] (2005) 2 SCC 42

43. To the extent relevant, section 2(n) of the Cr. PC defines "offence" as any act or omission made punishable by any law for the time being in force. Section 200 ordains what a Magistrate, *inter alia*, is required to do on receipt of a complaint. In taking cognizance of an offence on a complaint, he is required to (i) examine upon oath the complainant and the witness present, if any; (ii) reduce in writing the substance of such examination; (iii) get the signature of the complainant and the witness, if any, on such writing; and (iv) sign the same too. Section 202 is a provision that enables the Magistrate to postpone the issue of process against the accused and, if he thinks fit, either (a) inquire into the case himself or (b) direct an investigation to be made by (i) a police officer or (ii) by such other person he thinks fit. The statute permits the Magistrate to take such steps to facilitate a decision whether there is sufficient ground for proceeding against the accused by ascertaining the truth or falsity of the allegations made in the complaint. Section 203 authorizes the Magistrate, after considering the statements on oath of the complainant and the witness, if any, under section 200 or the result of the inquiry or the investigation under section 202, to dismiss a complaint, with brief reasons, should in his judgment there be no 'sufficient ground for proceeding'. On the other hand, section 204 under Chapter XVI of the Cr. PC titled 'Commencement of Proceedings before Magistrates' envisages that the Magistrate taking cognizance shall

take steps for the issue of necessary process if in his opinion there is 'sufficient ground for proceeding'. It is therefore abundantly clear, from the aforesaid general scheme, that the accused does not enter the arena of adjudication made by the Magistrate prior to issuance of process.

44. Thus, when a Magistrate taking cognisance of an offence proceeds under section 200 based on a *prima facie* satisfaction that a criminal offence is made out, he is required to satisfy himself by looking into the allegations levelled in the complaint, the statements made by the complainant in support of the complaint, the documentary evidence in support of the allegations, if any, produced by him as well as statements of any witness the complainant may choose to produce to stand by the allegations in the complaint. Although we are not concerned with section 202 here, if an inquiry or an investigation is conducted thereunder, it goes without saying that the reports should also be looked into by the Magistrate before issuing process under section 204. However, there can be no gainsaying that at the stage the Magistrate decides to pass an order summoning the accused, examination of the nature referred to above ought not to be intended for forming an opinion as to whether the materials are sufficient for a 'conviction'; instead, he is required to form an opinion whether the materials are sufficient for 'proceeding' as the title of the relevant

chapter would indicate. Since the accused does not enter the arena at that stage, question of the accused raising a defence to thwart issuance of process does not arise. Nonetheless, the fact that the accused is not before the Magistrate does not mean that the Magistrate need not apply his judicial mind. Nothing in the applicable law prevents the Magistrate from applying his judicial mind to other provisions of law and to ascertain whether, *prima facie*, an "offence", as defined in section 2(n) of the Cr. PC is made out. Without such opinion being formed, question of "proceeding" as in section 204 does not arise. What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial. Since initiation of prosecution is a serious matter, we are

minded to say that it would be the duty of the Magistrate to prevent false and frivolous complaints eating up precious judicial time. If the complaint warrants dismissal, the Magistrate is statutorily mandated to record his brief reasons. On the contrary, if from such materials a *prima facie* satisfaction is reached upon application of judicial mind of an "offence" having been committed and there being sufficient ground for proceeding, the Magistrate is under no other fetter from issuing process. Upon a *prima facie* case being made out and even though much can be said on both sides, the Magistrate would have no option but to commit an accused for trial, as held in ***Chandra Deo Singh*** (supra). The requirement of recording reasons at the stage of issuing process is not the statutory mandate; therefore, the Magistrate is not required to record reasons for issuing process. This is also the law declared by this Court in ***Jagdish Ram v. State of Rajasthan***[25]*.* Since it is not the statutory mandate that reasons should be recorded in support of formation of opinion that there is sufficient ground for proceeding whereas dismissal of a complaint has to be backed by brief reasons, the degree of satisfaction invariably must vary in both situations. While in the former it is a *prima facie* satisfaction based on probability of complicity, the latter would require a higher degree of satisfaction in that the Magistrate has to express his final and conclusive view of the complaint

[25] (2004) 4 SCC 432

warranting dismissal because of absence of sufficient ground for proceeding.

45. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in section 200/section 202) as to whether 'sufficient ground for proceeding' exists as distinguished from 'sufficient ground for conviction', which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to section 499, IPC is attracted, there is no bar either. After all, what is 'excepted' cannot amount to defamation on the very terms of the provision. We do realize that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from

so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to section 499, IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.

46. Adverting to the aspect of exercise of jurisdiction by the High Courts under section 482, Cr. PC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by section 482, Cr. PC; such powers are always available to be exercised *ex debito justitiae*, i.e., to do real and substantial justice for administration of which alone the High Courts exist. However, the tests laid down

for quashing an F.I.R. or criminal proceedings arising from a police report by the High Courts in exercise of jurisdiction under section 482, Cr. PC not being substantially different from the tests laid down for quashing of a process issued under section 204 read with section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible, if the justice of a given case does not overwhelmingly so demand.

47. Based on our understanding of the law and the reasoning that we have adopted, issue of process under section 204 read with section 200, Cr. PC does not *ipso facto* stand vitiated for non-consideration of the Exceptions to section 499, IPC unless, of course, before the High Court it is convincingly demonstrated that even on the basis of the complaint and the materials that the Magistrate had before him and without there being anything more, the facts alleged do not *prima facie* make out the offence of defamation and that consequently, the proceedings need to be closed.

48. The above discussion answers the questions of law formulated by us.

49. Moving on to answer question (a), what we find in the present case is that the Trial Court did not take recourse to section 202, Cr. PC and hence obtaining reports of inquiry or investigation, as the case may be, did not arise. Though not under any statutory requirement, the Trial Court has given brief reasons in its order showing application of mind. At the stage, when the Trial Court made the summoning order, two aspects were required to be satisfied: (1) whether the uncontroverted allegations as made in the petition of complaint read with the examination of the complainant, *prima facie*, tend to suggest an offence having been committed, and (2) whether it is expedient and in the interest of justice to proceed. Keeping in view the allegations made in the petition of complaint and the evidence placed before the Trial Court by the complainant and on a plain reading of its order dated 25th March, 2010 issuing summons to the accused, it does not appear to us that the finding of a *prima facie* case having been made out at that stage is so outrageously illogical or in defiance of legal principles and acceptable standards that it would merit interference by this Court. If at all the benefit of the Fourth Exception or any other pleaded exception is to be availed of, the appellant would be free to appear before the Trial Court and raise whatever defence is available to it in law, not necessarily confined

to the Fourth Exception, for due consideration thereof by the Trial Court.

50. On facts of this case, we are satisfied that the Trial Court was not unjustified in issuing summons to the accused based on the materials before it.

51. We also hold that the omission of the learned Judge in dealing with the other points raised in the petition by the appellant does not afford any ground for us to interfere, having noticed that by a detailed judgment delivered on the same day on the petition of Aggarwal, the learned Judge had applied his mind and spurned a similar challenge. However, it is observed that the learned Judge would have been well advised to add a sentence in the order impugned that no separate reason was being assigned to dispose of the other points raised by the appellant in view of the reasons already assigned for disposal of Aggarwal's petition laying challenge to the summoning order.

52. Question (a), thus, stands answered against the appellant.

53. Having regard to what we have held above, questions (b) and (c) need not detain us for long. We could have left them unanswered but since some argument was advanced touching the same, we propose to briefly deal therewith.

54. Answer to question (b) must necessarily depend on the facts of each case, meaning thereby the quality of evidence that is led in course of the trial and the weight to be attached to it. At this stage it would not be inappropriate to consider the other line of argument advanced by Mr. Taneja that those documents/materials on which the appellant seeks to rely have not been admitted or accepted by the complainant and are yet to be proved; hence, the same cannot be looked into while considering a prayer for quashing. The ratio of the decision in ***Supriya Jain*** (supra) finds support from an earlier decision of this Court in ***Chand Dhawan (Smt.) v. Jawaharlal***[26], where it was held that the High Court of Punjab and Haryana was not justified in quashing the complaint and the criminal proceedings on the ground of abuse of the process of court by relying on additional material produced by the accused, which was not admitted in evidence or accepted by the complainant.

55. The Power of Attorney is yet not proved by the appellant according to law and, therefore, could not have been considered by the learned Judge and cannot be considered by this Court as well. Even if proved, its effect and import necessarily have to be considered by the Trial Court in the light of the guiding factors for

[26] (1992) 3 SCC 317

applicability of an Exception as indicated in the concurring judgment authored by Hon'ble O. Chinnappa Reddy, J. in ***Sewakram Sobhani*** (supra).

56. However, if from evidence led it is established that the authorised agent had issued defamatory statements with the consent of the principal or that the principal, without giving consent, had due knowledge of such defamatory statements, yet, did not caution/reprimand the agent for doing so or had not disowned the statements so made, there is no reason why a prosecution for defamation should be nipped in the bud on the specious ground that an authorised agent is supposed to act lawfully and not unlawfully.

57. Turning to question (c), it is for the appellant to demonstrate before the Trial Court that the Fourth Exception is attracted, or plead any other defence, and discharge its burden of proof in respect thereof during the course of the trial. This, in our opinion, is not the right stage to opine one way or the other and, therefore, we leave it open for being decided by the Trial Court in accordance with law.

CONCLUSION

58. Having answered all the questions, what is left for us is to dismiss the appeal which we hereby order. The appeal is dismissed, with

the result that the interim order shall stand vacated forthwith. There shall, however, be no order for costs.

59. Except to the extent decided by this judgment, all other points are left open to be urged by the appellant before the Trial Court for a decision by it.

60. Since the proceedings have been unduly delayed, the Trial Court is encouraged to expedite the same.

.....J.
(BELA M. TRIVEDI)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
5TH OCTOBER, 2023