

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 292/2013

Judgment delivered on: 02.05.2013

TEJ KISHAN SADHU

... Petitioner

Through: Mr. U.U. Lalit, Senior Advocate,
Mr.Sandeep Sethi, Senior Advocate, Mr.
Ramesh Gupta, Senior Advocate, Mr.
Ashok Bhasin, Senior Advocate with Mr.
Mohit Mathur, Mr. Amish Dabur, Mr.
Rajiv Goel and Mr. Devinder Dadha,
Advocates

Versus

STATE & ANR.

.. Respondents

Through: Mr. Navin Sharma, Additional Public
Prosecutor for State
Mr. Harish Salve, Senior Advocate with
Ms. Pratibha M. Singh, Mr. Vijay Ag-
garwal, Mr. Gurpreet Singh and Mr.
Mudit Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

- 1) By this order I shall decide the present petition filed by the petitioner under Section 482, 483 of the Code of Criminal Procedure, 1973 (Cr.P.C in short) read with Article 227 of the Constitution of India, for setting aside the order dated 15.01.2013 passed by the learned Metropolitan Magistrate.

- 2) The petitioner has challenged the correctness and legality of the order dated 15.01.2013 passed by the learned Metropolitan Magistrate in a complaint case filed by Respondent No. 2 herein against the petitioner and many others, for the commission of an offence punishable under section 500/ 34 of the Indian Penal Code (IPC in short). By the impugned order the learned Metropolitan Magistrate instead of passing an order on the application filed by the respondents no.2/ complainant under section 91 Cr.P.C for summoning certain documents , ordered for an inquiry under section 202 Cr.P.C and directed the SHO, PS Tuglak Road to conduct an investigation qua the allegations made in the aforesaid criminal complaint against the accused persons, after coming to the conclusion that the complaint of the respondent No. 2, prima facie, disclosed commission of an offence of defamation.
- 3) The present litigation involves a public spat between a leading Industrial group, Jindal Steel and Power limited on one hand and a Media conglomerate like ZEE on the other , with the former claiming that the Zee group attempted to extort money for airing stories against his company in coal block allocation, and the latter accroaching that Jindal Steel and Power limited with sordid designs tried to defame the respondent

no. 2/ Sudhir Chaudhary, Editor, “ZEE NEWS”. It is alleged by Mr. Sudhir Chaudhary that the Jindal Steel and Power Limited by ploughing deceitful stories and making false imputations and statements against him in various public forums has tried to denigrate and disrepute his social image. Based on these connotations, legal battle began between the two parties. It appears to be a battle of straggling amour- propre, quenching personal vendetta amidst the garb of divestiture.

- 4) Turning to the controversy involved in the present case, certain important questions of law emerge in the present petition which can be formulated as under:
 - a) Whether the petitioner who has yet not been summoned as an accused can challenge any order passed by the learned Metropolitan Magistrate at the pre-summoning stage, by invoking the powers under Section 482, Section 483 Cr.P.C or Article 226 & 227 of the Constitution of India.
 - b) Whether after the amendment in Section 202 Cr.P.C , it is incumbent on the Magistrate to hold an inquiry or investigation where the accused is residing beyond the area in which the Magistrate is exercising its jurisdiction.

- c) Whether for directing an investigation to the police under Section 202 Cr.P.C, the magistrate can direct a full- fledged inquiry / investigation in the same manner as can be done by the police under Section 156(3) Cr.P.C.
 - d) Whether under Section 202 Cr.P.C, the Magistrate can direct the police or any other person to carry out their investigation on certain suggested lines.
- 5) Before I pen down the rival contentions of the parties and discuss the aforesaid issues at length, the material facts are necessary to present a composite picture of cause of action, which are stated as follows:
- a. That a criminal complaint was filed by one Mr. Sudhir Chaudhary, Respondent no.2 herein against the present petitioner , Mr. Tej Kishan and 16 other persons associated with Jindal Steel and Power Ltd. under Section 499, 500, 34 read with 109 of IPC seeking prosecution and conviction of the said accused persons for harming his reputation. The said case is pending adjudication before the Metropolitan Magistrate, Patiala House Courts, New Delhi.
 - b. The learned Metropolitan Magistrate took cognizance on the said

criminal complaint under section 499 read with 34 of IPC vide order dated 03.01.2013 and thereafter, adjourned the matter for examination on oath of the respondent no. 2 and his witnesses for 17.01.2013.

- c. An Application under Section 91 Cr.P.C was filed by the Respondent No.2 in the said complaint case, seeking summoning of record from the Broadcast Editors Association and the Jindal Steel & Power Limited(JSPL) :
- a) Minutes of the meeting of the JSPL for the period of September 2012 to December 2012.
 - b) Video Recording of the press conference dated 25.10.2012 held at the National Sports Club of India.
 - c) Minutes of the written records of all the proceedings/ meetings conducted by the Broadcast Editors Associations with respect to the termination of Membership of complainant in the Broadcast Editors Association.
 - d) Documents pertaining to association of Sh. Prakash Singh with M/s Jindal Steel and power ltd.
- d. However, in view of the fact that respondent no. 2 and his wit-

nesses were required to be examined on oath , the matter was again adjourned to 10.01.2013.

- e. Thereafter, on 10.01.2013, the learned Metropolitan Magistrate reserved the order on the said application and posted the matter for 15.01.2013.
- f. That on 15.01.2013, when the matter was listed for orders, the ld. Metropolitan Magistrate apprised the counsel for the respondent no.2 that the records sought to be summoned vide the application can also be procured during an investigation marked to the SHO, P S Tuglak Road in terms of an inquiry under Section 202 Cr.P.C.
- g. Thereafter, the Metropolitan Magistrate, under Section 202 Cr.P.C directed the SHO, PS Tuglak Road to conduct an investigation qua the allegations made in the aforesaid criminal complaint. However, to the utter shock and surprise of the petitioner , the Metropolitan Magistrate , while ordering the investigation vide the impugned order dated 15.01.2013 , also directed the SHO , the manner in which the investigation is to be conducted. A perusal of the order indicates that the prayer made in the application in terms of Section 91 of the Cr.P.C, was reproduced verbatim with the direction to the

police official to seize/ procure the the same documents.

h. Hence, aggrieved by the aforesaid impugned order the present petition has been filed by one of the accused in the complaint, Mr. Tej Sadhu, who is the Company Secretary in Jindal Steel & Power Ltd.

- 6) Addressing arguments on the present petition, Mr. Uday U Lalit, learned Senior Advocate appearing on behalf of the petitioner submitted that it is noteworthy that though the Magistrate has no power to guide and direct the investigating agency the manner in which the investigation is to be conducted, but in the order dated 15.01.2013, the learned Metropolitan Magistrate has given specific directions to the police expounding the manner in which the investigation is to be conducted.
- 7) Learned Senior Advocate submitted that before addressing arguments on the core issue of maintainability of the present petition, he would canvass as to how on merits the case of the petitioner has a sturdy footing to sustain. Ld. Senior counsel relying on the allegations made in the complaint submitted that the complaint has been filed under Section 499, 500, 34 of the Indian Penal Code, 1860, against 17 persons in their individual capacity as accused, who all are connected with the affairs of Jindal Steel and Power limited (JSPL). Counsel further submitted that the allegations

in the complaint have been divided into two causes of action, wherein as per the first cause of action, all the 17 accused with a common intention, in consonance with each other have tarnished the reputation of the complainant and damaged his social standing and goodwill in the society and made statements which as per their own knowledge are but to malign the image of the complainant and also direct allegations are levelled against Mr. Rajeev Bhaduria, Director, HR, the accused no.17 who has individually filed a complaint and has maliciously tried to defame the complainant as per the complaint alleging that all the other accused were well aware of the statements made and accused no. 1 to 16 made false statements with a common intention to defame the complainant. As per the second cause of action, the complainant portrays that it is Mr. Navin Jindal (Whole time Director), Vikrant Gujral (Whole-time Director), Ravi Uppal (Managing Director), Anand Goel(Whole-time Director) of M/s Jindal Steel & Power Limited who in consonance with the other accused persons have made false statements with common intention to malign the image of the complainant.

8) Learned Senior Advocate submitted that the above inconsistent stand,

clearly demonstrates the ingenuity on the part of the complainant. Counsel further submitted that as per the second cause of action, Mr. Navin Jindal i.e. the accused no.1, the whole time Director , JSPL Group, along with other accused persons held a press conference and made false statements against the complainant that the Broadcast Editors Association took action against the information provided by the JSPL(17 accused in the complaint including the present petitioner) and removed the complainant/ Mr. Sudhir Chaudhary as a treasurer and his removal makes it all the more clear that these people were blackmailing him. Learned Counsel also submitted that when it comes to allegations made in the complaint, the subsequent events in perpetuation as set out in the complaint would clarify the stand of the accused persons. The press conference was presided over by the accused- Navin Jindal, Ravi Uppal, Vikrant Gujral and Anand Goel and therefore, five persons in totality have been alleged as accused directly, and other members have been painted under the same brush along with the aforesaid accused.

- 9) Learned Counsel further submitted that the date mentioned in the second cause of action i.e.25.10.2012, when the conference was held has an overt relevance, referring to the allegations made in the second cause of ac-

tion. Learned Senior Advocate further submitted that the Broadcast Editors Association proposed an ethics committee for conducting an enquiry on 05.10.2012 and on 15.10.12, the BEA society informed the complainant telephonically to be available before the ethics committee formed by the BEA. Thereafter, the complainant had sent an email on 16.10.2012 requesting the BEA for granting him fair opportunity and allowing him to represent himself through his nominee. The reply to the same was sent by the BEA through its representative Mr. N.K. Singh, vide email dated 16.10.2012 wherein one final opportunity was given to the complainant to appear before the committee and it was clarified that if the complainant fails to appear he would be considered not interested to represent his side of the story, however considering the defiance of the complainant, he was removed vide issuance of a press release dated 18.10.2012. Learned Senior Advocate further submitted that thus in light of the aforesaid submissions, it is apparent that the discussion in the conference dated 25.10.2012, was in correlation with the aforesaid subsequent events which took place between the BEA and the respondent no.2 herein and was not discussed purposely in the conference with an intent to malign the goodwill of the complainant, making the intention of the

complainant quite palpable. Eventually, being aggrieved by the said order passed by the BEA, the complainant preferred a civil suit before the Hon'ble High Court at Delhi.

- 10) Learned Senior Counsel further submitted that the third facet of the matter in the present petition is the letter dated 19.11.2012, informing all the shareholders as to what situation/ development has arisen in the criminal conspiracy articulated by M/s Zee News Ltd for extorting money by airing false, manipulated and misleading programs on their channels regarding the petitioner and the JSPL group, the letter is nothing but a source of information which has been delivered to all the members by Mr. Tej Sadhu, the petitioner herein who is the company secretary in JSPL ltd.
- 11) Learned Senior Counsel also submitted that based on these allegations, the ld. M.M. vide order dated 03.01.2013 took cognizance in the matter and adjourned the same for examination on oath to 7.1.2013. In the meanwhile, an application under Section 91 Cr.P.C was filed by the complainant and arguments on the said application under section 91 were heard and the order was reserved for 15.01.2013. Learned counsel also submitted that in the examination on oath, the complainant has alleged

that in September 2012, a false case was lodged against him at the behest of the accused persons (in the complaint). An FIR was lodged on 02.10.2012 and the accused persons tried to defame him by holding a press conference, wherein various false imputations and statements were made levelling unscrupulous allegations against the complainant. Counsel further submitted that in his examination on oath, it is clearly mentioned that it was his belief that the respondent no.1 , the respondent no. 17 and the other respondents have acted against him in pursuance of a common intent to defame him. Counsel further submitted that in his examination on oath the complainant has clearly stated that “ ***I am not sure about the exact role of each of the respondents***”, ascertaining the individual role of the accused persons in the complaint, he has filed an application under section 91 Cr.P.C seeking record of Jindal Steel and Power Ltd.

- 12) Pointing towards the application under section 91 of the Cr.P.C, being the trigger point in the present matter, counsel also submitted that , the Learned M.M. without passing any order / directions on the said application precisely penned the same prayers in the impugned order passed under section 202 Cr.P.C which were set forth in that application.

- 13) Assailing the said order, Counsel for the Petitioner submitted that, there was no occasion for the learned M.M. to have passed this kind of an order under Section 202 of the Code of Criminal Procedure, 1873. It is completely in excess of such a provision, as the facts never justified that the learned M.M. has indeed ordered for a blinkered inquiry. The counsel further submitted that the larval point is whether this kind of an order could be passed under Section 202, being conscious of the fact that if he was allowed to vacillate, so far his genre of decision making is circumscribed in the scheme of things under Section 202 Cr.P.C. Learned counsel further submitted that under the said provision the Magistrate can 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.
- 14) Learned senior counsel further submitted that the scope of enquiry to be ordered by the Magistrate under section 202 Cr.P.C is extremely limited to the averments made in the complaint and the evidence adduced therein. Counsel submitted that power under section 202 Cr.P.C can be exercised only to ascertain the truth or falsehood of the allegations made in the complaint on the materials placed by the complainant, for finding

out whether or not a prima facie case for issue of process has been made out, therefore in other words whether or not there is sufficient ground for the Magistrate to proceed further on account of the allegations mentioned in the complaint and pre-summoning evidence of the complainant and his witnesses, the idea being that it is not open for the court to either take upon itself or direct any other agency/ person to embark upon a roving enquiry that seeks to crumple beyond the allegations made in the complaint. Counsel further submitted that inquiry as contemplated under section 202 Cr.P.C cannot be held to be an instrument to fill up the lacunas in the complaint. In order to proceed against the respondent/ accused sufficient material grounds must be placed on record and the same cannot be sought to be collected or procured during the course of an inquiry under Section 202 Cr.P.C. Counsel further submitted that the directions issued by the Id. Magistrate in the present complaint is nothing but to cover up the lacunas in pre summoning evidence of the respondent no.2 herein. Counsel thus stated that the order passed by the Id. M.M. is arbitrary and dogmatic in view of the aforesaid submissions. Bringing the attention of this court to the scope of investigation, Id. Senior Counsel submitted that the investigation is the sole and exclusive domain of the investigating

agency and while directing an investigation into a particular case, the Magistrate has no power to dictate the manner of investigation and/ or issue a premeditated direction and melange the importance of the two distinct provisions laid under the statute.

15) Counsel further submitted that an ‘inquiry’ has been defined under Section 2 (g) of the Code and ‘investigation’ under Section 2 (h) of the Code, and it is a settled legal position that inquiry has to be conducted by the Magistrate and investigation by the police or an investigating agency only and the Magistrate neither has the power to guide the mode of investigation nor to interfere in the said investigation so ordered. Counsel also stated that the issuance of a direction to the SHO to seize certain documents and video recordings from the possession of the petitioner, might lead to collection of evidence that may be self- incriminating which is violative of the rights of the petitioner under Article 20 (3) of the Constitution of India.

16) Counsel further submitted that it is noteworthy that an investigation is still pending in FIR no. 240/ 2012 dated 02.10.2012 filed by Mr. Rajiv Bhaduria, who has been arrayed as accused no. 17 by the respondent No.2 in the complaint filed by him before the learned Metropolitan

Magistrate wherein respondent No. 2 has alleged that he has been falsely implicated in the aforesaid FIR. Therefore, till the time the investigating agency concludes its inquiry in the said FIR and submits its report, question of Respondent no. 2 being defamed does not arise.

- 17) Counsel also submitted as regards the maintainability of the present petition is concerned, the discretion vested with the Magistrate under Section 202 Cr.P.C is a judicial discretion which cannot be exercised arbitrarily, but needs to be guided on sound principles of law governing exercise of such a discretion and it cannot be said that the discretion exercised by him cannot be challenged in appropriate proceedings and therefore, the person confronting adverse consequences cannot be left remediless. In support of his argument, ld. Senior counsel placed reliance on *MOHD. SALIM V. STATE (2010) 175 DLT 473*.
- 18) Learned Counsel further submitted that there has been a grave miscarriage of justice and serious irregularity of proceedings committed by the subordinate criminal court. Relying on the judgment of Hon'ble Supreme Court in the case *ADALAT PRASAD V. ROOP LAL JINDAL & ORS (2004) 7 SCC 338*, learned senior counsel further submitted that it is not only the aggrieved party who may approach this Hon'ble Court under the

inherent and supervisory jurisdiction of this court for seeking relief and this court in such a situation can set aside such an illegality and irregularity by exercising its *suo moto* powers in order to prevent miscarriage of justice. Counsel also submitted that the Hon'ble Court apart from exercising its supervisory jurisdiction under Article 227 of the Constitution of India has a duty to exercise continuous superintendence over the judicial Magistrates in terms of Section 483 of Cr.P.C. Counsel also submitted that power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdiction is also a part of basic structure of the Constitution. Counsel also submitted that the limitation to restrain as per the established procedure of law prohibiting participation of an accused before issuance of process by the Magistrate is only a stage wise limitation . Learned Senior Counsel also submitted that the petitioner is not prohibited or precluded from challenging an illegal or erroneous order if passed by the Magistrate, piercing the inherent powers by the High Court under Section 482 of the Code which are there to provide '*ex- debito justitiae*'. Counsel also submitted that if the order of the Magistrate is not according to law and adversely affects the petitioner who may not be even a party to the enquiry before

the magistrate, then such a petitioner cannot be prevented from challenging such an order passed by the Magistrate which consciously amounts to an irregularity of proceedings. Learned Senior Counsel also submitted that petitioner has an inherent and plenary right to challenge an order if his fundamental rights as well as legal rights are getting affected in any manner whatsoever. Learned Senior Counsel thus submitted that the power to direct investigation to the police authorities by the Magistrate under section 202 Cr.P.C and Section 156 (3) Cr.P.C , if even are akin to each other, the difference is the stage at which the said powers may be invoked. Therefore, if an order passed under Section 156(3) of Cr.P.C can be challenged by way of a petition under Section 482 of Cr.P.C, then order passed under section 202 Cr.P.C can also be challenged by filing a petition before this Hon'ble Court if any illegality or impropriety is found with the said proceedings.

- 19) Counsel thus submitted that in passing the impugned order dated 15.01.2013, the ld. Magistrate has resorted to pre-cognizance stage and ipso facto ordered investigation by the police in terms of Section 156 (3) of the code which is not permissible after the Magistrate has reached the stage of post- cognizance. Thus an inherent incongruity is manifested in

the order dated 15.01.2013 , as power of search and seizure is within the domain of the investigating agency and is the only agency itself that is the best judge to decide in which manner it should proceed in respect of the pending investigation.

20) In support of his arguments, learned senior Counsel placed reliance on the following judgments:

- i. *DHARMESHBHAI VASUDEVBHAI AND ORS. V. STATE OF GUJARAT AND ORS. (2009) 6 SCC 576*
- ii. *SMT. PARMESHWARI DEVI V. STATE AND ANOTHER (1977) 1 SCC 169*
- iii. *L. CHANDRA KUMAR V. UNION OF INDIA (1997) 3 SCC 261*
- iv. *RAMESHBHAI PANDURAO HEDAU AND ANOTHER V. STATE OF GUJARAT (2010) 4 SCC 185*
- v. *STATE OF KARNATAKA V. L. MUNISWAMY AND OTHERS (1977) 2 SCC 699.*
- vi. *RAGHU RAJ ROUSHA V. SHIVAM SUNDARAM PROMOTERS PVT. LTD. 2009(2) SCC 363.*

21) Per contra, Mr. Harish Salve, Learned Senior Advocate for the respondents at the very outset raised a preliminary objection to the very maintainability of the present petition and *locus- standi* of the petitioner to challenge the impugned order passed by the learned Metropolitan Magistrate at the pre-summoning stage. Learned Senior Counsel submitted that under the Indian Companies Act 1956 management of the company vests with the Board of the company and in a criminal complaint, in the

absence of vicarious liability, one must know the exact role of each of the members of the company. Referring to the letter dated 19.11.2012 which is addressed to the shareholders of the Jindal Steel and Power limited, learned senior Counsel argued that the defamatory allegations levelled therein have been attributed to the management of the said company. Counsel thus submitted that it is through the detailed investigation that the role of each of the alleged directors can be traced and therefore no fault can be found in the impugned order directing detailed investigation with the help of the police. Disagreeing with the contention raised by the counsel for the petitioner that under Section 202 Cr.P.C, learned Magistrate cannot pass an order giving direction as to how an investigation is to be conducted, the counsel argued that the language of Section 202 Cr.P.C, very clearly provides that the Ld. M.M shall enquire into the case himself or direct an investigation to be made by a police officer and when the Ld. M.M is conducting an enquiry himself then he may enquire directly and if the Ld. M.M directs the police officer to investigate the matter, then he can definitely specify the points on which such an investigation has to be carried out. For instance, if the Ld. M.M. delegates the power of inquiry to an accountant or a scientific officer then he has to

specify the query or which aspect of the matter is to be investigated and in what manner. Counsel also submitted that role of each of the accused was duly explained in the complaint and also as per the letter dated 19.11.2012 which was marked to all the shareholders of the company, and on perusal of the same it is quite apparent that all the named accused were part of the said indignation and malign flux.

- 22) Counsel further submitted that the Ld. M.M. on 03.01.2013 took cognizance only on being satisfied that a prima facie case of defamation is made out against the accused persons. The learned counsel emphasised that the cognizance is of the offence and not of the offender. Supporting the said arguments, counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***STATE OF W.B. V. MOHAMMED KHALID, AIR 1995 SC 785*** and also ***AMIT JAIN V. STATE & ANR. 2008 (4) JCC 2386***. Learned Senior Counsel further submitted that the Id. Magistrate has no discretion other than ordering the investigation under Section 202 Cr.P.C, 1973 as the same is a mandatory provision after the amendment in the Code. Learned senior Counsel further submitted that in the memo of parties of the complaint, almost 10 accused are residing at a place beyond the jurisdiction of the Id. M.M. and therefore,

Ld. M.M only after taking cognizance under Section 190 Cr.P.C, 1973 after examining the complaint under section 200 Cr.P.C , 1973 passed an order dated 15.01.2013 complying with the mandatory provision of Section 202 Cr.P.C.Learned Senior Counsel further submitted that the order passed by the magistrate , directing an investigation under Section 202 Cr.P.C, 1973 is an order technically assisting the petitioner, otherwise if the ld. M.M. would have summoned all the accused persons, then the petitioners would have adopted a contrary line and instituted a petition under section 482 Cr.P.C claiming that the ld. M.M. has passed a mechanical order without application of mind. But fortunately it is not the case in the present circumstances , thus the ld. Counsel submitted that the ld. M.M after considering the facts of the case, ordered for further investigation under Section 202 Cr.P.C, 1973.

- 23) Learned Senior Advocate further submitted that it is not a corporate offence, it is against an individual, purporting to act in the name of the company, committing an offence of defamation and hiding behind the corporate veil of the Management and as per section 291 of the companies Act, 1956, if one hides behind the corporate veil then certainly a need arises to conduct such an inquiry. Ld. Senior Counsel further sub-

mitted that the accused from 1 to 17 are mostly the directors of the company, whereas accused no. 16 who has signed the letter dated 19.11.2012 is the Company Secretary of the said company. Counsel further submitted that in the present petition, it is not the complaint that has been challenged, neither the cognizance is challenged, the challenge is made in regard to the powers derived by the learned Magistrate under the statute as per the mandate of Section 202 Cr.P.C. Counsel further submitted that under section 291 of the companies Act, 1956 it is necessary to pass a resolution to call for a Board meeting, and if a resolution is not passed, the ethics laid in the doctrine of Indoor management should follow to establish who participated, and what role was played by each of the directors.

- 24) Learned Senior Counsel further stated that we do not know if all the directors have even attended the press conference. It is pertinent to note that these accused today are being addressed as respondents because it is yet to determine the role played by each of them and ascertain if all the accused had participated in the conspiracy. It is an offence related to a company, doctrine of 'attribution' would apply and mentioning of the term 'management' then would mean all are culpable. Counsel further submit-

ted that vicarious liability on the part of a person must be pleaded and proved, and not inferred as held in various judgments of the Hon'ble Supreme Court. One has to keep a check on the perforated correlation and therefore, the inquiry ordered by the Magistrate cannot be termed as a blinkered inquiry. Learned Senior Counsel also submitted that the principles of 156 (3) Cr.P.C would not apply in the present circumstances.

- 25) The learned counsel also submitted that the Magistrate is simply sterilizing the intriguing character of the conspiracy by trying to find out who the buck is because summoning all the accused persons in the complaint would also result in contradiction . Learned Counsel further stated that as per the order also, minute book which has been ordered to be seized is not the property of any of these gentlemen.
- 26) Learned counsel thus submitted that the order is very well elucidated and anything that the police finds relevant in the enquiry would be collected on the terms mentioned in the order passed by the Id. magistrate. Learned Senior Advocate emphasising on the scope of enquiry under Section 202 , stated that the Magistrate has been very accurate as he has only ordered for what he wants to lay his hands on.

27) In support of the aforesaid arguments, Ld. Senior Advocate placed reliance on the following judgments:

- a) *SHASHI JENA AND OTHERS V. KHADAL SWAIN & ANR. 2004 (4) SCC 263 (PARA 8 AND 10)*
- b) *CHANDRA DEO SINGH V. PRAKASH CHANDRA BOSE & ANR. AIR 1963 SC 1430 (PARA 7)*
- c) *R.K. MISHRA V. STATE , 2010 CRI L.J. 1292 (PARA 9)*
- d) *SURESH CHAND JAIN V. STATE OF M.P. 2002 (1) AD SC 34(PARA 7)*
- e) *MANHARIBHAI MULJIBHAI KAKADIA & ANR. V. SHASHI BHAI MOHANBHAI PATEL & ANR. 2012 (10) SCC 517 (PARA 20, 21 ,22, 23)*
- f) *SHIVJEE SINGH V. NAGENDRA TIWARY & OTHERS , 2010 (7) SCC 578 (PARA 7, 16 & 19)*
- g) *K.T. JOSEPH V. STATE OF KERALA & ANR. , 2009 (15) SCC 199(PARA 4)*
- h) *8. BAL KISHAN V. STATE OF DELHI, 2007 (10) AD (DELHI) 518(PARA 41)*

28) I have heard learned counsel for the parties at length and given my thoughtful consideration to the arguments advanced by them.

29) Before analysing the rival contentions raised by the learned counsel appearing on behalf of the parties and referring to the judgments cited by them in support thereof, it would be pertinent to embark upon the relevant provisions of the Code of criminal procedure, 1873 and Indian Penal Code, 1908,involved in the present case, so far the offence of defamation and procedure for inquiry or investigation is concerned, the same are extracted below:

“Section 499 of IPC- Defamation

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

Explanation 2

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

Explanation 3

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

Explanation 4

No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome State, or in a State generally considered as disgraceful.

Section 500 of IPC- Punishment for defamation

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CLASSIFICATION OF OFFENCE

Para I

Punishment—Simple imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by Court of Session—Compoundable by the person defamed.

Para II

Punishment—Simple imprisonment for 2 years, or fine, or both—Non-cognizable—Bailable—Triable by Magistrate of the first class—Compoundable by the person defamed with the permission of the court.

Section 199 of Cr.P.C- Prosecution for defamation.

(1) No court shall take cognizance of all 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:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Government of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs

of the Union or of a State in respect of his conduct in the discharge of his public functions a court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction.

(a) Of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) Of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) Of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

Section 2(g) Cr.P.C-

(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;

Section 2(h) Cr.P.C-

(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf,

Section 156 Cr.P.C

156. Police officer's power to investigate cognizable cases.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

Section 202 Cr.P.C

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1[and shall, in a case where the accused is residing at a place beyond the area in which he exercise 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 Sessions 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 witness 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 Court on an officer in charge of a police station except the power to arrest without warrant.

- 30) Chapter XXI of the IPC deals with the offence of defamation. Section 499 defines defamation and sets out ten exceptions to which the main provision has been subjected to. Section 500 of the IPC deals with the punishment for defamation. Defamation is a bailable and non-cognizable offence. Defamation which concerns the personal reputation of a person

is unlike an offence against the State. Section 199 Cr.P.C. engrafts an exception to the general rule that no-one can set criminal law in motion in relation to offences covered by Section 499 to 502 IPC, and it is only an aggrieved person and no one else can file a complaint. In the year 1973, when Cr.P.C. was exhaustively amended then the sub-section 2 of Section 199 was re-casted so as to confer power upon the Public Prosecutor on a complaint in writing when defamation is alleged to have been committed against a person who, at the time of such commission is the President of India, Vice President of India, Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union Territory or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in discharge of his public functions then the Court of Sessions may take cognizance of such offence, without the case being committed to it. It would be thus seen that criminal machinery for bringing an action of defamation can be set into motion by the aggrieved person on the filing of a complaint before the competent Court of jurisdiction and it is on the filing of such a complaint that the Court of the Magistrate will proceed to examine for the purpose of taking cognizance of such an offence in the manner

provided under Chapter XV of the Cr.P.C and if the offence falling under Chapter XXI of the IPC is alleged to have been committed against any of the persons in terms of sub-section (2) of Section 199, then the cognizance of the offence shall be taken by the Court of Sessions. Chapter XII of the Cr.P.C. which provides the detailed procedure commencing from Section 154, from getting the first information relating to the commission of a cognizable offence entered into a book kept with the officer of the Police station till the zenith of filing a challan under Section 173 Cr.P.C. will not apply to a complaint of defamation filed by the aggrieved person before the concerned Magistrate or Sessions Court and therefore, the concerned Magistrate or Sessions Court cannot direct investigation by the police at the pre-cognizance stage under Section 156(3) Cr.P.C.

- 31) The normal procedure for seeking registration of an FIR relating to the commission of a cognizable offence as prescribed under Chapter XII of the Cr.P.C. thus would not apply to seek prosecution for an offence of defamation because of the bar created under Section 199 of the Code of Criminal Procedure. Section 199 of the Code of Criminal Procedure mandates that it is only upon a complaint made by the person aggrieved qua such an offence, the Court shall proceed and in the absence of such a

complaint no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code.

- 32) Under the Negotiable Instruments Act, 1881 one can also find a similar provision envisaged under Section 142 of the same and it reads as under:-

142. Cognizance of offences

[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; (b) Such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

["Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138].

- 33) Dealing with an issue whether the police investigation could be sought under Section 156(3) of the Code of Criminal Procedure on a private complaint seeking cognizance of an offence punishable under Section

Court in *Bandi Pandu vs Kola Balaji Varma and Anr* reported in **2002(2) ALD (Cri) 696** took a view that Section 142 of the Negotiable Instruments Act, 1881 contemplates filing of a private complaint only and that section does not give any indication to refer such a private complaint filed by the payee or holder in due course to the police for investigation under Section 156(3) of the Code of Criminal Procedure, by the Magistrate before whom such a complaint is filed. Section 142 of the Negotiable Instruments Act and Section 199 of the Code of Criminal Procedure are alike, both deal with the offences against the individuals and not the State and under both the provisions the criminal machinery can be set in motion only upon filing a complaint before the concerned Court and not through an ordinary process either by providing a mere information or complaint to the concerned police station in terms of the procedure provided under Chapter XII of the Code of Criminal Procedure. Thus there remains no scope for filing an application under Section 156(3) of the Code of Criminal Procedure to seek an investigation in a non-cognizable offence of a private nature like defamation and machinery in such like cases can be set in motion only after a complaint is filed by the aggrieved person under Section 200 of the Code of

Criminal Procedure. 'Private nature' of an offence of defamation signifies public disclosure of private facts, which arises where one person reveals information that is not of public concern, and the release of which would offend a rational person.

- 34) Turning to the facts of the case at hand, the respondent herein had filed a complaint before the concerned Magistrate under Section 200 Cr.P.C. with the prayer to take cognizance upon the complaint and summon the accused persons in accordance with law under Section 500/34/109 IPC. Vide order dated 3.1.13 the learned Magistrate took cognizance of the offences under Section 499 read with Section 34 IPC, and the matter was adjourned for examination of the complainant and his witnesses on 7.1.13. On 7.1.13 the learned Magistrate heard arguments on the application moved by the respondent / complainant under Section 91 of the Cr.P.C. but before taking any view on the said application, the court felt the necessity of recording the evidence of the complainant at the first instance and accordingly adjourned the matter for examination of the complainant on 10.1.2013. On 10.1.13 the evidence of the complainant was recorded and on the said date the court also heard arguments of the complainant on the said application under Section 91 Cr.P.C. The matter was

thereafter adjourned for orders on 15.1.13. Vide order dated 15.1.13, the court instead of giving any direction for summoning of the records in terms of the prayer made by the respondent under Section 91 Cr.P.C. felt that the necessary investigation qua the allegations made in the complaint could be conducted by the SHO Tuglak Road, New Delhi in terms of Section 202 Cr.P.C. and during the investigation, the SHO was directed to investigate the role of each of the respondents qua the two causes of action as described in the complaint. The SHO was also directed to seize the minutes of the meeting and other documents of BEA regarding termination of the membership of the complainant and his removal from the post of Treasurer BEA, further to seize the relevant pages of the Minute Book of JSPL covering the decision of the management of JSPL referred in the letter dated 19.11.12 issued by the Company Secretary of JSPL and also to seize video recording of the press conference allegedly held on 25.10.12 by the respondents either from the office of JSPL or any TV news channel. While giving the said direction the court also clarified that these guidelines should not restrict the SHO from conducting full and thorough investigation, which is under challenge before this court in the present petition. The petitioner felt aggrieved and prejudiced by such

sweeping directions given by the Magistrate and as per the petitioner, at the post-cognizance stage the learned MM cannot direct such kind of full-fledged investigation as can be directed at pre cognizance stage under Section 156(3) and the scope of the inquiry under Section 202 Cr.P.C. is extremely limited, only to an extent of ascertaining the truth or falsehood of the allegations made in the complaint.

- 35) The respondent No. 2 on the other hand while supporting the said order has strongly challenged the maintainability of the present petition. The issue raised by counsel for the respondent on the maintainability of the present petition is that the petitioner is a merely prospective accused and the matter is still at the pre-summoning stage and therefore, the petitioner has no *locus standi* to file the present petition to challenge any process of the concerned Magistrate, the same being at the pre-summoning stage. Counsel for the respondent also submitted that neither the respondent nor even the petitioner at this stage can know at all, whether actually the petitioner would be summoned in the case or not and therefore, without having any notice to this effect, the petitioner has no locus to challenge the order dated 15.1.13 passed by the Ld.MM. To support his arguments, counsel for the respondent mainly placed reliance on the judgment of

the Apex Court in the case of *Shashi Jena (supra)* and the decision of the Apex Court in *Chandra Deo's case (supra)*.

- 36) In *Shashi Jena and Others V. Khadal Swain & Anr. 2004 (4) SCC 263*, the court was accosted with a question that if an accused has any right to cross examine the prosecution witness during the course of enquiry under Section 202 of the Cr.P.C., answering this question the court in following paragraphs held as under:

*8. From a bare perusal of the aforesaid provision, it would appear that evidence given by a witness in a judicial proceeding or before any person authorized to take it is admissible for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in its evidence given in earlier judicial proceeding or earlier stage of the same judicial proceeding, but under proviso there are three pre-requisites for making the said evidence admissible in subsequent proceeding or later stage of the same proceeding and they are (i) that the earlier proceeding was between the same parties; (ii) that the adverse party in the first proceeding had the right and opportunity to cross examine; and (iii) that the questions in issue in both the proceedings were substantially the same, and in the absence of any of the three pre-requisites afore-stated. Section 33 of the Act would not be attracted. This Court had occasion to consider this question in the case of **V. M. Mathew v. V.S. Sharma and Ors.**, AIR1996SC109, in which it was laid down that in view of the second proviso, evidence of a witness in a previous proceeding would be admissible under Section 33 of the Act only if the adverse party in the first proceeding had the*

right and opportunity to cross examine the witness. The Court observed thus at pages 110 and 111:-

"The adverse party referred in the proviso is the party in the previous proceeding against whom the evidence adduced therein was given against his interest. He had the right and opportunity to cross-examine the witness in the previous proceeding..... the proviso lays down the acid test that statement of a particular witness should have been tested by both parties by examination and cross-examination in order to make it admissible in the later proceeding."

[Emphasis added]

1. *Thus, the question to be considered is as to whether accused has any right to cross examine a prosecution witness examined during the course of inquiry under Section 202 of the Code. It is well settled that the scope of inquiry under Section 202 of the Code is very limited one and that is to find out whether there are sufficient grounds for proceeding against the accused who has no right to participate therein much less a right to cross examine any witness examined by the prosecution, but he may remain present only with a view to be informed of what is going on. This question is no longer res integra having been specifically answered by a 4-Judge bench decision of this Court in the case of **Chandra Deo Singh v. Prakash Chandra Bose @ Chabi Bose and Anr.**[1964]1SCR639 , wherein this Court categorically laid down that an accused during the course of inquiry under Section 202 of the Code of Criminal Procedure, 1898, has no right at all to cross examine any witness examined on behalf of the prosecution. It was observed thus at page 1432:*

"Taking the first ground, it seems to us clear from the entire scheme of Ch. 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.....".

[Emphasis Added]

10. Thus, we have no difficulty in holding that as during the course of inquiry under Section 202 of the Code an accused has no right much less opportunity to cross examine a prosecution witness, Statement of such a witness recorded during the course of the inquiry is not admissible in evidence under Section 33 of the Act, and consequently, the same cannot form the basis of conviction of an accused.

- 37) Also in the case of ***Chandra Deo Singh V. Prakash Chandra Bose & Anr. AIR 1963 SC 1430***, the Court was accustomed with the similar issue concerning the *locus standi* of the respondent contesting the criminal case before issuance of the process against him and after referring to the entire Scheme of Chapter XV of Cr.P.C., the Apex Court in the following paragraphs has held:

7. Coming to the second group, we have no hesitation in holding that the test propounded by the learned single judge of the High Court is wholly wrong. For determin-

ing the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. A number of decisions were cited at the bar in which the question of the scope of the enquiry under s. 202 has been considered. Amongst those decisions are : Parmanand Brahmachari v. Emperor A.I.R. (1930) Pat. 30; Radha Kishun Sao v. S. K. Misra MANU/BH/0210/1948 : AIR1949Pat36 ; Ramkisto Sahu v. The State of Bihar MANU/BH/0046/1952 : AIR1952Pat125 ; Emperor v. J. A. Finan A.I.R. (1931) Bom. 524 and Baidya Nath Singh v. Muspratt I.L.R. (1886) Cal. 141. In all these cases, it has been held that the object of the provisions of s. 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under s. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-s. (1) of s. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

8. *This brings us to the third ground. Section 203 of the Code of Criminal Procedure which empowers a Magistrate to dismiss a complainant reads thus :*

"The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the witnesses and the result of the investigation or inquiry, if any, under s. 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing."

9. *The power to dismiss a complaint rests only with a Magistrate who has taken cognisance of it. If before issue of process, he had sent down the complaint to a Magistrate subordinate to him for making the enquiry, he has the power to dismiss the complaint, if in his judgment, there is no sufficient ground for proceeding. One of the conditions, however, requisite for doing so is the consideration of the statements on oath if any made by the complainant and the witnesses and of the result of the investigation of the enquiry which he had ordered to be made under s. 202, Cr.P.C. In the case before us, an investigation by a police officer was not ordered by the learned Sub-Divisional Magistrate, but an enquiry by a Magistrate, First Class. He had, therefore, to consider the result of this enquiry. It was not open to him to consider in this connection the statements recorded during investigation by the police on the basis of the first information report lodged by Panchanan Roy or on the basis of any evidence adduced before him during the enquiry arising out of the complaint made by Mahendra Singh. All these were matters extraneous to the proceedings before him. Of course, as we have already stated, the learned Magistrate has not given any reasons for dismissing the complaint and, therefore, we do not know what exactly weighed with him when he dismissed the complaint, but the learned single judge of the High*

Court who has dealt with the case elaborately has not kept the evidence adduced in the two complaints separate but appears to have been influenced in deciding one case on the basis of what was stated by the witnesses in the other case. The High Court has relied upon the evidence of Pannalal Saha and Sankar Ghose who ought never to have been examined by the enquiring Magistrate. The High Court has further relied upon the investigation made by the police in the complaint of Panchanan Roy. All this will be clear from the following passage in its judgment :

"The version of these two witnesses (Pannalal Saha and Sankar Ghose) is supported by the fact that the police when they went to the locality found a dead bird and a pair of shoes and a pair of black half pants in wet condition. This find of the dead bird and the pair of shoes etc. has not explained on the version given by Panchanan Roy, Upendra Mondal and Tarapado Naru. Mr. Ajit Kumar Dutt stated that the inquiring Magistrate was not right in examining Pannalal Saha and Shankar Ghose at the suggestion of an advocate for the accused Chabbi Bose and that the latter should not have been allowed at the inquiry. When however there had already been a full investigation into the case by the officers under the supervision of the Superintendent of Police, it was desirable and proper for the inquiring magistrate to make a careful inquiry and not merely an one sided inquiry by examining such witnesses as might be produced by an interested party. Moreover, in this case, the learned magistrate was inquiring into both the complaints simultaneously and necessarily he could look at the evidence as a whole. In fact, two separate cases ought not to have been started at all, even though there were two separate complaints giving two different versions. These complaints were more or less Naraji petitions against the final report submitted by the police. There was only one incident in the course of which Nageswar Singh has lost his life. Therefore on the basis of the two Naraji peti-

tions it would have been proper to hold one inquiry rather than two separate though simultaneous inquiries."

- 38) The aforesaid legal position has been further reiterated in a recent decision of the Apex Court in the case of ***Manharibhai Kakadia & Anr(supra)***. In this case the Hon'ble Apex Court also considered the scope of Section 401 (2) of Cr.P.C. with reference to the right and entitlement of the suspect for hearing by the revisional court in a revision petition preferred by the complainant, challenging the order of the Magistrate dismissing his complaint under Section 203 Cr.P.C., the Apex Court after astuting upon the previous judgments of the Hon'ble Supreme Court on the subject matter has reiterated the legal position that the suspect is not entitled to be heard on the question whether the process should be issued against him or not, till the stage of issuance of process the accused cannot claim any right of hearing under law. While taking this position, the Apex Court further held that all the accused/suspects are not entitled to be heard at any stage of proceedings until the issuance of process under Section 204. Section 401(2) of the Code elucidates that no order in exercise of power of revision shall be made by the Sessions Judge or the High Court, as the case may be

to the prejudice of the accused or other persons unless he has an opportunity of being heard either personally or by pleader in his own defence. The Apex Court after having analysed the three expressions 'prejudice', 'other persons' and 'in his own defence' as are used in Section 401(2) Cr.P.C., took a view that the right given to an 'accused' or 'other persons' under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 203 and 204 of the Code. In the ultimate analysis, the Apex Court took a view that the accused or any other person cannot be deprived of hearing in the face of the express provision contained in Section 401(2) of the Code. The relevant paras of the judgment are reproduced as under:

23. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize 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 unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry Under Section 202 of the Code or direct an

investigation to be made by a police officer. The dismissal of the complaint Under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate Under Section 202. The legal position is no more res integra in this regard. More than five decades back, this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Anr. MANU/SC/0059/1960 : (1961) 1 SCR 1 with reference to Section 202 of the Code of Criminal Procedure, 1898 (corresponding to Section 202 of the present Code) held that the inquiry Under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.

25. In Smt. Nagawwa MANU/SC/0173/1976 : (1976) 3 SCC 736, this Court had an occasion to consider the scope of the inquiry by the Magistrate Under Section 202 of the old Code. This Court referred to the earlier two decisions in Vadilal Panchal MANU/SC/0059/1960 : (1961) 1 SCR 1 and Chandra Deo Singh MANU/SC/0053/1963 : 1964 (1) SCR 639 and in para 4 of the Report held as under:

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

44. In *Tata Motors Limited*, Single Judge of the High Court was concerned with controversy arising out of complaint which was dismissed by the Metropolitan Magistrate Under Section 203 of the Code in limine. In the revision petition filed Under Section 397 read with Section 401 and Section 482 of the Code, it was contended on behalf of the complainant that the Metropolitan Magistrate erred in taking into consideration possible defence of the accused instead of ascertaining whether on a consideration of the complaint and the pre-summoning evidence, a prima facie case had been made out for summoning the accused for the offence mentioned in the complaint. It was also argued on behalf of the complainant before the High Court that the accused persons have not yet been summoned and even cognizance of the case has not been taken by the Metropolitan Magistrate and, therefore, there was no occasion at all for the accused persons to be heard. It was also argued on behalf of the complainant that at the pre-cognizance stage, there was no question of the accused being given an opportunity even in a revision petition filed by the complainant against the order of dismissal of complaint. On the contrary, on behalf of the accused persons it was argued that Under Section 401(2) of the Code, if adverse order is going to be passed in revision petition which might prejudice either the accused or any other person then such a person has to be mandatorily given an opportunity of being heard either personally or by pleader in defence. The Single Judge of that Court on consideration of the submissions of the parties and the decisions cited before him culled out the legal position as follows:

20. xxx xxx xxx

(1) There is a distinction to be drawn between the criminal complaint cases which are at the pre-cognizance stage and those at the post-cognizance stage. There is a further distinction to be drawn between the cases at the post-cognizance but pre-summoning stage and those at the post-summoning stage.

(2) It is only at the post-summoning stage that the Respondents in a criminal complaint would answer the description of an 'accused'. Till then they are like any other member of the public. Therefore at the pre-summoning stage the question of their right to be heard in a revision petition by the complainant in their capacity as "accused" in terms of Section 401(2) Code of Criminal Procedure does not arise.

(3) At the post-cognizance but pre-summoning stage, a person against whom the complaint is filed might have a right to be heard under the rubric of 'other person' Under Section 401(2) Code of Criminal Procedure. If the learned MM has not taken the cognizance of the offence then no right whatsoever accrues to such "other person" to be heard in a revision petition.

(4) Further, it is not that in every revision petition filed by the complainant Under Section 401(2) Code of Criminal Procedure, a right of hearing has to be given to such "other person" or the accused against whom the criminal complaint has been filed. The right accrues only if the order to be passed in the revision petition is prejudicial to such person or the accused. An order giving a specific direction to the learned MM to either proceed with the case either at the post-cognizance or post-summoning stage or a direction to register an FIR with a direction to the learned MM to proceed thereafter might be orders prejudicial to the Respondents in a criminal complaint which would therefore require them to be heard prior, to the passing of such order.

45. On facts obtaining in the case, the Single Judge observed that the Metropolitan Magistrate had not even taken cognizance of the offences and, therefore, there was no question of the applicants being heard at the stage of revision application.

46. The above decision of the Delhi High Court in Tata Motors Limited came up for consideration of that Court in Prakash Devi and Ors. v. State of Delhi and Anr. Criminal

Miscellaneous Case No. 2626/2009 decided on February 5, 2010]. The Single Judge, on facts of the case which were under consideration before him, observed that the Magistrate had dismissed the complaint filed by the complainant after taking into consideration the status report filed by the police. The Magistrate had not examined the complainant and other witnesses under Section 202 of the Code and in the revision filed by the complainant the revisional court had remanded the matter to the Magistrate to grant another opportunity to the complainant to lead pre-summoning evidence and to proceed in the matter in accordance with law and, therefore, there was no occasion for the Sessions Judge to accord hearing to the accused persons. The High Court held as under:

16. ... As already discussed above, the character of the Petitioner was still not that of an accused as the complaint filed by the Respondent was dismissed Under Section 203 Code of Criminal Procedure and since the matter was remanded back to the Magistrate to grant opportunity to the complainant to lead pre-summoning evidence, therefore, the said order does not cause any prejudice to the rights of the Petitioner. Even after the said remand, the fate of the complaint case could either be dismissal Under Section 203 or under 204 Code of Criminal Procedure, if the Court with the fresh material before it, comes to the conclusion to proceed against the Respondent. Since in the present case the process was not yet issued against the Petitioner and the complaint was dismissed Under Section 203 of Code of Criminal Procedure, therefore, preceding the said stage, the Petitioner had no right to seek opportunity of hearing before the Revisional Court in the light of the legal position discussed above.

.....

48. The legal position is fairly well-settled that in the proceedings Under Section 202 of the Code the accused/suspect is not entitled to be heard on the question

whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs 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. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process Under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence. Three expressions, "prejudice", "other person" and "in his own defence" in Section 401(2) are significant for understanding their true scope, ambit and width. Black's Law Dictionary [Eighth Edition] explains "prejudice" to mean damage or detriment to one's legal rights or claims. Concise Oxford English Dictionary [Tenth Edition, Revised] defines "prejudice" as under:

- 1. Preconceived opinion that is not based on reason or actual experience. > unjust behaviour formed on such a basis.*
- 2. harm or injury that results or may result from some action or judgment. v.1 give rise to prejudice in (someone); make biased. 2. cause harm to (a State of affairs).*

49. Webster Comprehensive Dictionary [International Edition] explains "prejudice" to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination; detriment arising from a hasty and unfair judgment; injury; harm."

- 39) To deal with the issue of maintainability of the present petition further, we shall now examine the relevant legal provisions, as the spine of the controversy rests on these provisions, the same are as under:

482. Saving of inherent power of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

483. Duty of High Court to exercise continuous superintendence over courts of Judicial Magistrates.

Every High Court shall so exercise its superintendence over the courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates.

226. Power of High Courts to issue certain writs.

¹[226. Power of High Courts to issue certain writs.

*(1) Notwithstanding anything in article 32²[***] every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including³[writs in the nature of habeas corpus,*

mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

⁴*[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-*

(a) Furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

227. Power of superintendence over all courts by the High Court.

¹*[(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.]*

(2) Without prejudice to the generality of the foregoing provision, the High Court may-

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

- 40) Dealing with the inherent powers of this court under Section 482 of Cr. P.C. one of the earliest celebrated case which is often cited, is the case of ***Madhu Limaye Vs. State of Maharashtra, (1978)SCC (Cri) 10***, wherein the court took a view that if the impugned order clearly brings about a situation where arises an abuse of the process of the court or for the purpose of securing the ends of justice, the interference of the High Court is absolutely necessary then nothing contained in Section 397(2) can limit or affect the exercise of the inherent powers by the High Court. Relevant paragraphs of the said judgment is reproduced as under:

“10. In most of the cases decided during several decades the inherent power of the High Court has been invoked for the quashing of a criminal proceeding on one ground or the other. Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with

the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court. In the background aforesaid we proceed to examine as to what is the correct position of law after the introduction of a provision like Sub- section (2) of Section 397 in the 1973 Code.

11. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing Sub-section (2), in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But

then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”

- 41) In *Adalat Prasad Vs. Rooplal Jindal & Ors* (*supra*), the three Judge Bench of the Hon'ble Apex Court disagreed with the earlier decision of the Division Bench in *K.M. Mathew V. State of Kerala (1992)1 SCC 217*, wherein it was held that it was open to the court issuing summons to recall the same on being satisfied that the issuance of summons was not in accordance with law. Taking a view that Mathew's case does not lay down a correct law, the three Judge Bench in the aforesaid case took a view that the Cr.P.C. does not contemplate the review of the order by the concerned Magistrate and therefore, in the absence of any review power or inherent power with the subordinate courts the remedy of the aggrieved person lies in invoking the inherent jurisdiction of this court under Section 482 Cr.P.C.
- 42) The scope and ambit of the powers of the High Court under Article 226 of the Constitution of India and under Section 482 Cr.P.C. were also elaborately discussed in the case of *State of Haryana Vs. Ch. Bhajan Lal & Others reported in AIR1992SC604*, wherein by way of illustrations the hon'ble court has expounded certain guidelines to exercise inherent powers of this court under Section 482 Cr.P.C. and extra-ordinary powers under Article 226 of the Constitution of India either to prevent

abuse of the process of any court or otherwise to secure the ends of justice. While laying down such guidelines the court also said that it may not be possible to lay down any precise, explicit, sufficiently channelized, inflexible guidelines or a rigid formulae and give an exhaustive list of myriad kinds of cases wherein such powers should be exercised and held as under:

“105. ...

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section [155\(2\)](#) of the Code.*
- 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no*

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

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

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

- 43) In pursuance of the said guidelines, the court also gave another note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with great circumspection and that too in the rarest of rare cases. The Apex court also held that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.
- 44) In the landmark decision of the Constitution Bench of the Apex court in the case of ***L.Chandra Kumar Vs. Union of India & Others AIR 1997 SC 1125***, the Supreme Court recognized the power of High Courts as

vested to exercise judicial superintendence over the decisions of various courts and Tribunals within their respective jurisdiction as a part of basic structure of the Constitution. The germane paragraphs of the said judgment are reproduced as under:-

“78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to

oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles [226](#) and in this Court under Article [32](#) of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.”

- 45) In yet another case titled ***State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors. reported in 2003(6)SCC 641***, the Hon’ble Apex court has extensively dealt with the powers of the High Court under Section 482 Cr.P.C. and discussed the judicial superintendence under Article 227 of the Constitution of India and the germane portion of the same are reproduced as under:-

*“25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of *The Estralla Rubber v. Dass EState (P) Ltd.* MANU/SC/0558/2001 : (2001) 8 SCC 97 wherein it was observed as follows:*

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

In our opinion, the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the Constitution of India in the peculiar circumstances of this case. The decision to exercise jurisdiction had to be taken in accordance with the accepted norms of care, caution, circumspection. The issue herein only related to a tenancy and subletting. There was no lis relating to the ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land No:2, Block-B, transport area of Jhandewalan EState, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of a civil suit being Suit No: 361 of 1980 in

the High Court of Delhi. The High Court, therefore, ought not to have given any opinion on the question of ownership.

26. We are of the opinion the High Court traveled beyond the well defined contours of its jurisdiction under Article 227 of the Constitution of India.”

- 46) In ***Hamida Vs. Rashid & Ors reported in(2007) 1 SCC 474*** reiterating the same legal position while dealing with the inherent powers of the High Court under Section 482 Cr.P.C, it was held as under:-

“6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in Emperor v.Khwaja Nazir Ahmad MANU/PR/0007/1944 with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is a verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already in-

herently possesses shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act.

7. It is well established principle that inherent power conferred on the High Courts under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 Cr.P.C. were examined in considerable detail in Madhu Limaye v. State of Maharashtra MANU/SC/0103/1977 : 1978CriLJ165 and it was held as under:

The following principles may be Stated in relation to the exercise of the inherent power of the High Court -

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

- 47) In ***Divine Retreat Centre Vs. State of Kerala & Others reported in (2008) 3 SCC 542*** the Apex court again conferred in detail with regard to the scope, content and ambit of the inherent powers of the High Court as conferred under Section 482 Cr.P.C and the following paragraphs of the same will be relevant for appreciation:

“22. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section [482](#) of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. It is well settled that Section [482](#) does not confer any new power on the High Court but only saves the inherent power which the court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

*23. Chandrachud, J. (as His Lordship then was), in **Kurukshetra University v. MANU/SC/0102/1977 : State of Haryana** 1977CriLJ1900 while considering the nature of jurisdiction conferred upon the High Court under Section 482 of the Code observed:*

It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

...

33. In our view, the High Court in exercise of its inherent jurisdiction cannot change the Investigating Officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither the accused nor the complainant or informant are entitled to choose their own investigating agency to investigate a crime in which they may be interested.

34. *It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an Investigating Officer mala fide. That power is to be exercised in rarest of the rare cases where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.*

35. *Even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 Cr. P.C., but a Writ Petition in such a case is not to be entertained. This Court in **Gangadhar Janardan Mhatre v. State of Maharashtra and Ors.** 2004CriLJ4623 held:*

When the information is laid with the police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All In-

dia Institute of Medical Sciences Employees' Union (Regd.) v. MANU/SC/1769/1996 : Union of India (1996)11SCC582 . It was specifically observed that a writ petition in such cases is not to be entertained.

....

47. In our view, the whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the nature (Sic) pre of mandamus, certiorari, prohibition and co- warranto are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court but they undoubtedly operate in different fields.”

- 48) In addition to the powers conferred on the High Court under Article 226 and 227 of the Constitution of India it also exercise judicial superintendence in terms of Section 483 Cr.P.C. and recognising this power of the High Court over the Judicial Magistrates, the Apex Court in the case of ***Dharmesbhai Vasadevbhai & Ors. Vs. State of Gujarat & Ors.*** (*supra*) took a view that such a power by the High Court can be exercised even *suomoto* when it finds that the order passed by the Magistrate was absolutely without jurisdiction. The supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate courts within the bounds of their jurisdiction. The powers under Article 227 of the Constitution of India are very wide and in fact under Article 227, a duty has been casted/ entrusted on the High Court to

keep subordinate courts and Tribunals within the limits of their authority and to see that they exercise their jurisdiction in a manner permitted by law and not by over-stepping or going out of the bounds of law. Undoubtedly, such a power by the High Court is exercised sparingly and with prodigious wariness and not merely to correct the errors of the subordinate court but to supervise and deliver justice in the circumstances of each case , and ordinarily the same would not be entertained this Hon'ble Court if there is already an efficacious remedy available under law.

- 49) Here to fore, we have dealt with the intendment of various statutory provisions as well as legal pronouncements of the Hon'ble Apex Court clearly enunciating the inherent powers of the High Court under Section 482, 483 Cr.p.C and also under Article 226 /227 of the Constitution of India. It is a settled legal position that before the Magistrate, the person who has been impleaded as an accused in the complaint case may remain present either in person or through a counsel or agent with a view to gain information about what is going on, but he has no right to take part in the proceedings and nor has the Magistrate any jurisdiction to permit him to do so and the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process against the accused persons un-

der Section 204 of the Code of Criminal Procedure. Legal position to this extent is beyond the pale of controversy. The right of a person accused of an offence to be tried in a revision petition filed by the Complainant under Section 401(2) of Cr. P.C. against the order of the dismissal of the complaint has been recognised by the Apex Court in the case of *Manharibhai Muljibhai Kakadia* (supra).

50) The Court here is not dealing with the revisionary powers of this Court or of the Sessions Court as specified under Section 401 (2) of the Code of Criminal Procedure, 1973 as the petitioner here has invoked the powers of this Court under Section 482/ 483 of Cr.P.C and Article 226/227 of the Constitution of India to assail the impugned order dated 15.01.2013 . It is a trite law that the amplitude of the inherent powers of the Court under Section 482 Cr.P.C are much wider in scope than the revisionary powers of this Court.

51) Undoubtedly, the petitioner approaching the High Court at the pre-summoning stage, can only do so in excruciating circumstances wherein a very strong case has been made out seeking for the indulgence of this Court. In exercise of its powers under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India it is

only in very rare and exceptional cases that the High Court intervenes in the interest of securing the ends of justice to prevent the abuse of the process of the court. This has been a consistent view of the Apex Court and various High Courts that exercise of such powers either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India would depend upon the facts and circumstances of each case and it is neither possible nor desirable to lay down any inflexible rules or guidelines which would govern the exercise of these inherent, plenary and extraordinary powers of this Court.

- 52) It has also been a settled legal position that powers possessed by the High Court under these provisions are very wide and the very plenitude of such powers require great caution in its exercise and the same must be exercised *ex debito justitiae* to impart real and substantial justice, for the administration of which alone the Court exists. In a case where the Court is satisfied that there is a great miscarriage of justice or abuse of the process of the Court is writ large on the very face of it or there is a bizarre violation of any statutory provision in passing any order and there is no specific remedy provided under law to challenge such an order or there is a need for immediate intervention to secure the ends of justice, in

such extraordinary circumstances, it is but the duty of the Court to interfere in the exercise of inherent powers vested under Section 482 of the Code of Criminal Procedure or in the exercise of extraordinary power of judicial superintendence vested under Article 227 of the Constitution of India.

- 53) Before I give my findings on the maintainability of the present petition filed by the petitioner, let me gander/ examine whether the case of the petitioner falls in any of the above categories for this court to interfere in the impugned order passed by the learned Metropolitan Magistrate. The Magistrate in the impugned order dated 15.1.2013, has directed the police to conduct the investigation on particular lines and to seize certain material deriving his powers under Section 202 Cr.P.C at the post -cognizance stage. It is an admitted position between the parties that the learned Magistrate had taken cognizance of the offence and after having examined the respondent/complainant, it felt the necessity for directing further investigation with the help of police before taking a decision to issue the process. There is also no conflict between the parties that at post cognizance stage the Magistrate can direct an investigation through the party, wherever he thinks fit for the purpose

of deciding whether or not there is sufficient ground to issue process against the accused person. The crucial issue to be considered by this court is whether the Magistrate in exercise of his powers can direct investigation through the police in the same manner as can be directed under Section 156(3) Cr.P.C.; or it is in any manner different; or the Magistrate at the post cognizance stage can direct the police to conduct the investigation on some particular lines or guide the investigating agency in any manner whatsoever. As per the counsel for the petitioner, the Magistrate has no power to direct the police to carry on the investigation on particular lines nor has the power to interfere in such an investigation and the investigation at this stage, is very limited, only to ascertain the truthfulness of the allegations made in the complaint, while on the other hand the stand of the counsel for the respondent has been that the investigation at the post cognizance stage under Section 202 Cr.P.C., is different from the kind of comprehensive investigation conducted by the police in terms of Section 156(3) of Cr.P.C and also the Magistrate is well within his rights to direct the police to carry on the investigation on the suggested lines and in a particular manner. There are series of

judgments on this contentious issue. It would be useful to embark upon some of the judgments elaborating the scope of an enquiry under Section 202 Cr.P.C and the scope of investigation under Section 156(3) Cr.P.C.:

- 54) In one of the earliest cases where the Hon'ble Apex Court took a view that the power to direct police investigation under Section 156(3) Cr.P.,C., is different from the power to direct investigation conferred by Section 202(1) Cr.P.C. is ***Devarapalli Lakshminarayana Reddy and Ors.***
Vs. V. Narayana Reddy and Ors. AIR 1976 SC1672, where it was held as under:

“15. Section 156(3) occurs in Chapter XII, under the caption: "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of

Section 156(3). It may be noted further that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173. On the other hand Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him."

- 55) The scope of Section 202 Cr.P.C., was also considered by the Hon'ble Supreme Court in the case of **Rosy Vs. State of Kerala, (2000)2SCC230**, and after taking a view that the inquiry under Section 202 Cr.P.C. is of a limited nature, it was held as under:

"36. The aforesaid Section 200 requires a Magistrate taking cognizance of an offence on a complaint to examine upon oath the complainant and the witnesses present. If any. The proviso to the said section carves out an exception in cases where a complaint is filed by a public servant acting or purporting to act in the discharge of his official duties or in cases where the Court has made the complaint. In such cases, complainant and witnesses need not be examined. In such cases, if he is satisfied that there is sufficient ground for proceeding, he can straight-

way issue process. At this stage, the Magistrate has three options:

(i) to issue process on the basis of complaint, if he is satisfied that there is sufficient ground for proceeding against the accused (Sec. 204); or

(ii) to dismiss the complaint (Sec. 203); or

(iii) to hold an enquiry-

(a) by himself, or

(b) by directing investigation by the Police Officer,

(c) or by other person, for the purpose of deciding whether or not there is sufficient ground for proceeding.

37. It is only if the Magistrate decides to hold the inquiry the proviso to Sub-section (2) of Section 202 would come into operation. If the offence is triable exclusively by the Court of Sessions, the Magistrate himself has to hold the inquiry and no direction for investigation by police shall then be made. Inquiry can be held for recording evidence on oath and if he thinks fit, Sub-section (2) of Section 202 gives discretion to the Magistrate to record evidence of witnesses on oath. To this discretionary power, the proviso carves out an exception. It provides that for the offence triable exclusively by the Court of Sessions, the Magistrate shall call upon the complainant to produce all his witnesses and examine them on oath. Then the next stage after holding inquiry is passing of appropriate order of either dismissal of the complaint or issue of process. That is provided under Sections 203 and 204 of the Code. Hence, on receipt of the complaint, the Magistrate by following the procedure prescribed under Section 200 may issue process against the accused or dismiss the complaint. Section 203 specifically provides that after considering the Statement on oath, if any, of the complainant and witnesses and the result of the inquiry or

investigation, if any, under Section 202 the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint. For dismissal of complaint, he is required to briefly record his reasons for so doing. In other cases, he has to issue process i.e. either summons or warrants as the case may be as provided under Section 204. However, no summons or warrant is to be issued against the accused until a list, of the prosecution witnesses has been filed. Therefore, the question of complying with the proviso to Sub-section (2) of Section 202 would arise only in cases where the Magistrate before cognizance of the case decides to hold the inquiry and secondly in such inquiry by him, if he decides to take evidence of witnesses on oath. But the object and purpose of holding inquiry or investigation under Section 202 is to find out whether there is sufficient ground for proceeding against, the accused or not and that holding of inquiry or investigation is not an indispensable course before issue of process against the accused or dismissal of the complaint. It is an enabling provision to form an opinion as to whether or not process should be issued and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

38. In a case, Ranjit Singh v. State of Pepsu (now Punjab) MANU/SC/0049/1959 : 1959CriLJ1124 , where the Sub Inspector of Police was convicted under Section 193, I.P.C. by First Class Magistrate, it was contended that the procedure adopted by the Magistrate was erroneous because he did not hold an enquiry as required under Sections 200 and 202 of the Code. This Court negated the said contention and held thus (Para 10):

That contention is equally untenable because under Section 200 proviso (aa) it is not necessary for a Magistrate when a complaint is made by a Court to examine the complainant and neither Section 200 nor Section 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against.

Further, it is settled law that the inquiry under Section 202 is of limited nature. Firstly, to find out whether there is prima facie case in issuing process against the persons accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out whether or not there is sufficient ground for proceeding against the accused." The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under Section 202 Cr. P.C. accused has no right to intervene and it is the 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. [Re: Chandra Deo Singh v. Prakash Chandra Bose MANU/SC/0053/1963 : [1964]1SCR639 , Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar MANU/SC/0059/1960 : [1961]1SCR1 , Pramanath Nath Taluqdar v. Saroj Ranjan Sarkar MANU/SC/0149/1961 : AIR1962SC876 ; Nirmaljit Singh Hoon v. State of West Bengal MANU/SC/0196/1972 : [1973]2SCR66 and Mohinder Singh v. Gulwant Singh MANU/SC/0363/1992 : 1992CriLJ3161

39. This Court in Kewal Krishan v. Suraj Bhan MANU/SC/0143/1980 : 1980CriLJ1271 , dealt with the case where instead of finding out prima facie case made out against the accused, the Magistrate passed an order by meticulously appreciating the evidence in a case exclusively triable by a Sessions Court, at the stage of Sections 203 and 204. The Court held that the Magistrate committed an irregularity by exceeding his jurisdiction and observed thus (Para 9 of AIR, Cri LJ):

At the stage of Sections 203 and 204. Criminal Procedure Code in a case exclusively triable by the Court, of Session, all

that the Magistrate has to do is to see "whether on a cursory perusal of the complaint" and the evidence recorded during the preliminary inquiry under Sections 200 and 202, Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused.

The Court further made it clear thus (Para 9):

At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges. The standard of proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of framing charges. A fortiori, at the stage of Sections 202/204 if there is prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by the Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for trial to the Court of Session.

40. In this view of the matter it is apparent that the High Court erred in holding that there was breach of mandatory provisions of the proviso to Section 202(2) of the Code and the order of committal is vitiated and, therefore, requires to be set aside. The High Court failed to consider proviso to Section 200 particularly proviso (a) to the said Section and also the fact that inquiry under Section 202 is discretionary for deciding whether to issue process (under Section 204) or to dismiss the complaint (under Section 203). Under Section 200 on receipt of the complaint, Magistrate can take cognizance and issue process to the accused. If the case is exclusively triable by the Sessions Court, he is required to commit the case to the Court, of Sessions."

56) The scope of enquiry under Section 202 Cr.P.C. is extremely limited was also the view taken by the Apex Court in the case of **Smt. Naggawa Vs.Veerappa AIR 1976 SC 1947**, where it was observed that:

“ in Vadilal Panchal v. Dattatrya Dulaji Ghadigaonker and Anr. MANU/SC/0059/1960 : [1961]1SCR1 observed as follows :

Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial.

4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Sections 202 of the Cods of Criminal Procedure is extremely limited--limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint--ft) on the materials placed by the complaint before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the

complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Sections 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

5.....These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Sections 202 of the CrPC which culminates into an order under Sections 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

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

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

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

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

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

.....It was not a case where the Magistrate had passed an order issuing process in a mechanical manner or just by way of routine. The High Court appears to have gone into the whole history of the case, examined the merits of the evidence, the contradictions and what it called the improbabilities and after a detailed discussion not only of the materials produced before the Magistrate but also of the documents which had been filed by the defence and which should not have been looked into at the stage when the matter was pending under Sections 202, has held that the order of the Magistrate was illegal and was fit to be quashed. In the first place the High Court ought not to have considered the documents filed by respondents 1 and 2 in the previous revision without obtaining the permission of the Court and particularly when the High Court itself gave no directions whatsoever to the Magistrate to consider those documents. In fact the Magistrate considering the question as to whether process should be issued against the accused or not cannot go into the materials placed by the accused and therefore the High Court could not have given any such directions while disposing of the previous revision. The impugned order of the High Court proceeds on the basis that it was incumbent on the Magistrate to have considered the documents and their effect on the truth or falsehood of the allegations made by the complainant. This was an entirely wrong approach. As we are clearly of the opinion that the Magistrate was fully justified in completely excluding the documents from consideration, we refrain from making any observation regarding the effect of those documents. In fact the documents filed by the respondents were mere copies and they were, therefore, not admissible. At any rate, at the stage of Sections 202 or Sections 204 of the CrPC as the accused had no locus standi the Magistrate had absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused who could be present only to watch the proceedings and not to participate in them. Indeed if the documents or the evidence produced by the accused is

allowed to be taken by the Magistrate then an inquiry under Sections 202 would have to be converted into a full-dress trial defeating the very object for which this section has been engrafted. The High Court in quashing the order of the Magistrate completely failed to consider the limited scope of an inquiry under Sections 202. Having gone through the order of the Magistrate we do not find any error of law committed by him. The Magistrate has exercised his discretion and has given cogent reasons for his conclusion. Whether the reasons were good or bad, sufficient or insufficient, is not a matter which could have been examined by the High Court in revision. We are constrained to observe that the High Court went out of its way to write a laboured judgment highlighting certain aspects of the case of the accused as appearing from the documents filed by them which they were not entitled to file and which were not entitled in law to be considered.

7. For these reasons, therefore, we are satisfied that the order of the High Court suffers from a serious legal infirmity and the High Court has exceeded its jurisdiction in interfering in revision by quashing the order of the Magistrate. We, therefore, allow the appeal, set aside the order of the High Court dated December 16, 1975 and restore the order of the Magistrate issuing process against respondents 1 and 2.”

57) In **Suresh Chand Jain Vs. State of Madhya Pradesh, 2002(1) AD SC**

34, explaining the difference between exercise of power under Section 156(3) and 202 (1) Cr.P.C., the court took the following view:

“7. In our opinion, the aforesaid direction given by the learned Single Judge of the Punjab and Haryana High Court in Suresh Kumar vs. State of Haryana (supra) is contrary to law and cannot be approved. Chapter XII of the Code contains provisions relating to information to the police and their powers

to investigate, whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII, deals with powers of the police officers to investigate cognizable offences. True, Section 202 which falls under Chapter XV, also refers to the power of a Magistrate to direct an investigation by a police officer. But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code. Section 156 of the Code reads thus: 156. Police officers power to investigate cognizable cases.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

9. But a magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. or direct an investigation to be made by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.”

58) In *Mohinder Singh Vs. Gulwant Singh & Ors. AIR 1992 SC 1894*, after placing reliance on the previous decision of the Supreme Court in Nagawwa's case, the following dictum was laid down:

"11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section [202](#) of the Code and settled the principle of law, the substance of which is as follows:

*12. The scope of enquiry under Section [202](#) is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section [204](#) of the Code or whether the complaint should be dismissed by resorting to Section [203](#) of the Code on the footing that there is no sufficient ground for proceeding on the basis of the Statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section [204](#) of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section [202](#) of the Code. To say in other words, during the course of the enquiry under Section [202](#) of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide *Vadilal Panchal v. [Dattatraya Dulaji Ghadigaonker and Anr. MANU/SC/0059/1960](#)* : [1961]1SCR1 and *Pramatha Nath Talukdar v. Saroj Ranjan* [1962] 2 SCC 297."*

59) In the case of *Mohd. Yusuf Vs. Smt. Afaq Jahan & Anr.*, AIR 2006 SC 705, the Apex Court again reiterated the earlier view that the investigation as envisaged under Section 202 Cr.P.C., contained in Chapter XV is different from the investigation contemplated under Section 156 (3) of the Code. The following paragraphs of the same, will be useful to refer:

“7. Chapter XII of the Code contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.

8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order

of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e.

"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".

This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him."

- 60) Extracting the importance of the amended Section 202 Cr.P.C, it would also be necessary to peep into the legal position which existed prior to the introduction of the new Code as the basic concern of the legislature was to ensure that cognizance is not taken to the detriment, prejudice and harassment of accused persons who do not deserve to be proceeded

against . Firstly, the old law in sub section (1) required the Magistrate to record his reasons for postponing issue of summons to the accused. The said requirement has been dispensed with under the present code. The Law Commission in its 41st Report at page 134, observed as under:

"16.8: Section 202 (1) requires Magistrate to record his reasons in case he postpones the summoning of the accused and orders an inquiry or investigation into the complaint. It has been forcefully represented to us by the Chief justice of the High Court that Magistrates find it difficult at the stage to record their reasons, we are inclined to agree. One reason why a Magistrate may be reluctant to issue process against the accused can be that he feels doubtful about the value of the complainants statement and the few witnesses produced by him. It would be clearly embarrassing for him to say so in writing at that stage. Nor we see any real purpose that can be served by any expression of judicial opinion at that stage."

Secondly , the words, 16.9: "for the purpose of ascertaining truth or falsehood of the complaint" occurring in the old sub section (1) have been substituted by the words "for the purpose of deciding whether or not there is sufficient ground for proceeding". The substituted words were found "inappropriate, as the truth or falsehood of the complaint cannot be determined at that stage; nor it is possible for a Magistrate to say that the complaint before him is true when he decides to summon the accused". The real purpose is to ascertain whether grounds exist for "proceeding further which expressing is in fact used in Section 203."

Section 202 Cr.P.C before the 2005 amendment reads as under:

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, 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 of investigation shall be

made-

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions 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 witness 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 Court on an officer in charge of a police station except the power to arrest without warrant.

Cr.P.C (Amendment) Act, 2005 (25 of 2005)- In Section 202 of the principal Act, in sub – section (1) , after the words “may, if he thinks fit”, the following shall be inserted namely:- (Amended Section)

202. Postponement of issue of process.- *(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1[and shall, in a case where the accused so is residing at a place beyond the area in which he exercise 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 Sessions 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 witness 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 Court on an officer in charge of a police station except the power to arrest without warrant.

- 61) The said amendment was introduced by the Parliament with an object to discourage filing of false complaints against innocent persons residing beyond the territorial jurisdiction of a particular Magistrate where such a complaint has been filed. The objective of the said amendment as stated in the Code of Criminal Procedure Bill reads as under:

“Clause 19- 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.”

- 62) The basic query for amending the statute is aptly answered, relenting the import and consequence of the amendment brought in Section 202 Cr.P.C by Act 25 of 2005 w.e.f 23.06.06 by which 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 introduced. Is the stipulation couched in the above language directory or mandatory?. A classification appears to have been made of accused persons residing within the jurisdiction of the Magistrate taking cognizance and those residing outside the jurisdiction of such Magistrate. It was stipulated by the amendment to Section 202 Cr.P.C that in respect of the accused persons residing outside the jurisdiction of the Magistrate taking cognizance, either an enquiry or investigation under Section 202 Cr.P.C shall be conducted. Earlier the section only said that an enquiry or investigation

under Section 202 Cr.P.C may be conducted and there was identical stipulation in respect of both these classes of persons. But by the amendment, it was stipulated that such enquiry or investigation shall be conducted in respect of persons belonging to the latter class - of those residing outside the jurisdiction of the Magistrate. In respect of the others there was no change in the procedure to be followed.

- 63) In *Abhishek Agrawalla vs. Boortmalt NV & Anr. reported 2011(1)JCC614* a question came up for consideration whether the amendment to Section 202 Cr.P.C makes it obligatory on the part of the Magistrate to hold an inquiry in all complaint cases where the accused resides beyond its jurisdiction. In this case the court was dealing with a complaint case filed against the accused who was resident of Noida under Section 420/406/120B IPC and the Ld. Magistrate after recording pre-summoning evidence and appreciating the documents filed by the complainant came to the conclusion that the accused person alongwith his co-accused entered into a criminal conspiracy and cheated the complainant company of several crores of rupees and directed issuance of process against them for committing an offence under Section 420 IPC. Challenging the said summoning order of the Learned Magistrate, a

Revision Petition was filed under Section 397 Cr.P.C. The ground raised was that the order passed by the Id. Magistrate was bad in law as it failed to comply with the provisions of Section 202 Cr.P.C. where under an inquiry by the Magistrate himself or an investigation through the police officials, after amendment in the said provision, had been made mandatory where the accused was residing beyond the area in which the Magistrate had jurisdiction. Categorising the cases which come before the Court, one where the offence is sought to be proved from documents and oral testimony is given before the court to prove the documents by exhibiting them and the other kind of cases, where the case does not depend on documentary evidence and depends upon the oral testimony the court in the following paragraphs held as under:

“8. There are two kinds of cases which come before the court, one where the offence is sought to be proved from documents and the oral testimony is given before the court to prove the documents by exhibiting the documents

and by deposing as to when the documents were executed and by whom. The other kind of cases are where the case does not depend on documentary evidence and depends upon only the oral testimony. These are cases of physical hurt, injuries, threats etc. In order to protect an innocent person being summoned by the Magistrate on the basis of oral testimony of a person and considering that a large number of false complaints were being filed at far-off places just to harass the people, the Parliament had amended Section 202

so that the summoning orders were not issued mechanically by the Magistrates and whenever the accused was of other State an investigation or enquiry into the allegations was mandatorily conducted either by the Magistrate himself or through police. Say for example, a person files a complaint that on telephone he had been threatened by a person seeking ransom or he had been threatened to be killed and the person who allegedly threatened him was living outside the jurisdiction of the court. Before acting on this oral statement of the victim, it would be incumbent upon the court to make an enquiry about the call details, about the telephone and about telephone number from which the threat was allegedly received and the telephone number of the complainant. The call details for period around the date of incident would show if the calls had been made frequently or it was a solitary call and the Magistrate can also make enquiry about the person in whose name the telephone was standing. This would enable the Magistrate to find out if there was credibility in the statement given by the complainant. The Magistrate can summon the officials of service provider telephone company and make this enquiry himself. Similarly there may be a case where a person alleges that while he was at X place, Y a resident of other State had come there and beaten him or abused him or threatened him or caused injuries to him etc. The person produces his MLC and makes an oral statement. The court in such a case, if the accused is of outside his jurisdictional area, would have to get an enquiry made through police if the accused was living at the address given and if the accused had visited the place where it was alleged that he had beaten or threatened. The Magistrate can also get a fact finding enquiry done from police of that State or police of his own State. However, where the commission of offence is disclosed only from the documents, no further enquiry except scrutinizing the documents proved before the court by testimony of complainant is feasible, I consider that the enquiry envisaged under Section 202 Cr.P.C in such cases is an enquiry by way of recording statement of complainant

and careful scrutiny of documents relied upon by the complainant. Say, if a case against the accused is filed under Section 138 of Negotiable Instruments Act and the accused lives in Noida while the complainant lives in Delhi. The Magistrate in such a case has only to consider if prima facie offence was committed or not and if it has jurisdiction based on the documents i.e. whether the cheque was dishonoured, whether the proper demand notice was sent and still payment was not made etc. Similarly there are several statutes where the offence is of technical nature and the commission of offence can be made out from the documents, say the offences under the Companies Act, against the directors of the company for violating the mandatory provisions regarding filing of returns etc. The company may be registered in Delhi but the director may be living in Noida or Gurgaon. In such a case, the commission of offence has to be inferred only from the documents and the enquiry under Section 202 Cr.P.C has to be limited to scrutiny of the documents and recording of statement of the complainant and cannot go beyond that.”

- 64) In the final analysis, in the said judgment, the court on placing reliance upon judgment of the Apex Court in the case of *Rosy (Supra)*, and *Kewal Krishan Vs. Suraj Bhan* reported in AIR 1980 SC 1780, held that the inquiry or investigation under Section 202 of Cr.P.C. has to be conducted mandatorily in all those cases where the accused resides beyond the jurisdiction of that court. It was further held that where the commission of an offence is disclosed based on the documents, no further inquiry scrutinising the documents proved before the court by the testimony of the complainant is feasible. The court also held that in such like cases, an

inquiry by way of recording of statement of complainant and upon careful scrutiny of documents relied upon by the complainant would be sufficient to consider whether any *prima facie* case is made out or not for proceeding in the matter Citing examples of cases of technical nature under various Statutes and also those offences under the Negotiable Instruments Act, 1881 as well as Companies Act, 1956 which are based on documentary evidence, the commission of offence has to be inferred only from the documents and the inquiry in such like cases under Section 202 Cr.P.C. has to be limited to scrutiny of the documents and recording of the Statement of the complainant and witnesses if any and not beyond that. In my view, an offence under Section 500 of the IPC also falls in the same category and the inquiry by the Magistrate in this context should confine to the appreciating the documents placed on record by the complainant and recording of the Statement of the complainant and witnesses if any.

- 65) The legal position that emerges on the aforesaid legal discussion can be crystallised as under:-
- a) Magistrate can order for investigation under Section 156(3) of Cr.P.C. only at the pre-cognizance stage that is to say before taking

cognizance under Section 190 , 200 and 204 of the Code of Criminal Procedure, 1973. Such an investigation will either result in the filing of a closure report or filing a charge sheet under Section 173 of the Code;

- b) Where the Magistrate instead of directing an investigation at the pre-cognizance stage chooses to take cognizance of the offence himself under Section 200 of the Code, shall examine the complainant on oath and the witnesses present if any.

The proviso to Section 200 of the Code carves out an exception in cases where a complaint is filed by a public servant acting or purporting to act in the discharge of his official duty or in a case where the court has made a complaint, in such cases complainant and witnesses need not be examined by the court.

At this stage, Magistrate has three options:-

- i) to issue notice on the basis of complaint if is satisfied that there is sufficient ground for proceeding against the accused (Section 204 of the Code) or;
- ii) to dismiss the complaint under Section 203 of the Code or;
- iii) Either to hold an inquiry by himself or by directing

investigation by the police officer or by other person, for the purposes of deciding whether or not there is sufficient ground for proceeding against the accused.

The inquiry or investigation has to be mandatorily held by the Magistrate where the accused is residing at a place beyond the area in which he exercises his jurisdiction.

And for the very purpose of carrying out the inquiry or investigation, the following options are available to the Magistrate:

- a) If the Magistrate inquires into a case himself then in such an inquiry, the Magistrate may, if he thinks fit, take the evidence of witnesses on oath.
- b) If the Magistrate directs an investigation; the same may be made through a police officer or by such other person, as he thinks fit.
- c) If the offence is triable exclusively by the Court of Sessions, then he shall call upon the accused to produce all witnesses and examine them on oath and no direction for investigation in a case exclusively triable by the court of Sessions shall then be made.
- d) The investigation that can be directed under Section 202 of the Cr.P.C. is a limited investigation unlike the investigation as

envisaged under Section 156(3) of the Code at the pre-cognizance stage.

- e) At the time of directing investigation through the police or some other person, as the Magistrate may think fit, the Magistrate can spell out the kind of information he is desirous of in such an investigation.
- f) After holding the said inquiry or investigation, the Magistrate if finds that no prima facie case is made for issuance of process , shall pass an order for dismissal of the complaint under Section 203 of the Cr.P.C. or may issue process against the accused under Section 204 of the Cr.P.C.

The object and purpose of holding an inquiry/investigation under Section 202 of the Code is to find out whether there is sufficient ground for proceeding against the accused or not.

- 66) However, where the commission of offence is disclosed based on the documents under various Statutes, such as Companies Act, Negotiable Instruments Act, or where the filing of a complaint in writing has been made as a pre-requisite in various Statutes, or where the offence is purely of private or personal nature and not against the State then the inquiry by

the Magistrate shall be based on the Statement on oath of the complainant and on careful scrutiny of the documents relied upon by the complainant and evidence of the witnesses on oath examined by the complainant and not beyond that, while in other offences, based on the oral testimony, the Magistrate may direct investigation through the police or by some other person, as he deems it fit.

67) Applying the dicta as laid in the forgoing paragraphs to the facts of the present case, this court is of the view that the Magistrate has not directed a limited or restricted inquiry as is envisaged under Section 202 Cr.P.C., but in fact has directed a full-fledged investigation which can be only contemplated under Section 156(3) Cr.P.C. On perusing the order passed by the Id. Magistrate, and glancing through the kind of directions given by the learned Magistrate to the police for conducting the investigation in a particular manner, it is clear that the impugned order and the directions imbued therein are not only limited to such specific directions, but the Magistrate has further clarified that the aforesaid guiding principle shall not restrict the SHO from conducting a complete and thorough investigation.

68) In the present case, in the complaint of defamation filed by the

respondent no.2 under Sections 500/109/34 IPC, he has impleaded 16 Directors of M/s Jindal Steel & Power Ltd., and one accused holding the post of Company Secretary of the said company. The respondent no.2/complainant has premised his complaint based on two separate cause of actions. The first cause of action pertains to alleged defamatory allegations levelled in the complaint filed by the petitioner who is accused no.17 in the complaint case which led to the registration of the FIR No. 240/12. As per the complainant, the accused persons with a common intention made a false complaint to the Police on 2.10.2012 alleging that earlier when the respondent no.2 was the CEO of Live India T.V., they had carried out a fake sting operation for which they were banned for doctoring the story and seemingly impressed with his capabilities, Mr. Subhash Chandra had taken the aforesaid complainant on the Board of their company for extorting money for his channel and used him for this malicious campaign and nefarious designs. The second cause of action as per the complainant is based on the press conference held by Mr. Naveen Jindal and other accused persons wherein they made a false statement against the complainant where reference was also made to the decision taken by the Broadcast

Editors Association including removal of the complainant from the post of treasurer. The complaint clearly states that the press conference was presided over by the accused Naveen Jindal, Ravi Uppal, Vikrant Gujral and Anand Goel, who were senior members of the said company. Against the other co-accused persons the complainant has averred that they all were hand in glove and they very well knew that the false statements are being made in the press conference and they abetted to make such false Statements with the common intention to malign the image of the complainant. Even under the heading first cause of action the complainant has clearly alleged that the complaint was filed by the accused no.17 Rajiv Bhaduria, Director (HR) of M/s Jindal Steel & Power Ltd., but against the other co-accused persons, the only allegation is that they were well aware that in the press conference false statements were made and following the said stream of action, the accused nos. 1 to 16 have abetted with the common intention to defame the complainant.

- 69) Astoundingly, in his evidence the complainant had categorically Stated that he was not sure about the exact role of each of the respondents and therefore , in order to ascertain the role of the respondents he had

filed an application under Section 91 Cr.P.C., to summon the records of M/s Jindal Steel & Power Ltd. Similarly, and to prove that he had never attended any meeting of Broadcast Editor Association he made a reference to his prayer made in the said application, wherein in his deposition he had prayed that CD of the press conference be summoned from the office of M/s Jindal Steel & Power Ltd., and also to summon the relevant records from the office of M/s Jindal Steel & Power Ltd., and also to summon the relevant records from the office of the Broadcast Editor Association.

- 70) The aforesaid full-fledged and comprehensive investigation directed by the Ld. Magistrate cannot be comprehended at the post-cognizance stage and the same does not satisfy the dictum of various judgements cited above predicated limited investigation- circumscribed only to the extent of ascertaining whether a prima facie case for the issue of process has been made out or not. Section 202(1) Cr.P.C. empowers the Magistrate to postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by the 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 . After the

amendment of Section 202 Cr.P.C. by an amending Act of 25 of 2005 it has become obligatory for the Magistrate to hold an inquiry under Section 202 where the accused is residing at a place beyond the area in which the Magistrate exercises jurisdiction. The amendment however has not brought any change regarding the nature of the inquiry which is required to be held under Section 202(1) Cr.P.C, being of a limited nature. In a case where the statements of the complainant and the witnesses which were adduced before the Magistrate at the post cognizance stage, if are not considered sufficient enough to take a decision on the issue of process or have raised certain doubts in the mind of the Magistrate then in such a situation, if he thinks fit, he can hold an inquiry himself or direct an investigation to be made by a police officer or by such other person as he thinks fit but only to a limited extent for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203 Cr.P.C. the Magistrate can dismiss the complaint if after taking into consideration the statement of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding and if the court finds that the complainant has made out a prima facie case for

the issue of the process then the Magistrate will proceed to issue the process under Section 204 Cr.P.C. The object of the inquiry/investigation as envisaged under Section 202 Cr.P.C is primarily to ascertain the truth or falsehood of the complaint and the Magistrate making inquiry has to do this only with reference to the intrinsic quality of the statements made before him at the inquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements if any, made by the witnesses examined at the instance of the complainant. The Magistrate has to carefully scrutinise the allegations made in the complaint and the other material placed on record by the complainant along with the statement of complainant and of other witnesses with a view to ensure that no process is issued against a person based on a frivolous complaint and at the same time the person against whom prima-facie case is made out is not saved from facing prosecution.

- 71) In the facts of the present case as would be seen from the deposition of the complainant himself, he is not sure about the exact role of each of the respondents except accused no. 17 in the complaint and therefore, an application under Section 91 Cr.P.C was moved by him to summon the records of Jindal Steel & Power Limited and Broadcast Editor

Association.

- 72) Summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion just as a matter of course as held in ***Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors.*** reported in ***AIR 1998 SC 128*** The important paragraphs of the said judgment are reproduced as under:-

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

28. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding

quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants. If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under Section 245 of the Code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. If we now refer to the facts of the case before us it is clear to us that not only that allegations against the appellants do not make out any case for an offence under Section 7 of the Act and also that there is no basis for the complainant to make such allegations. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Papsi '. The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information

is from A.K. Jain who is impleaded as accused No. 3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made Fruit Products Order, 1955 (for short, the "Fruit Order"). It is not disputed that the beverage in the question is a "fruit product" within the meaning of Clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The Fruit Order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to the packaging, marking and labelling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacturer to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [Clause (8) (1) (b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in *The Hamdard Dawakhana .(WAKF) Delhi and Anr. v. The Union of India and Ors.*, MANU/SC/0025/1964 : [1965]2SCR192 , an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit order was validly issued under the Essential Commodities Act. What we find in the present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the

offending beverage and if, as noted above, the first appellant was the manufacturer thereof.”

- 73) Noticeably, in the case at hand, Respondent No.2, complainant before the Ld. Magistrate is seeking prosecution of 17 accused persons for the commission of offence under Section 499 IPC. For seeking summoning of all these 17 respondents, it is for the complainant to disclose and place on record sufficient material to satisfy the Magistrate that all these respondents have played an active role in the alleged defamation of complainant. The complainant cannot be so casual in approach and implead all the Directors of a company without laying any basic foundation of facts, or attributing and assigning any specific role either in the complaint or in his evidence which could prima-facie show their role in alleged defamation of the complainant, . In the absence of any such material on record , the Magistrate shall not conduct any fishing or roving inquiry and any such inquiry or an investigation involving the police will evade the very scope of Section 202 Cr.P.C.
- 74) It cannot be lost sight of the fact that the stage of Section 202 Cr.P.C comes after the Magistrate has taken cognizance of the offence and cognizance of the offence can be taken only when the Magistrate derives some kind of judicial satisfaction for the case to be fit enough for taking

cognizance of the offence. It is at the post cognizance stage that the Magistrate calls upon the complainant to give his evidence and the evidence of his witnesses if any, however under Section 202 Cr.P.C, the inquiry so entrusted is of a limited nature even if the Magistrate seeks for some assistance by the police. This investigation by the Magistrate through a police officer thus cannot be equated with a police investigation which is envisaged under Section 156(3) Cr.P.C as investigation under Section 202 Cr.P.C. is limited investigation whereas, investigation under Section 156(3) is a kind of full-fledged investigation.

75) The extensive investigation as directed by the Magistrate in the impugned order, thus cannot stand the test of limited investigation as envisaged under Section 202 of the Code of Criminal Procedure, 1973 and also do not guzzle the principles of law settled in various legal pronouncements as discussed above.

76) It is also a settled legal position that in any complaint of defamation the complainant must disclose clear, specific, and unambiguous allegations and the exact role of the persons sought to be prosecuted in such a complaint for the offence of defamation and before taking cognizance of such complaint, the Magistrate has to satisfy himself that the complaint

contains necessary asseverations against the persons sought to be summoned by the complainant as accused persons. The complainant in the instant complaint has not levelled clear and specific allegations of defamation against the accused Nos. 3,6,7,8,9,10,11,12,13,14,15,16 in the complaint and even in his evidence the complainant has candidly stated that he was not sure about the exact role of each of the accused in the complaint except accused No. 17 as there is another FIR lodged by the said accused against the respondent no.2 herein, wherein the inquiry is being conducted and the case is pending , therefore, direct allegations have been attributed towards the said accused in causing the alleged defamation punishable under Section 500 IPC. Simply because of the alleged ground that the other directors very well knew about the press statements issued by the aforesaid directors , they all cannot be arrayed as accused persons and painted in the same brush on the whims and fancies of the respondent no.2 herein. There cannot be any vicarious liability which can be fastened on one Director based on the alleged role of other director against whom specific allegations of defamation have been levelled. This Court also cannot subscribe to the argument advanced by the learned counsel for the respondent that in the absence of

any clear averments against these respondents, through the process of the investigation by the police the role of these individual directors should be found out for causing the alleged defamation of respondent No. 2. Under Section 202 of Code of Criminal Procedure, this kind of roving enquiry is totally impermissible and the Magistrate could have ordered only for a limited inquiry or limited investigation after taking cognizance of the offence but the Magistrate in any case cannot direct any kind of investigation which is beyond the precincts of Section 202 Cr.P.C, attracting the legal fiction created by the legislature under 156(3) of the Code of Criminal Procedure.

- 77) It is noteworthy to point out that when the Magistrate directed an enquiry under Section 202 of the Cr.P.C through the police or any other person who can be in such a position to facilitate the process of ascertaining the truth or falsehood of the allegations made in the complaint, the Magistrate certainly can spell out what kind of help and investigation into what aspect is required by him. To this extent the investigation which can be directed by the Magistrate to the police at the pre-cognizance stage under Section 156(3) of the Code of Criminal Procedure cannot be equated with the investigation directed by the Magistrate under Section 202 of the

Code of Criminal Procedure at the post cognizance stage. The investigation under Section 156(3) embraces the entire process as contemplated in chapter XII of the Code which leads up to final report/ charge sheet under Section 173 of the same chapter. Under Section 156(3) the entire power of the investigation vests with the police and normally the Court does not interfere with such an investigation being carried out by the police unless there are exceptional circumstances where there is any violation of fundamental rights of the accused persons or investigation is done contrary to the procedural safeguards or by violation of the rights of an accused. This task of holding an enquiry under Section 202 Cr.P.C is taken up by the Magistrate himself although limited in nature as already discussed above for the purpose of ascertaining whether or not there is a sufficient ground for proceeding, then certainly the Magistrate can direct the police or such other person to obtain a particular information or to collect documentary proof pertaining to the commission of an offence otherwise the Magistrate will not be in a position to disclose as to in what manner he is in need of seeking help from the police or such other person to dispel his own doubts in the

process of ascertaining the falsehood or the truthfulness of the allegations made in the complaint.

- 78) Bearing in mind the contention raised by the respondent that purporting to act in the name of the company preponsely, committing an offence of defamation and hiding behind the corporate veil is not permissible in law. The substratum of argument is the members of the company have no right to disparage or denigrate the reputation of any other person or defame anyone in the name of the company and hide behind the corporate veil. However, the touchstone of this aspect which majorly confines to corporate crimes, it is pertinent to note that the Companies Act nowhere doubts the individual identity of the company itself, which is further blanced into Chairman, Directors, Shareholders etc., therefore, scrutinizing the principles as governed under the companies Act but not having made the company a party would not suffice this limb of the argument advanced by the counsel for the respondent, therefore, raising vague connotations against 17 members /accused of the company without corroborating any specific allegations against either of them, is in contradiction of their own stand. To have raised such a plea, the respondents herein should have been conscious of the fact that a statute or

law cannot be understood in jiffs and fragments. It is fundamental principle of criminal law that a penal provision must receive a strict construction. Therefore, the said recourse is not available to the respondents and completely ostracizes from the concept like 'attribution' and 'lifting the corporate veil' and in fact, puts the directors, management and other officers responsible in their individual capacity in a deemed concept compartment on certain guided parameters.

- 79) As already discussed above the case in hand relates to an offence of defamation which is an offence against an individual and not against the State and it is incumbent on the complainant to lay factual foundation and spell out a clear case against persons sought to be prosecuted with clear and specific allegations with necessary averments ought to be made in a complaint before a person can be subjected to criminal prosecution. Therefore, what averments a complaint should contain is of vital significance in view of the fact that at the stage prior to the issuance of process, the Magistrate will only examine the complaint and the witnesses if any produced by the complainant and also the accompanying documents . At this stage a person sought to be made an accused has no right to participate in the proceedings or to file any documents or

evidence in defence. The complainant thus cannot be casual in making any person as accused of an offence without at least making necessary averments against such an accused, describing his role in the commission of an offence.

80) This court is not suggesting that the complainant has to spell out a full proof case which can result in the conviction of an accused but atleast the averments necessary to disclose a prima facie case of commission of an offence by the persons sought to be prosecuted should be enunciated. Such clear cut averments would be more essential in the case of those accused persons who are residing at a place beyond the jurisdiction of a Magistrate before whom such a complaint has been filed.

81) Coming to Section 203 of the Cr.P.C which empowers a Magistrate to dismiss a complaint without even issuance of process. The section used the word “after considering” and “the Magistrate is of the opinion that there is no sufficient ground for proceeding” The use of following expressions in the Section clearly suggests that the Magistrate has to apply his mind to the averments made in the complaint at the initial stage and see whether a case is made out against the accused persons before the process is issued to them on the basis of a complaint. Similarly, even

Section 204 Cr.P.C. starts as “ if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding”. These words suggest that a particular ground should be made out in the complaint for proceeding against the respondent and in the absence of any such ground the complaint must result in dismissal under Section 203 of the Code. A complainant who himself is doubtful and that too in a case of defamation where the allegations levelled by the complainant should be more precise, specific and clear as to how and in what manner they can be held criminally liable for the offence, one cannot seek criminal prosecution of those against whom there are no proper averments as it would be an abuse of the process of the court. Without laying a proper foundation in the criminal case or disclosing a prima facie case against the person accused of an offence, complainant herein seeks a thorough and complete investigation through the help of police that too at the post-cognizance stage which is beyond the scope and ambit of Section 202 Cr.P.C., as already discussed.

- 82) In the light of the aforesaid discussion, relenting on the import of the provisions involved, following answers would set out the legal propositions as formulated in Para 4 above, which are as under:

a) Whether the petitioner who has yet not been summoned as an accused can challenge any order passed by the learned Metropolitan Magistrate at the pre-summoning stage, by invoking the powers under Section 482, Section 483 Cr.P.C or Article 226 & 227 of the Constitution of India.

- This query has been discussed in detail in the paragraph nos.37- 51 of the aforesaid judgment. The petitioner, who has not yet been summoned as an accused can challenge the order passed by the learned Metropolitan Magistrate even at the pre-summoning stage invoking the inherent power of this Court under Section 482 of the Cr.P.C., or even under Article 226 & 227 of the Constitution of India or under Section 483 of the Cr.P.C., but the exercise of such a power can only be under an extraordinary situation where the abuse of process of the Court or miscarriage of justice is writ large or in other alluring circumstances as discussed above.

b) Whether after the amendment in Section 202 Cr.P.C , it is incumbent on the Magistrate to hold an inquiry or investigation where the accused is residing beyond the area in which the Magistrate is exercising its jurisdiction.

- Answer to the aforesaid query is in the affirmative subject to paragraph Nos. 61,62,63 of the aforesaid judgment, as per Section 202 of the Cr.P.C, the inquiry or the investigation is mandatory where the accused is residing beyond the area in

which the Magistrate is exercising its jurisdiction.

- c) Whether for directing an investigation to the police under Section 202 Cr.P.C, the magistrate can direct a full- fledged investigation in the same manner as can be done by the police under Section 156(3) Cr.P.C.
- The Magistrate cannot direct a full-fledged inquiry or investigation under Section 202 of the Cr.P.C. akin to the investigation which can be directed under Section 156(3) of the Cr.P.C. at the pre-cognizance stage. The aforesaid discussion in paragraph no. 64 clearly expounds the clear legal position as envisaged under Section 202 Cr.P.C
- d) Whether under Section 202 Cr.P.C, the Magistrate can direct the police or any other person to carry out their investigation on the suggested lines.
- Unlike under Section 156(3) of the Cr.P.C., the Magistrate being the master of inquiry under Section 202 of the Code, can direct the police or any other person to collect information on the line suggested by the Magistrate restricting to the ambit of the complaint but without involving the accused in any manner at such a pre mature stage which would be against criminal jurisprudence.

83) In the light of the aforesaid discussion this court is of the view that the Learned Metropolitan Magistrate has exceeded its jurisdiction in directing such a full-fledged investigation at the post cognizance stage and therefore, the impugned order deserves to be set aside. The petitioner by approaching this Court under Sections 482/483 Cr.P.C. has in no way stepped out of the criminal jurisprudence. The present petition filed by the petitioner is thus maintainable in the eyes of law. The order passed by the Ld. Magistrate is grossly illegal, perverse, and if allowed to stand, the same will result in causing mis-carriage of justice and serious prejudice to the rights of the petitioners.

84) Hence, the present petition accordingly stands allowed.

85) It is ordered accordingly.

(KAILASH GAMBHIR)
JUDGE

May 02, 2013
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