

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1238 OF 2019

- 1. Ratan N. Tata**
R/at "Halekai"
169-B-171, Lower Colaba Road,
Colaba, Mumbai-400 005.
- 2. Ajay Gopikishan Piramal**
R/at 61, Piramal House,
Pochkhanwala Road,
Worli, Mumbai-400 030.
- 3. Amit Ranbir Chandra**
R/at Flat No.C-4, 3rd Floor,
Palacimo CHS, Bhulabhai Deasi Raod,
Mumbai-400 026.
- 4. Ishaat Hussain**
R/at Flat No.222, NCPS Apartments,
Sir, Dorabji Tata Road,
Nariman Pont, Mumbai-400 021.
- 5. Nitin Nohria**
R/at 51, Harvard Way
Boston-0211661322
- 6. Ranendra Sen**
R/at A-42, IFS Apartment,
Mayur Vihar, Ph-1, Delhi-110091.
- 7. Vijay Singh**
R/at H.No.20, Poorvi Marg,
Vasant Vihar-1, New Delhi-110 057.

8. **Venu Srinivasan**
R/at 3, Adyar Club Gate Road,
R A Puram, Chennai-600 028.
9. **Ralf Speth**
R/at 12 Lucys Mill Lane
Stanford Upon Avon CV376DE GB
10. **N. Chandrasekaran**
R/at Floor 21, 33 South Condominium
Peddar Road, Opposite Sterling Apt.,
Mumbai-400 026.
11. **F.N. Subedar**
R/at 1, Wadia Building,
6 Babulnath Road,
Mumbai-400 007.

...Petitioners

V/s.

1. **State of Maharashtra**
Though Government Pleader
(Bombay High Court)
Mumbai-400 001.
2. **Nusli Neville Wadia**
C-1, Wadia International Centre
(Bombay Dyeing),
Pandurang Budhkar Marg,
Worli, Mumbai-400 025.

...Respondents

Dr.Abhishek Manu Singhvi, Sr.Counsel a/w.Mr.Mohan Parasaran, Sr. Counsel, Mr.Amit Desai,Sr.Counsel a/w. Nitesh Jain, Atul Jain, Adrish Majumdar, Zulfiquar Memon, Parvez Memon, Waseem Pangarkar, Chirag Naik,Sidharth Sharma,L. Nidhiram Sharma, Azeem Samuel and Ashwin Kumar, Advocates i/by. Shardul Amarchand Mangaldas & Co. for the Petitioners.

Ms.S.D. Shinde, APP for the Respondent No.1-State.

Mr.Aabad Ponda with Karma Vivan, Bhomesh Bellam, Mrs.Olga Lume Pereira i/by.Dastur Kalambi & Associates for Respondent No.2.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

RESERVED ON : 11th June 2019

PRONOUNCED ON : 22nd July, 2019.

JUDGMENT : (Per Smt.Bharati H. Dangre,J)

1. The present Criminal Writ Petition emanates from an order dated 15.12.2018 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai in a Complaint Case No.11356/SS/2016 instituted by the respondent No.2 for the offence of defamation and alleging that the act of the respondent (present petitioner) has damaged his reputation. By the said impugned order, process is issued against the accused Nos.2 to 12 for the offences punishable under Section 500 read with 34 of the Indian Penal Code.

2. Before advertng to the order impugned before us, it would be necessary to refer to the bare minimum facts in a

chronological manner to have a better understanding of the issue before us. Tata Sons Ltd., is an unlisted public company registered under the provisions of the Companies Act, 1886. The said company is having substantial shareholdings in various listed and unlisted private companies which form a part of the Tata Group of Companies. The said Tata Sons Ltd., is a shareholder of Tata Steel Ltd., Tata Chemicals Ltd. and Tata Motors Ltd., as it holds ordinary shares representing a marginal percentage of the paid up ordinary share capital of the three companies. Thus, Tata Sons Ltd., is a promoter/share holder in the three operating companies i.e. Tata Chemicals, Tata Motors and Tata Steels.

The petitioner No.1-Ratan Tata was an Additional Director and Interim Chairman of the Tata Sons as on 10.11.2016 where as the petitioner Nos.2 to 10 were the Directors of the said promoter Company. The petitioner No.11 was the Chief Operating Officer and Company Secretary of Tata Sons Ltd. The respondent No.2 (the Complainant-Nusli Neville Wadia) is the Chairman of Bombay Dyeing and Manufacturing Company Ltd., as well as several other companies and claims to

be a person of impeccable reputation in society. The respondent No.2 was an independent Director of the three holding companies of the Tata Group and came to be appointed as a Director of Tata Steel on 29.08.1979, non-executive Director of Tata Motors on 22.12.1998 and a non-executive Director of Tata Chemicals on 26.06.1981 and in this capacity he claims to have long association with the said three companies.

3. The roots of the present dispute between the aforesaid parties could be traced back to 24.10.2016 when the Chairman of the Tata Sons Ltd., by name Mr.Cyrus Mistry came to be removed by the Board of Directors of Tata Sons Ltd. In the wake of his removal, the independent Directors of Tata Chemicals Ltd., met at Bombay House on 10.11.2016 to review the recent events and the subsequent media reports which could impact the Management of the business of the company, both on domestic and international front and the meeting was convened to enable the independent Directors to review the situation which had developed on account of removal of the

Chairman of the Tata Sons Ltd. It is this meeting which is core of the dispute between the parties. Both the parties have their own version as to what transpired in the said meeting. However, at present it would be only necessary to refer to the undisputed outcome of the fact that the independent Directors unanimously affirmed their confidence in the Board, its Chairman and the Management in the conduct of the business. The independent Directors after due discussion which, according to the respondent No.2 was unanimous whereas according to the petitioners it was an attempt on part of the respondent No.2 to galvanize the independent Directors and met with an allegation that he has not conducted himself independently and acted as an interested party. As an outcome of the said meeting dated 10.11.2016, a statement was issued by the independent Directors of Tata Chemicals to the stock exchanges affirming their confidence in the Board, Chairman and the Management of the Tata Chemicals and it also reassured all the stake holders, Management of the company and its subsidiary where ever located of their full confidence and support. The said statement was issued by one Mr.Rajiv

Chandan, General Counsel and Company Secretary on behalf of the independent Directors of Tata Chemicals Ltd. It is this conduct of the respondent No.2 which was perceived as unfavourable and prompted the Tata Sons Ltd., which is a shareholder of Tata Chemicals Ltd., to requisition the Board of Directors of Tata Chemicals for convening an Extraordinary General Meeting of its shareholders in the manner prescribed under the law to pass two resolutions. Accordingly, on 10.11.2016 itself the Chief Operating Officer and the Company Secretary of Tata Sons Ltd., i.e. petitioner No.11 issued notice to the Board of Directors of Tata Chemicals Ltd., in its capacity as shareholder of Tata Chemicals Ltd. The Circular Resolution came to be passed by the Board of Directors of Tata Sons Ltd., which included the petitioner Nos.1 to 10 to submit requisition for convening Extraordinary General Meeting of the shareholders of the Tata Chemicals and communication came to be addressed informing that pursuant to Section 100(2)(a) and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder, a requisition has been forwarded to the holding company for convening an Extraordinary

General Meeting of the shareholders of Tata Chemicals Ltd., to pass two resolutions. Item No.1 related to removal of Mr.Cyrus P. Mistry as Director where as Item No.2 pertain to “Removal of Mr.Nusli Wadia as Director”. The similar communications were addressed by Tata Sons Ltd., to the other two holding companies and the Special Notices issued to the Company included the resolution seeking removal of Mr.Nusli Wadia as Director of the Relevant Tata Companies. The resolution which was contemplated to be passed as an ordinary resolution in pursuant to the provisions of section 169 and other provisions of the Companies Act and the Rules was accompanied with a brief background about the conduct of Mr.Nusli Wadia and it is the reflection of this conduct contained in the special notice issued under Section 169(2) read with Section 115 of the Companies Act which is the bone of contention between the parties. According to the petitioners, the narration contained in the Special Notice issued under Section 169(2) read with 115 of the Companies Act by Tata Sons Ltd., was a statutory requirement before taking action of removal of a Director and fall completely within the four corners of the Companies Act

and the Rules framed thereunder, whereas according to the respondent No.2, the said Special Notice containing the allegations is per se defamatory and no due diligence was shown by the petitioner by ascertaining whether the allegations are true or false before issuance of the said Notice containing the imputation. The contention of the respondent No.2 is that this Special Notice contained the defamatory statement and the statement being per se defamatory, the respondent No.2 followed up with the petitioners by asking them to seek legal advice and withdraw the said Special Notice as the same is alleged to be defamatory. But instead of doing the needful, it is the grievance of the respondent No.2 that the notices containing the defamatory material came to be further circulated to the shareholders of the operating companies, again without verification of the statements contained therein and this amounted to an irresponsible behavior. It is in the backdrop of this fact we have heard the submissions advanced on behalf of the petitioners as well as the respondents and we would be making reference to the rival contentions of the respective parties by making reference to the voluminous

documents placed before us.

4. To continue the assertion of facts, it may be noted that the end result of the proceedings is that the Extraordinary General Meeting of all the three holding companies came to be held and the respondent No.2 was removed as Director by requisite majority and in case of Tata Steel Ltd., on 21.12.2016 in case of Tata Motors on 22.12.2016 and in case of Tata Chemicals on 23.12.2016.

5. It is to be noted that Suit No.50 of 2017 came to be filed by few public shareholders in relation to the removal of the respondent No.2 along with the Notice of Motion No.345 of 2017. The said suit came to be instituted on 13.12.2016 and certain affidavits came to be filed in this suit which have been sought to be relied upon by the parties. It is also to be noted that the respondent No.2 instituted Civil Suit which came to be numbered as Civil Suit No.225 of 2017 before the High Court of Judicature at Bombay (Nusli Wadia V/s. Tata Sons Pvt. Ltd. and Others) for defamation and he has prayed for declaration

that the defendants are jointly and severely liable to compensate him by paying sum of Rs.3 Crores by way of damages, for having published or caused to be published the Special Notices containing per se defamatory and libelous allegations against him. The said suit came to be filed on 15.12.2016.

6. The respondent No.2 Mr.Nusli Wadia filed a complaint in the Court of Additional Chief Metropolitan Magistrate, Mumbai on 23.12.2016 which is a genesis of the present Writ Petition. In the complaint, respondent No.2 has set out in detail his curriculum vitae which is depictive that he is a famous personality who enjoys very good and immaculate reputation amongst caste, creed and calling. The respondent No.2 highlighted in the complaint his lifetime achievements. It is alleged in the complaint that the complaint is filed since the accused persons individually and collectively have committed an offence of defamation against the complainant by printing, publishing and circulating per se false, frivolous, baseless, incorrect, libelous and defamatory material concerning the

complainant which have been so printed and published with the sole intention of lowering, tainting, tarnishing the reputation and self-esteem of the complainant in the eyes of right thinking person. The complainant further proceed to state that the accused persons have been instrumental in preparing the contents of the Special Notice which is defamatory and they collectively ensured that these defamatory contents are published and circulated and thus all the accused persons are jointly and directly responsible for committing the offence under Section 500 read with Section 109 of the Indian Penal Code. It is also specifically alleged that the Special Notices which contained the material against the complainant is based on false, baseless and unsubstantiated imputation which have been published with a view to damage and tarnish his reputation and goodwill. It is further alleged that the defamatory and offensive contents of the Special Notice has caused serious prejudice to his reputation and has affected his status as Director in various other Companies. The justification is also offered as regards the allegation about his conduct as an independent Director and it is stated in the complaint that if

the other independent Directors have expressed their support towards Mr.Cyrus Mistry as Chairman of the Company, Board and Management of the operating companies, it is not on account of the action on the part of the complainant but the collective and unanimous decision of the independent Director which is reflected in the Minutes of meeting of Tata Chemicals and Tata Motors. It is also stated in the complaint that as an independent Director, the complainant is entitled to express his support in the Chairman, the Board and the Management of the operating companies and he is entitled to do so after exercising his independent business judgment as his fiduciary duty is only to the companies in which he is a Director. In the said complaint, a request is made to the Magistrate to take cognizance of the offence committed under Section 500 of the I.P.C. read with Section 109 and also read with Section 34 of the I.P.C. and a request was made to issue process against the accused persons.

7. On this complaint, the Magistrate recorded the verification of the complainant on 14.12.2018 and passed the

impugned order on 15.12.2018 in which the Magistrate recorded a finding that the complainant has made out a case against the accused persons except the accused No.1 which is a company, hence, he issued process against accused Nos.2 to 12 (Petitioner Nos.1 to 11) for the offences punishable under Section 500 read with Section 34 of the Indian Penal Code. The learned Magistrate has recorded that on perusal of the complaint and its verification, in view of Section 200 of Cr.P.C. and on perusal of the documents as per list of documents Exhibit "A to Z" and "Aa to GG", it appears that the averments made in the complaint are supported by documents i.e. record of minutes of the independent Directors of Tata Chemicals Ltd., dated 10.11.2016, outcome of the meeting of the independent Directors dated 10.11.2016, Special Notice issued by the accused to Tata Chemicals Ltd, copy of e-mails, copy of articles published in newspapers etc., and the allegations levelled against the complainant in the Special Notice are serious in nature and there was no satisfactory explanation offered as to on what basis the statements were contained in the Special Notice and the learned Magistrate concluded that the

statements are defamatory. That is how the learned Magistrate justify the issuance of process against the present petitioners.

8. In support of the petition, we have heard the learned senior counsel Shri.Abhishekh M. Sanghvi. After inviting our attention to the sequence of events, Shri.Sanghvi would submit that by no imagination the provisions of Section 500 of Indian Penal Code can be invoked and applied against the present petitioners. He would submit that the existence of the *prima-facie* case is a pre-requisite of issuance of process and before exercising power the Magistrate has to satisfy himself, upon due application of mind that there exists sufficient ground for proceeding against the present accused and committing an offence. Shri.Sanghvi would submit that the complaint alleges defamation in respect of the Special Notices issued by the Tata Sons Ltd to the three operating companies promoted by it on 10.11.2016 under the provisions of the Companies Act seeking removal of the independent Director of the Relevant Tata Companies. Shri.Sanghvi has invited our attention to the statutory power contained in Section 169 of the Companies Act

which authorizes the company to remove a director including an independent director by following the procedure set out in the said section. He would submit that Board of Tata Sons took a decision to replace Mr.Cyrus Mistry as its Chairman on 24.10.2016 and the proceedings came to be initiated to remove him from the operating companies and notices came to be issued for removal of Mr.Cyrus Mistry as Director of all the companies in which he was the Director. In this process on 10.11.2016, the meeting of the Tata Chemicals was being held and in the evening, one of the non-executive Director of the Tata Chemicals Mr.Bhaskar Bhat submitted his resignation as Director of the Tata Chemicals and the various events which transpired in the meeting, came to be documented through the affidavits which included the affidavit of Mr.Rajiv Chandan-Company Secretary, Mr.Mukund-Manging Director and Mr.Bhaskar Bhat-Non-executive Director who resigned. This affidavits came to be tendered in suit filed by one Mr.Janak Mathura Das seeking stay of the EGM's of the Tata Companies on account of the resolution proposed for removal of the respondent No.2. Mr.Sanghvi invited our attention to the

affidavit reflecting the conduct of the respondent No.2 in the meeting held on 10.11.2016. Shri.Sanghvi, would submit that in the light of the events that took place on 10.11.2016, Board of Tata Sons in its fiduciary duty as shareholders and promoters of the relevant Tata Companies decided to issue the Special Notices to seek removal of the respondent No.2 along with Mr.Cyrus Mistry. As a part of the Special Notices, according to Shri.Sanghvi, some background material came to be alluded and it was only with an intention to assist the board of the Relevant Tata companies in the deliberation of the request of the requisitioning of the meeting for removal of the respondent No.2. He would submit that the communication of the Tata Sons was a confidential communication in accordance with the provisions of the Companies Act and the only purpose of the said notice was to request the Relevant Tata Companies to requisition meeting of its shareholders and propose resolution at the behest of the promoter company for removal of Mr.Nusli Wadia as an independent director. This was sought to be done strictly in conformity with the mechanism prescribed in Section 169 of the Companies Act. He would submit that perusal of the

contents of the said notice can by no sense be construed as *per se* defamatory and rather provisions of the Companies Act contemplate that the notice of the business to be transacted in a meeting should be accompanied with a statement setting out the material fact concerning each item of special business to be transacted in the meeting including the facts or any other information that may enable the members to understand the meaning, scope and implication of the items and to take decision thereon. He would thus submit that the notice contained the relevant background so that the Board of Directors of the relevant companies would have a brief idea of the purpose of holding a meeting. Shri.Sanghvi has also submitted that when the procedure contemplated under Section 169 was sought to be followed, the respondent No.2 actively and consciously consented to the circulation of the Special Notice of the Tata Sons including the background material to the shareholders of the Tata Companies as an annexure to the explanatory statement and that the relevant Tata companies were duty bound to issue notice in terms of the Section 102 of the Companies Act. Shri.Sanghvi would submit

that the sole intention of the Special Notices containing the brief factual material was necessary since the meeting was to be held for removing a director in whom the Tata Sons as shareholder had lost confidence and any such comment made for achieving the objective, in any case cannot constitute the defamation. The learned senior counsel further submits that if it leads to a criminal offence of a defamation, it would have a disastrous effect as those who are expected to take an independent and objective decision in an institution would be stalled in exercise of their duty if such a course is permitted. He would further submit that the power of removal of a person including an independent director is vested in the Board of Directors of the company cannot be stultified through threats of criminal prosecution. Shri.Sanghvi has placed reliance on the judgment of the Hon'ble Apex Court in case of ***Subramanian Swamy V/s. Union of India, Ministry of Law & Ors.***¹ to support to his submission that there has to be imputation and it must have been made in the manner as provided in the Section 499 of the Indian Penal Code with the intention to cause harm to the reputation of a person about whom it is made. He

1 (2016-7-SCC-221)

would submit that the said judgment in unequivocal terms has held that the complainant has to show that the accused has intended or had reason to believe that such imputation will harm the reputation of the complainant. He would also place reliance in the judgment of this Court in the matter of *Ramchandra Venkataramanan V/s. Shapoorji Pallonji & Company Ltd & Anr.*² where certain yardsticks have been set out to find out whether the statement is defamatory or not and it has been held that the statement has to be read in its entirety and while determining the question whether the statement is defamatory or not, it will have to be ascertained whether the averments in the complaint and the statement made are capable as a matter of law being defamatory. Shri.Sanghvi would submit that if the statutory powers, has been exercised by a company and the process contemplated under statute is followed to achieve the end result which is within the four corners of the statute, then whether the defamation can be attracted. He would submit that when the petitioners as a Board of Directors of the Tata Sons had lost confidence in one of its independent director and it proceeded to follow the

² (2019-SSC-Online-Bom-524)

statutory procedure for his removal and circulated the Special Notice giving a brief backdrop of the material, the provisions of Section 499 cannot be attracted in any case. He has also relied upon the judgment of the Hon'ble Apex Court in case of ***S. Khushboo V/s. Kanniammal & Anr.***³ .

Shri.Sanghvi also placed reliance on the judgment of Punjab and Haryana High Court in case of ***Shri.Mohinder Singh Dhillon V/s. Shri Ganga Dhar Sharma***⁴ which relates to the entry taken in annual confidential remarks of an employee and as to whether adverse entry would attract the offence of defamation.

9. Apart from the said submission, Shri.Sanghvi has also submitted that the Magistrate has fallen into a great error in not considering an important aspect of matter, namely, the aspect of jurisdiction. He would invite our attention to Section 202 of Cr.P.C. and submit that the Magistrate has failed to appreciate that as per mandate of Section 202, he was duty bound to inquire into the case before passing the impugned

3 2010-5-SSC-600

4 1975-2-SLR-603

order and admittedly no inquiry/investigation under Section 202 was conducted. He would further submit that the petitioner Nos.5 to 9 reside beyond the jurisdiction of the learned Magistrate and therefore, the Magistrate could not have issued process to the said respondents who were located beyond his jurisdiction. He would place reliance upon judgment of the Apex Court in the case of ***Abhijit Pawar V/s. Hemant Madhukar Nimbalkar & Anr.***⁵ where the requirement of the amended Section 202 is reiterated.

The submission of Shri.Sanghvi is to the effect that the said approach of the Magistrate in not following the provisions of Section 202 itself discloses the non-application of mind on the part of the Magistrate. He would also place heavy reliance on the judgment of the Apex Court in case of ***Udai Shaker Awasthi V/s. State of Uttar Pradesh & Anr.***⁶ and a judgment in case of ***Vijay Dhanuka & Ors. V/s. Najma Mamtaj & Ors.***⁷ wherein it is held that the requirement to conduct an inquiry and direct investigation before issuing

5 2017-3-SCC-528

6 2013-2-SSC-435

7 (2014-14-SCC-638)

process against the accused beyond the territorial jurisdiction of the Magistrate concerned is held to be mandatory, the object, being to protect innocent persons residing at far off places from being harassed. Apart from the said two points, Shri.Sanghvi would also submit that the complainant was not entitled to approach the Magistrate since he has failed to seek efficacious remedy provided under Section 111(3) of the Companies Act. He submits that the sub-Section (3) of Section 111 would impose a fetter on the company to circulate any statement, if on the application either of the company or any other person who claims to be aggrieved, the Central Government has declared that the right conferred by the section are being abused to secure needless publicity for defamatory matter. Shri.Sanghvi submits that there is no explanation offered by the respondent No.2 as to why he did not invoke the remedy under Section 111(3). He would also invite our attention to the illustrative guidelines by the Hon'ble Apex Court in case of *State of Haryana and Ors V/s. Bhajan Lal & Ors.*⁸ and specifically place reliance on clause (6) of paragraph No.102 where there is an expressed legal bar engrafted in any of the provisions of the

⁸ 1992-Suppl(1)-SCC-335

Code or the concerned Act to the institution and continuation of the proceedings where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

Shri.Sanghvi would thus submit that since the contents of the Special Notice are not per se defamatory as what is sought by the respondent No.2 and since they have been circulated in exercise of the statutory power and are in form of a duty cast upon the company, the issuance of the process by the Magistrate is nothing but abuse of process of law and this Court in exercise of its inherent power should intervene by quashing and setting aside the impugned order.

10. We have also heard learned Senior Counsel Shri.Amit Desai for the petitioners. The learned Senior Counsel would adopt the arguments advanced by Shri.Sanghvi. Apart from the said arguments, he placed reliance on the judgment of the Apex Court in case of *Birla Corporation Limited V/s. Adventz Investments and Holdings Limited and Others*⁹ decided by the Apex Court on 09.05.2019 and he would submit

⁹ (Criminal Appeal No.875 of 2019 arising out of SLP (Crl.) No.9053 of 2016

that the said judgment exhaustively deal with the issue of exercise of jurisdiction of this Court under Section 482 of Cr.P.C. as against an order passed by the Magistrate on a complaint filed under Section 200/202 of Cr.P.C.

11. In support of the impugned order justifying issuance of the process against the present petitioners, we have heard learned counsel Shri.Abad Ponda. According to Shri.Ponda the statements contained in the Special Notices to which he has exhaustively referred to, are per se defamatory in nature and he would further submit that having regard to the respondent No.2's eminent stature and reputation it was incumbent upon the petitioners before levelling any allegation to ascertain the truthfulness of the same and there ought to have been some care shown on their part to find out whether the allegations are true or false. He would submit that when an independent Director is alleged to be acting in consonance with another, it is a direct affront on his independence and this is no short of questioning his integrity as any independent Director. He would place reliance on the judgment of the Hon'ble Apex

Court in case of *Shiv Narayan Laxmi Naryan V/s. State of Maharashtra*¹⁰ to submit that a conclusion derived by the petitioners that on account of the act of the respondent No.2 as the company is in jeopardy and this has desired effect of harming and tarnishing his reputation. Shri.Ponda is therefore extremely critical about the phraseology used in the Special Notices including the word “Galvanizing independent Directors” and according to him this projects a picture in the eyes of the right thinking persons that the conduct of respondent No.2 is deplorable. Further, the allegation in the Special Notices that the action of the respondent No.2 makes his continuation on the Board untenable and that the principal shareholder have lost confidence in his independence, suitability and *bona fides* are also nothing but statements attempting to lower his reputation. He would emphasize on the fact that the respondent No.2 was acting as an independent Director and would submit that at no point of time, prior to 10.11.2016, the respondent No.2's independence and integrity has been questioned and doubted. He would further submit

10 1980-2-SCC-465

that the allegation that he was acting in concert with Mr.Cyrus Mistry is not only per se defamatory but palpably false. He would also invite our attention that in the explanatory statement to the notice convening the Extraordinary General Meeting, it is recorded that “The Board has been informed by the independent Directors individually that they have not been approached by Mr.Nusli Wadia that may be considered as influencing their independence in the Company”. He would also rely upon the Minutes of meeting of the independent Directors of the Tata Motors Ltd., held on 14.11.2016 whereas unanimous decision of the independent Director was recorded in the following effect.

“The independent Director confirm that all decisions taken by the Board with regard to statutory, operation and business of the company have been unanimous and executed by the Chairman and Management accordingly”.

“The Independent Directors further affirm that the Company continues to be governed, supervised and managed under the guidance and direction of the Board. The Management of the Company and its subsidiaries have the full confidence and support of the independent Directors”.

Further, he also makes a reference to the meeting of the Board of Directors of Tata Sons Ltd., held on 11.11.2016 where the Board has resolved to the following effect:-

“All decisions taken by the Board with regard to strategy, operations and business of the company have been unanimous and executed accordingly.”

Further, he also invite attention to the Resolution passed in the meeting of the independent Directors of the Tata Chemicals on 10.11.2016 which reads thus :-

“On the basis of the above criteria, the independent Directors concluded that in their view the Board, Management and Chairman had been acting in a manner consistent with law and prudence in the best interest of the company and that nothing adverse-(covert or avert)-had come to their notice which necessitated a revision of their assessment which had been made by them on March 22, 2016.

Considering the above the Independent Directors unanimously affirmed their confidence in the Board, its Chairman and the management in the conduct of the Company's business.

Independent Directors also reaffirmed that all the decisions taken with regard to the operations and business of the Company had been taken by the Board

unanimously and executed by the Chairman and management as per the directions of the Board.”

12. Based on the aforesaid statements and the Resolution, Mr.Ponda has vehemently submitted that the material available on record disclose otherwise and in fact there is no basis for making the defamatory allegation by the petitioners against a responsible independent Director who was enjoying longstanding association with them and he submits that is how the allegation “become per se defamatory”.

He would place reliance on the judgment of the Apex Court in case of *John Thomas V/s. Dr. K. Jagadeesen*¹¹ where it is categorically held that the only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right-thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact

11 2001-6-SCC-30

amounted to defamation even in spite of the apparent deficiency, so the appellant cannot contend, at this stage, that he is entitled to be discharged on the ground that the imputations in the extracted publications were not per se defamatory.

13. Shri.Ponda has also further emphasized on the fact that the Special Notices were circulated *inter alia*, to the Board of Directors of the operating companies comprising almost entirely or totally different sets of Directors, when the law do not require any reason to be ascribed. He would submit that except the common Director, namely, Mr.Ishaaat Hussain, who is also a Director of the Tata Steel and Tata Sons Ltd., Dr.Ralf Speth, Director in Tata Motors and Tata Sons Ltd., and Mr.Cyrus Mistry, the entire Board of Directors in the operating companies was different from that of Tata Sons Ltd. He also alleges that Special Notices were deliberately lent to the print media for this purpose. He has placed reliance on the articles published in Business Standards, Economic Times etc. He would also allege that during the deliberation by the Board of

Directors of Tata Motors at its meeting held on 14.11.2016 regarding the requisition of Tata Sons Ltd., to convene an Extraordinary General Meeting, stories were immediately reported by the media agencies and this reflect the nexus between the Tata Sons Ltd., personnels and the media and that this formed a part of large conspiracy to disrepute the respondent No.2. Shri.Ponda also deal with the submissions of Shri.Sanghvi to the effect that respondent No.2 never objected to the circulation of the defamatory material and he submits that the said allegation misleading. Shri.Ponda submit that respondent No.2 has addressed a letter dated 21.11.2016 to the Board of Directors and the Company Secretary of Tata Steel and had asserted that the allegations in the Special Notice are absolutely false and baseless and he had clarified that the draft notice and the explanatory statement circulated by the Company Secretary reproduces the highly defamatory statement made by the Tata Sons Ltd., in the Special Notices and this letter was received by the Tata Sons Ltd., before the Board meeting dated 21.11.2016 where such letter was discussed at length. Shri.Ponda would submit that the

petitioners had responded to the respondent No.2's letter and denied the allegation and had re-iterated that the Special Notice was confidential communication. He would also invite our attention to the fact that pursuant to the decision of the Board in its meeting held on 21.11.2016 a Board meeting of Tata Steel Ltd., was held on 25.11.2016 to consider and approve the notice convening an Extraordinary General Meeting and prior to it, legal opinion was also sought and circulated to the members of the Board which was duly considered and discussed in the meeting. He would submit that the petitioners had circulated the Notices and the defamatory contents thereof in spite of serious efforts on part of respondent No.2 to stall its publication and circulation, and not only this though there was no legal obligation to ascribe reasons for respondent No.2's removal, that formed part and parcel of the Special Notice and the requisition. Shri.Ponda would thus submit that the respondent No.2 had continuously objected to per se defamatory publication of the Special Notices but no heed was paid to his request. He would also deny the contention of the petitioners that the Special Notices were

issued under the provisions of Section 102 of the Companies Act. Shri.Ponda has further submitted that Special Notices are reflective of the *mens rea* and *malice* on the part of the petitioners and therefore Section 499 of the Indian Penal Code is clearly attracted.

He would place strong reliance on the judgment of the Hon'ble Apex Court in case of *Subramanian Swamy V/s. Union of India*¹² and also the judgment of the Apex Court in case of *Jeffery J. Diermeier and Another V/s. State of West Bengal and Anr.*¹³, where it has been categorically held that the constitute "Defamation" under Section 499 IPC, there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of a person about whom it is made and according to Shri.Ponda it has been held that it would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly

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from the imputation as alleged.

Shri.Ponda has also extensively dealt with the submission of the petitioners in relation to the bar under Section 202 of Criminal Procedure Code. In conclusion he would submit that in any case at present this Court is only confronted with a limited issue as to whether the Magistrate who had issued the process was justified in doing so. He would submit that this would not involve passing of a detailed order but only a *prima facie* satisfaction on part of the Magistrate that a case has been made out and when the Magistrate was satisfied that there is sufficient material against the accused persons, he has issued the process. He would further submit that there is absolutely no reason for this Court to resort to its extraordinary jurisdiction to interfere in such a matter since there are several triable issues and under the inherent power of this Court, a just prosecution cannot be stultified.

14. The Writ Petition has been filed before us under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure and relief is sought to the effect

of quashing and setting aside the order passed by the Additional Chief Metropolitan Magistrate, Mumbai on 15.12.2018.

The present petition was initially listed before the learned Single Judge, however, in light of the judgment in case of *Abdul Pal Abdul Rahim V/s. State of Maharashtra*¹⁴, the learned single Judge was pleased to issue direction for listing of the matter before the Division Bench in light of the power sought to be invoked and, that is how, the matter came to be listed before us.

It is trite position of law that the power conferred on this Court under Section 482 of the Cr.P.C. is the inherent power and the said power is to be exercised with great circumspection and in rarest of rare case where the complaint does not disclose any offence. It is settled position of law that if the complaint itself discloses an offences, then it is not permissible for this Court to embark upon an inquiry as to genuineness of the allegation made in the complaint or whether those allegations are likely to be established on evidence or not.

It is not permissible for the Court to verify the authenticity or

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truthfulness of the allegations made in a complaint and if an offence *prima facie* falls under the provisions of the Penal Code, the launching of prosecution cannot be thwarted by the High Court under Section 482 of the Cr.P.C.

15. The principles enveloping the discharge of this power by the High Court have been well settled as early as in the year 1992 in the case of ***State of Haryana V/s. Bhajanlal and Ors.***,¹⁵ where the Hon'ble Apex Court has enumerated several categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent power under Section 482 of Cr.P.C. can be exercised by the High Court either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. Though the guidelines laid down by the Apex Court have been declared to be not clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae, the parameters by this time are more or less well settled. Where the allegations made in the complaint even if they are taken at their face value and

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accepted in their entirety do not *prima facie* constitute any offence or no case is made out against the accused then the Courts exercising the power under Section 482 are justified in exercise of its power.

We have examined the case before us by keeping in mind this well settled principles in exercise of the inherent powers of this Court under Section 482 of Cr.P.C.

16. Since we have already averred to the necessary facts, we would straightway refer to the contents of the Special Notice which have been alleged to be defamatory. It is to be noted that the statements/imputations which are alleged to be defamatory are contained in a Special Notice/requisition by the promoter company, namely, the Tata Sons Ltd., for convening the Extraordinary General Meeting of the Shareholders of the Tata Chemicals, Tata Motors and Tata Steels and to issue Special Notices to propose resolution for removal of the respondent No.2 as Director of the Relevant Tata companies. The Special Notice and requisition under the provisions of the Companies Act came to be issued by the Tata Sons Ltd., and

was addressed to the Board of Directors of the three holding companies, for convening an Extraordinary General Meeting of the shareholders of the respective companies. The separate notices came to be issued to the Board of Directors of all the three holding companies on 10.11.2016. The Special Notice proceed to state that Tata Sons is a shareholder of the three companies and hold equity shares in the respective companies. After making reference to the provisions of Section 100(2)(a) and other applicable provisions of the Companies Act, 2013, the Notice proceed to state that Tata Sons Ltd., submit the requisition to the Holding Companies for convening an Extraordinary General Meeting of their shareholders in the prescribed manner to pass two resolutions on following subjects:-

- Item No.1 Removal of Mr.Cyrus Mistry as Director.*
- Item No.2 Removal of Mr.Nusli Wadia as Director.*

Since we are not concerned with item No.I of the Special Notice, we would refer to item No.II which pertains to the removal of respondent No.2. The Special Notice issued to the holding companies on 10.11.2016 read thus :-

“Item No.2

REMOVAL OF MR.NUSLI N. WADIA AS DIRECTOR

To pass the following resolution as an Ordinary Resolution :

RESOLVED THAT pursuant to the provisions of Section 169 and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder, Mr.Nusli N. Wadia (Director Identification Number 00015731) be and is hereby removed from the office of Director of the Company with effect from the date of this meeting.”

Although there is no requirement, legally or otherwise, for the benefit of the shareholders, the following may be noted :-

(i) Post the development of October 24, 2016, Mr.Nusli Wadia acting in concret with Mr.Cyrus Mistry has been acting against the interests of Tata Chemicals and its principal shareholder by galvanising independent directors and mobilising opinion, forcing disruptions, and issuing a statement that in our view is contrary to the interests of the company. By such an act, it has put the company in jeopardy with respect to its further expansion plans, capital raising by virtue of equity or debt, queries from rating agencies and impact on the overall morale of the workers, employees and management who have joined Tata Chemicals, a Tata Company. Moreover, he has been a director since several decades and considering all these factors, his continuance on the Board is untenable. The principal shareholders have lost confidence in the independence, suitability or bonafides of Mr.Wadia and seek his removal.

(ii) Consequently, the Board of Directors of Tata Sons limited by its resolution dated November 10, 2016 has resolved to propose the removal of Mr.Nusli Wadia as Director of Tata Chemicals.

3. Please also treat the above as special notice under Section 169(2), read with Section 115 and other applicable provisions of the Companies Act, 2013 and the

Rules framed thereunder for the aforesaid purpose.

*Yours faithfully,
TATA SONS LIMITED*

*(F.N. Subedar)
Chief Operating Officer & Company Secretary
Copy to :Company Secretary, Tata Chemicals Limited.”*

17. The contents of the Special Notices issued to all the holding companies contain a similar averment. Based on this Special Notice issued under Section 169(2) read with Section 102 of the Companies Act, the respective holding companies forwarded the copy of the Special Notice and requisition dated 10.11.2016 to the respondent No.2 and drawn his attention to Section 169(4) of the Companies Act and intimated him that in case he intends to make any representation to the members of the company in resolution for his removal as a Director, the same should be forwarded for circulation to the members. Similar communications were addressed by all the three companies to the respondent No.2. On 21.11.2016, the respondent No.2 addressed a letter to the Board of Directors of the three holding companies as well as their respective Company Secretaries and he responded that the statement

contained in the Special Notice issued by Tata Sons Ltd., was without any evidence or proof and that the allegations were absolutely baseless, false, defamatory and libelous and with an intention to harm his reputation. He also makes a mention that he had an opportunity to read the draft notice and the explanatory statement circulated by the Company Secretary of the Companies and the draft reproduces the highly defamatory statement made by the Tata Sons Ltd., in the Special Notice. A request is therefore made by the respondent No.2 to the Board of the respective holding companies, to the effect that if the Board convened a shareholder meeting under Section 169 he must be extended an opportunity to make a written and oral representation to the shareholders. The said communication also contained a following categorical statement :-

“In any event, if the Board convenes a shareholders’ meeting under Section 169, I must be extended the opportunity to make a written and oral representation to the shareholders. I would like to confirm that I will make a representation in writing to the shareholders of the Company as provided under Section 169 of the Companies Act and would expect the company to circulate the same to all shareholders. I would also make

a representation at the shareholders' meeting. I request that the company to notify the shareholders accordingly”.

Pursuant to the requisition, the holding companies issued notice of holding of an Extraordinary General Meeting, on the requisition of the Tata Sons Ltd., on different dates. The said notice briefly referred to the business to be transacted in the said Extraordinary General Meeting including removal of Mr.Nusli Wadia as Director and was accompanied with notes. It is also mentioned in the said notice that the Board of Directors in its meeting held on 23.11.2016 had approved the convening of the Extraordinary General Meeting and issue of the notice of the said meeting. The related explanatory statement pursuant to section 102 of the Companies Act, 2013 in respect of the business as set out in the notices was also accompanied. The explanatory statement accompanying the said notice was signed by the Company Secretary, by order of the Board of Director. It contained the explanatory statement pursuant to Section 102 setting out the material facts relating to the special business mentioned at item No.1 and 2 as an accompaniment to the notice dated 23.11.2016 and as far as

item No.2 is concerned it contained the following statement :-

“Item No.2

Tata Sons Limited (the Requisitionist) is the Promoter of the Company and holds 77,89,70,378 Ordinary shares aggregating 26.51% of the Company's voting capital: Tata Sons Limited has pursuant to the Requisition and Special Notice dated November 10, 2016 and in recognition of the legal rights vested in them as a shareholder, decided to convene an EGM, to consider and if through fit, pass an Ordinary Resolution for removal of Mr.Cyrus P. Mistry and Mr.Nusli Wadia as Directors of the Company.

Mr.Nusli Wadia is an independent Director of the Company. He was appointed as a Non-Executive Director of the Company by the Board on December 22, 1998 and by the shareholders at the AGM held on August 12, 1999. Being a director liable to entire by rotation, Mr.Wadi's re-appointment was approved at various, AGM's held on July 26, 2002, July 11, 2005, August 25, 2009, August 12, 2011 and August 21, 2013 in terms of the provisions of the Companies Act, as applicable from time to time. As required under the listing agreement, Mr.Wadia has been an independent Director of the Company since March 2001. As required under Section 149 of the Companies Act, 2013, Mr.Wadia was appointed as an independent Director of the Company with effect from July 31, 2014. Mr.Wadia is the

Chairman of the NRC and a Member of the Eco's.

The Board has been informed by the independent Directors individually that they have not been approached by Mr.Wadia that could be considered as influencing their independence in the Company.

Mr.Wadia, vide his letter dated 23, 2016 addressed to the Board of Directors and the Company Secretary has stated as under:-

Letter No.1 Mr.Wadia has inter alia, termed the reasons provided by the Requisitionist, in the Special Notice for his removal as baseless, false, defamatory and libelous and have been made with the intention of harming his reputation. Further, Mr.Wadia has questioned the ability of the Requisitionist to requisition a general meeting and vote to removal him as a Director (he being an independent Director) from the Board of the Company.

Letter No.2: Mr.Wadia has requested the Board of Directors to forthwith institute an Independent investigation upon the allegations as set out in the Special Notice issued by Tata Sons Limited dated November 10, 2016 or state otherwise on the allegations.

The said letters were tabled at the Board of Directors meeting held on November 23, 2016 and are also open for inspection.

Under Section 169(4) of the Companies Act, 2013, the Director being sought to be removed has a right to make a representation to the Members in the manner

stated therein. We have been informed that Mr.Wadia intends to provide a separate representation to be sent to the Members of the Company.

The Board of Directors of the Company would like to clarify that a copy of the Special Notice issued by the Requisitionist is being sent along with this Notice with a view to provide the relevant background concerning item No.2 of Special business to be transacted at the EGM, A copy of this Special Notice and Requisition is annexed hereto (Annexure). Consequently, the company, the Board of Directors of the Company and its Officers do not take any responsibility for the same.”

Similar notices came to be issued by the other two holding companies which were accompanied with the statement pursuant to Section 102 of the Companies Act, 2013.

18. The letter dated 21.11.2016 addressed by the respondent No.2 to the Directors of the Tata Sons Ltd., and the Chief Operating Officer of Tata Sons Ltd., and the subsequent letter dated 22.11.2016 addressed to all the Directors of the Tata Sons Ltd., was responded to by the Chief Legal and Group General counsel of Tata Sons Ltd. In the said response, it was

highlighted that as a shareholder of the Tata Steel, Tata Motors and Tata Chemicals, Tata Sons Ltd., had certain rights, duties, obligations, legal and otherwise towards Tata Sons Ltd., as well as various stake holders and Tata Sons Ltd., has exercised these rights as shareholder of the holding company and issued a Special Notice to the Board of Directors on 10.11.2016 pursuant to Section 100, Section 115 and Section 169 of the Companies Act calling upon the Board of Directors to convene an Extraordinary General Meeting of shareholders of the Companies to pass the two resolutions. It was also clarified that it was a fairly well settled position that there was no requirement, legally or otherwise as a shareholder to provide any reason while seeking the removal of a Director in terms of Section 169 of the Act. The Special Notice was therefore sought to be justified and the respondent No.2 was called upon to consider withdrawal of the notices issued by him. It is a specific case of the petitioners that the respondent No.2 by e-mail has categorically approved the final draft notice and the explanatory statement of the Extraordinary General Meeting of Tata Motors as well as Tata Chemicals and these e-mails have

been suppressed in the complaint during verification. The issue as to whether the subsequent circulation of the explanatory statement was with the consent of the respondent No.2 would be referred to by us at a little later. At this stage, it is suffice to note that there was exchange of correspondence between the petitioners and respondent No.2 in form of rejoinders/sur-rejoinders but it is important to note that the respondent No.2 preferred a representation by availing the opportunity under Section 169(4) of the Companies Act.

We have carefully perused the said representation where the respondent No.2 has averred to the following effect.

*“To,
M/s.Tata Motors Limited
Bombay House, 24 Homi Mody Street,
Mumbai 400 001, India.*

*Kind Attention: Board of Directors and Company
Secretary Mr.Hoshang K. Sethna.*

*Subject : Representation under Section 169 of the
Companies Act, 2013.*

Dear Sir / Madam,

I refer to the special notice (“Special Notice”) moved by Tata Sons Limited (“Tata Sons”), seeking my removal as an Independent Director levelling allegations against me, which are unsubstantiated, baseless, false, motivated, defamatory and libellous and have been made with the intention of harming my reputation.

Further to my letter dated 23rd November 2016, and my statutory rights under Section 169(4) of the Companies Act, I am exercising my right to make a written representation to the shareholders. The representation is attached herewith ("Representation").

The Company is obliged to send the representations to the shareholders so that they are able to take an informed decision. You have reasonable time to circulate this representation to the shareholders in physical as well as electronic form.

Kindly note that documents referred to in the attached Representation letter are also available for inspection/perusal at my office. The shareholders requiring any further information/clarification may write to me on my email [address-nusliwadia@independentdirectortml.com](mailto:nusliwadia@independentdirectortml.com) and same would be provided promptly.

Kindly note that this letter is without prejudice to my rights."

The said communication is accompanied with a detailed representation addressed to the shareholders where the respondent No.2 has attempted to relent the imputation against him as contained in the resolution proposing to remove him as an independent Director. In conclusion, he had urged the shareholders to decide his fate as an independent Director and also cautioned that the fate of the very institution of independent Director needs to be protected by the shareholders. He also clarified that the representation

preferred by him keeping in mind the spirit of Section 169 of the Companies Act and with no other intention. At the bottom of the said representation, a note similar to the one appended to the letter which we have reproduced above is also added, permitting the shareholder to seek any other clarification on an e-mail address of the respondent No.2. Such representations have been addressed to the shareholders of all the three respective companies. In the said representation, the respondent No.2 has deciphered the allegations levelled against him and in great detail has highlighted his role on the Board of Directors and has also levelled certain allegations about the inappropriate behavior of the interim Chairman of Tata Sons Ltd-Shri.Ratan Tata.

It can thus be seen that in the entire representation, Shri.Nusli Wadia had offered an explanation and requested the shareholder to take a conscious decision by taking into consideration the information put forth by him in the representation and as to how his removal was an attempt to undermine the entire institution of Independent Director itself. It is also to be noted that on 22.12.2016 the respondent No.2

directly addressed a letter to all the shareholders of respective holding companies and the said letter is placed by the petitioner on record as annexure "T". In the said letter, Shri.Nusli Wadia has made reference to his earlier detailed letter setting out his response to the resolution proposed by the Tata Sons Ltd., for his removal as Director and once again he reiterated his stand by highlighting his achievement in the field of corporate governance. He also invited attention of the shareholders as to what actually transpired in the meeting of the Board of Directors of the Company held on 10.11.2016 and asserted that the actions of the Tata Sons of trying to involve the Management in the process of removal of Director is against the interest of the Company, its stake holders and shareholders and has slammed the action as inappropriate and illegal. In conclusion he intimated the shareholders that he had chosen not to attend the meeting as he was unhappy with the manner in which the meetings have been held inappropriately and therefore he had chosen to forward the letter to the Company Secretary to be read out to the shareholders. It is the allegation of the petitioners that this letter has been suppressed by the

respondent No.2 in the complaint and also during his verification. It is in this background we are required to examine the allegation as to whether the contents of the resolution passed by the petitioners directing the holding companies to requisition the Extraordinary General Meeting are defamatory.

19. We have already reproduced the statement which is referred to as defamatory as contained in the Special Notice dated 10.11.2016. We must make it clear that we are not here to judge the truthfulness of the said statement and to ascertain as to whether the statements were made after due verification or whether they are baseless, not being backed without any supporting material. The alleged statement is contained as an accompaniment giving the brief background of the subject to be discussed, namely, removal of Mr.Nusli Wadia as a Director by taking recourse to the provisions of Section 169 and other applicable provisions of the Companies Act, 2013. The argument of the learned Senior Counsel for the petitioners is to the effect that the said statement is a part of statutory action

which the petitioners proposed under the provisions of the Companies Act and it is contained in the Special Notices which were issued by the Tata Sons Ltd., under Section 169(2) read with Section 115 of the Companies Act, in its capacity as a shareholder of the Relevant Tata Companies *inter alia* seeking removal of the respondent No.2 as the Director of the Relevant Tata companies. It is also sought to be justified that the issuance of Special Notices by Tata Sons Ltd., was necessitated by conduct of respondent No.2, a matter in which the Tata Sons Ltd., had material interest (being promoter and controlling shareholder of Relevant Tata Companies) and aimed at protecting its interest. It is thus sought to be submitted that the Special Notices were issued in exercise of the statutory power conferred upon the Tata Sons Ltd., under the Companies Act and a subject wherein a Tata Sons Ltd., had a legitimate, legal interest and duty to do so.

At this stage, it would be apposite to refer to Section 169 of the Companies Act 2013 which deals with "Removal of Directors". The relevant Section 169 of Companies Act reads as under :-

1) *A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard:*

[Provided that an independent director re-appointed for second term under sub-section (10) of Section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:]

[Provided further that] nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.

(2) *A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.*

(3) *On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.*

(4) *Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in*

writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company),

and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting:

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this subsection are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

20. The Companies Act also contain a provision in form of Section 115 which provides for resolution requiring a Special

Notices which stipulate that where, by any provision contained in the Companies Act or in the Articles of a Company, Special Notice is required of any resolution, notice of the intention to move such resolution shall be given to the Company by such number of members holding not less than one percent of total voting power or holding shares on which such aggregate sum not exceeding Rs.5 lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

At this juncture, reference would also be necessary to Section 101 and Section 102 of the Companies Act. Section 101 prescribes for the manner in which a meeting of a company can be called, where as Section 102 prescribed that a statement setting out the material facts concerning each item of special business to be transacted at a General Meeting, shall be annexed to the notice calling such meeting and Section 102 enlist the material facts to the following effect :-

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of -*
 - (i) every director and the manager, if any;*
 - (ii) every other key managerial personnel; and*

(iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

21. A conjoint reading of all the said provisions would thus disclose that whereas any Special Notice is required of any resolution, then it would be imperative to give to the Company, a notice of the intention to move such requisition. Section 102 of the Companies Act prescribe that if a special business is to be transacted in any meeting, it should be accompanied with a statement setting out the material facts in form of information and such facts that may enable the members to understand the meaning, scope and implication of the items of the business and to take decision thereon.

In the frame work of this statutory provision, we would deal with the power conferred on the Company for removal of its Director. Section 169 of the Companies Act, 2013 empower the Company to remove a Director by an ordinary resolution before expiry of the period of notice after

giving reasonable opportunity of being heard. Sub-Section (2) of Section 169 contemplates a Special Notice of any resolution to remove a Director and Sub-Section 3 contemplates the company to send forthwith a copy thereof of the resolution to the Director concerned, and the Director who is entitled to be heard on the resolution at the meeting. Sub-section 4 contemplates a further opportunity to the Director who is sought to be removed and it is open to the Director concerned to make a representation to the Company in writing and he can request its notification to the members of the company and then the Company is duty bound, if the time permits to issue notice of the resolution to the members of the Company stating the fact that the representation has been made and send a copy of the representation to every member of the Company to whom notice of meeting is send. But for if any reason the representation could not be sent due to insufficient time or of the company's default, the Director may without prejudice to this right to be heard orally require that the representation shall be read out at the meeting. The only exception carved out to the said procedure, is proviso appended to sub-Section (4)

which set out that the copy of representation need not be sent out and the representation need not be read out in the meeting if, on the application either of the Company or of any person who claims to be aggrieved had approached the Tribunal and the Tribunal is satisfied that the rights of such person are being affected then it may not be permit publicity of the said representation.

22. It is in light of this statutory scheme we are called upon to examine whether the publication of the imputation against the respondent No.2 in the Special Notice is defamatory.

Section 499 of the Indian Penal Code defines defamation in the following manner :-

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

The Section is succeeded by 10 exceptions which

would take out the words either spoken or intended to be read, or by signs or by visible representations, making or publishing any imputation concerning any person out of the preview of defamation. Mr.Ponda has invited our attention to the case set out by the petitioner in their petition by setting out a case that the petitioners have claimed to be covered by Exception Nos.8 and 9 and he would invite our attention to paragraph Nos.94 and 95 of the petition where the petitioner contends that the *bona fides* of the petitioners are evident from the fact that the Special Notices were issued in accordance with law in favour of the said companies and they are based on true and correct facts. A further statement is made that the Special Notices issued by the Tata Sons Ltd., in good faith and by taking appropriate care and protection and to protect its interest and therefore the Special Notices are protected and safeguarded under 9th exception to Section 499 of Indian Penal Code. However, the learned Senior Counsel during the course of the argument has categorically stated that the petitioners do not wish to take recourse to the 8 and 9 exceptions appended to the said section but the petitioners have a more stronger case

though it may not strictly fall within the two exceptions and that being the exercise of the statutory powers which is available under the relevant statute.

The offence of defamation under the Indian Penal Code *inter alia* consisting of three initial ingredients namely :-

- (a) *Making or publishing any imputation concerning a person.*
- (b) *Such imputation must have been made either by words either spoken or intended to be read or by sign or by visible representation.*
- (c) *The said imputation must have been read with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned.*

23. We have perused the imputations contained in the Special Notice. It undisputedly makes a reference to certain acts of the respondent No.2 in reference to the erstwhile Chairman Mr.Cyrus Mistry. The Special Notices contain certain statement in respect of the respondent No.2 and his conduct, but this imputation will have to be read in reference to the purpose for which it find place in the Special Notice. The Special Notice issued by the Tata Sons Ltd., as a promoter is in

form of requisition to the holding companies to call for an Extraordinary General Meeting for removal of their independent Director in whom “Principal shareholder” (Tata Sons) have lost confidence. The Special Notice is thus issued for the purpose of seeking removal of an independent Director of the Company since the principal shareholders are of the opinion that the respondent No.2 is acting in a manner that is designed to harm the “Tata Group” and his conduct reflect that he is not conducting himself independently and instead has been *inter alia* galvanizing independent Directors and acting prejudicial and as such, the Principal shareholder are apprehensive that in future his action may put the company and its future in great jeopardy and impact the overall morals of the works, employees and management who have joined Tata Company. The imputation contained forms part of the resolution passed by the Board of Directors of Tata Sons Ltd i.e. the present petitioners and it is contained in a requisition/Special Notice proposing resolutions for removal of the respondent No.2 as Director of the Relevant Tata Companies seeking vote in favour of such resolution. It is not

to be construed as an independent statement but will have to be referred to in the background in which it is made, namely, an act or conduct of the independent Director who is sought to be removed by the Company who is empowered to remove its Director after following the procedure prescribed under Section 169 of the Companies Act, 2013. The entire argument of the respondent No.2 as canvassed by Mr.Ponda is that the statement of imputation has been made without any verification and reflects of an irresponsible behavior on the part of the petitioners. Section 169 of the Companies Act vest a power in the Company to remove a Director before expiry of the period of his office the grounds of removal though not mentioned in Section 169, Section 166 of the Companies Act set out the duties of the Director and expects the Director of the Company to act in good faith in order to promote the objects of the Company for the benefit of the members as a whole, and in the best interests of the company, its employees, shareholders, community and for the protection of environment. It also contemplate that the Director of a Company shall exercise his duties with due diligence and care and shall exercise

independent judgment and he shall not involve in a situation in which he may have a direct or indirect interest that conflicts or possibly may conflict, with the interest of the Company. If these are the duties of a Director of a Company and if a Company which has appointed a person as a Director is of the opinion that he has failed to live upto its exceptions and has acted in a manner where he has failed to exercise his independent judgment and ceased to act in an independent manner and has issued a statement which is contrary to the interest of the company and if this conduct of a Director is adjudged by the promoter as design to cause harm to the Tata Group, which is put forth as a ground for his removal, we are of the view that the action of the petitioners in exercise of its power conferred under Section 169 of the Companies Act. It is not necessary for us to assess or judge the truthfulness of the imputation/allegation since ultimately the allegations levelled against the respondent No.2 has caused his removal by the Board of Directors of the respective companies. The imputation contained in the Special Notice cannot be viewed independent of the purpose for which it is included in the Special Notice and

if the petitioners have adopted a legal course permissible to be adopted under the frame work of the statute governing it, we do not think the allegations can be termed as “per se defamatory”. The Special Notices though categorically have mentioned that there was no legal requirement, legal or otherwise and is discretion of the Relevant Tata companies that the Special Notices were circulated to the shareholders of the Relevant Tata companies, they cannot be held liable since the statutory scheme itself contemplates that the notice should be accompanied by a brief statement of information and facts that would enable the members to understand the meaning, scope and implication of the items and business to be transacted in the meeting and to take decision thereof. If removal of the respondent No.2 was one of the agenda of the notice and it is accompanied by a brief statement why such action of removal is initiated, we are not ready to accept the submission of Shri.Ponda and examine the *bona fides* or otherwise of the said action since, we are of the clear opinion that the imputations are contained in a Special Notice which is statutory in nature and it had ultimately resulted into removal of the respondent

No.2 as independent Director from the three Tata Companies by requisite majority.

Moreover, we also do not agree with the submission of Mr.Ponda who has asseverated before us the *mala fides* and *malice* in the imputation. If the petitioners in exercise of the statutory obligation have included the statement, which is challenged to be defamatory, we do not perceive any *mens rea* to the petitioner which is a condition precedent to constitute a particular offence. The petitioners can, by no imagination said to have an intention to cause harm to the reputation of the respondent No.2 but its action was only directed towards removal of the respondent No.2 as an independent Director of the three holding companies and it succeeded in the said exercise. The Special Notices were prepared and submitted in the name of Tata Sons and the petitioners being the Directors/Officers of Tata Sons Ltd., cannot be held to be vicariously liable and no *malice* can be attributed to the petitioners, since the power under Section 169 has been exercised by the Tata Sons Ltd., a corporate entity. We

therefore do not find any justification in the Metropolitan Magistrate issuing process to the present petitioners and holding that the imputation contained in the Special Notice is per se defamatory.

24. The facts placed before us do disclose that the requisition by the Tata Sons Ltd., to its three holding companies for convening Extraordinary General Meeting for removal of the respondent No.2 was acted upon by the holding Companies and the holding companies have issued the notices of Extraordinary General Meeting to its shareholders and scheduled the holding of the meeting which was accompanied with the copy of Special Notice and also the explanatory statement. We do not intend to precipitate the issue as to whether the circulation was by the respondent No.2's consent as the subsequent conduct of the respondent No.2 reflect that he had submitted a detailed representation under Section 169(4) availing the opportunity to rebut the imputations and while addressing the representation to the respective companies, he has reminded the companies, that they are

obliged to circulate the representation to shareholders so that they are able to take an informed decision. He also made it clear that company has reasonable time to circulate the representation to the shareholders in visible as well as electronic form. He also clarified that the documents referred to in the representation are also available for inspection/perusal and supplied his e-mail address from where this information can be sought. In the detailed representation, the respondent No.2 himself has referred to the allegation and rebutted them one by one and offered his explanation. Not only this, he independently addressed a letter to the shareholders on 21.12.2016 and requested the shareholders to take conscious decision in the interest of the entire institution of independent Directors. In the backdrop of this fact, we express that the respondent No.2 has also chosen to avail statutory right available to him under sub-Section (4) of Section 169 and has responded to the resolution of removal and availed the opportunity of appealing to the shareholder to take a conscious decision after going through the response submitted by him through his representation to the

allegation/imputations levelled in the Special Notice. Therefore, it is not that the imputations have been first time contained in the Special Notice but in the representation, the respondent No.2 repeated then and offered an explanation as to how they are not true and rather levelled allegation against the petitioner No.1 as to how he has manipulated the action of his removal and therefore when the respondent No.2 has also availed the statutory remedy and offered his explanation in form of a representation and addressed an independent letter to the shareholder, we fail to understand how the offence of defamation is made out and if it is not made out whether the Magistrate is justified in issuing process to the petitioners by the impugned order.

25. As far as the conduct of the respondent No.2 in the meeting dated 10.11.2016 which forms the basis of Tata sons Ltd., losing their confidence in him as an independent Director, it is reflected in the affidavit of Mr.Rajiv Chandan, Company Secretary and General Counsel of Tata Chemicals as well as affidavit of Shri.R.Mukundan, Managing Director of Tata

Chemicals and one Mr.Bhaskar Bhat, Director of Tata Chemicals. The said affidavits are subsequently filed in a Suit No.50 of 2017 filed by few public shareholders in relation to the removal of the respondent No.2. In any contingency, it is informed that the said suit came to be withdrawn unconditionally on 06.02.2019. We do not intend to go into the veracity or truthfulness of the alleged conduct of the respondent No.2 in the meeting dated 10.11.2016 since we have already observed that the Tata Sons Ltd., was exercising its statutory power of removal of its Director in whom they had lost confidence and it is to be noted that respondent No.2 has never challenged his removal before any Court of Law meaning hereby he has accepted his removal as an independent Director from the holding companies of Tata Group and do not question the power of Tata Sons Ltd., to remove him.

26. The learned Magistrate who has passed the impugned order had before him the complaint instituted on 23.12.2016 when the respondent No.2 was already removed as an independent Director from the Company. The Magistrate

recorded the verification statement of the respondent No.2 on 14.12.2018.

We have carefully perused the said statement. The statement revolves around the Special Notice dated 10.11.2016 and the alleged defamatory imputation contained in the said Notices. The respondent No.2 proceeded to state before the Magistrate the allegations in the Notices were published which were per se defamatory and damaged his reputation. He has also proceeded to state that he has requested the accused person to withdraw the defamatory allegations. It is pertinent to note that even in 2018, he does not make any statement as to the culmination of the said proceedings into his removal as Director of the Company. The Magistrate therefore proceeds only on the basis of the Special Notice dated 10.11.2016 and even fail to take into account the subsequent replies, counter replies or even the representation preferred by the respondent No.2 and he himself reminding the Companies of its imperative duty to circulate the same and an independent letter addressed by him to the shareholders. The learned Magistrate while exercising his power under Section 200 of Cr.P.C. refers to

“Perusal of the documents as per list of documents”. He makes a reference to the record of minutes of independent Directors of Tata Chemicals dated 10.11.2016 outcome of the meeting, the Special Notice dated 10.11.2016, copy of articles (news papers etc.) and also the notices issued by the respondent No.2 to the accused persons rebutting the allegations contained in the Special Notice. The Magistrate applied his mind and deem it expedient not to issue to M/s.Tata Sons Ltd., (accused No.1) before him, being a juristic person and cannot be held liable for defamation, *mens rea* and essential ingredients. However, he refers to the statement made in the notices in the news items as defamatory and concludes that accused persons have failed to offer any satisfactory explanation on what basis the statements have been made and therefore, he concludes thus:- “From the above document it appears that the meant item and allegations in the news papers and statements of Special Notice mentioned in the aforesaid documents i.e Exhibit “A” to “Z” and “Aa” to GG might come within the meaning of the defamation as per Section 499 of the Indian Penal Code. It appears that the complainant made out his case against accused nos.2 to 22 but

there is no such case made out against petitioner No.1 for the offence under Section 500 read with Section 34 of the Indian Penal Code”. The impugned order is a clear reflection of non application of mind on the part of the learned Additional Chief Metropolitan Magistrate apart from the fact that he only relied on the statement of the complainant whom he examined under Section 200 and failed to examine any other witness. The Magistrate has committed a haste in issuing the process without conducting an inquiry into the allegation of the complainant considering other relevant material to satisfy himself whether there was sufficient ground for initiating the proceedings against the accused as contemplated under Section 202 of Cr.P.C.

27. We are satisfied that there is no *prima facie* case of defamation in the present case as there was no intent on the part of the petitioners to cause harm to the reputation of the respondent as contemplated by Section 499 of the IPC nor can we discern any actual harm caused to his reputation, since the element of *mens rea* being absent and since the publication was

only limited to the Board of Directors of the holding Company and the respective shareholders of these Companies, it could not be said that it was circulated widely over a section of general public. Publication of the news about a resolution being passed by a well acclaimed business house happened to be a business news for the media and both the petitioner no.1 and respondent no.2 being well-known business personalities, they drew the attention of the media and the allegations/imputations and the story of removal of the respondent no.2, no wonder, happened to be a hot topic for media. However, it is not conclusively established as to it is the petitioners who have leaked the information to the media and particularly when we have noted that the respondent no.2 himself had addressed the communication to the shareholders independent of his representation in terms of sub-section (4) of Section 169 and which he requested for being circulated to the shareholders. The allegations of the respondent no.2 in respect of disparaging remarks/comments being widely circulated is also not correct since it was only circulated to the shareholders and they had a right to know the background of the resolution

on which they were supposed to vote. In light of the decision of the Apex Court in case of **S. Khushboo** (supra), since there was no intention to malign the image of respondent no.2 by making his conduct known to the public and particularly when the petitioners were exercising their statutory power, we record that there is no *prima facie* case of defamation in the present case which the Magistrate has failed to consider.

28. The Magistrate before issuing the process, has failed to take into consideration the conspectus of the matter and though it is the duty cast upon him to be satisfied before issuance of a process, he had concluded without any material being placed before him that the statement is defamatory. The learned senior counsel Shri Singhvi is justified in relying upon the observations of the Bombay High Court in case of **Ramchandra Venkatraman Vs. Shapoorji Pallonji & Anr, 2019 SCC Online Bom 524**, where it has set out the test to be applied to determine whether a statement is defamatory and it is held that the statement must be understood as defamatory by right thinking or reasonable minded persons and certain

yardsticks were laid down to enable the Court to have an objective assessment of a subjective crime i.e. defamation. He would also invite our attention to the relevant observations of the Hon'ble Apex Court in case of *Subramanian Swamy Vs. Union of India* (supra) where the Apex Court has cast a responsibility on the Magistrate in the following words :

207. Another aspect required to be addressed pertains to issue of summons. Section 199 of Cr.P.C envisages filing of a complaint in Court. In case of criminal defamation, neither can FIR be filed nor can any direction be issued under Section 156(3) of Cr.P.C. The offence has its own gravity and hence, responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process as has been held in *Rajindra Nath Mahato Vs. T. Ganguly*, (1972) 1 SCC 450 is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank Vs. Surendra Prasad Sinha*, 1993 Supp (1) SCC 499 : 1993 SCC (Cri), it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage, the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In *Pepsi Foods Ltd, Vs.*

Special Judicial Magistrate (1998) 5 SCC 749, a two-Judge Bench has held that summoning of an accused in a criminal case is Investigating Agency serious matter and criminal law cannot be set into motion as a matter of course”

29. Further reliance placed by the learned counsel for the petitioner in the latest judgment of the Apex Court in case of *Birla Corporation Vs. Adventz Investments and holdings*, 2019 SCC Online 682, where the Apex Court has elaborated and clarified the scope of enquiry in the following words :

56. As held in [Chandra Deo Singh v. Prokash Chandra Bose](#) alias Chabi Bose and Another AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry under [Section 202](#) Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under [Section 204](#) Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

61. The object of investigation under [Section 202](#) Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under [Section 202](#) Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling

for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused.

Mr.Singhvi has also vehemently argued that the non-application of mind on the part of the Magistrate is reflected in the wake of the fact that the place of residence of the petitioners 5 to 11 is beyond the jurisdiction of the learned Magistrate but still the learned Magistrate had issued the process. To demonstrate that this is reflective of non-application of mind, he would place heavy reliance on the judgment of the Apex Court in case of Vijay Dhanuka Vs. Najima Mamtaj & ors, (2014) 14 SCC 638, where it has been held that the requirement to conduct an enquiry or direct investigation before issuing process where accused residing beyond territorial jurisdiction of Magistrate is mandatory and the purpose is to protect innocent persons residing at far off places from being harassed. The Apex Court had construed the word “shall” applied in the said section and after taking into consideration the intention of legislature in bringing out an

amendment by the Central Act No.25 of 2005 held that the object of amendment is to prevent innocent persons from harassment. Therefore, the expression “shall” would contemplate an enquiry or investigation, as the case may be, being mandatory before issuance of summons against the accused persons living beyond the territorial jurisdiction of the Magistrate. Further, it is no doubt true that the enquiry contemplated under Section 202 contemplate an expression of the complainant and the witnesses and then the Magistrate has to satisfy himself that there are sufficient grounds for proceedings against the accused and the entire purpose of the enquiry is to determine whether a *prima facie* case is made out. In the judgment in ***Birla Corporation*** (supra), the Hon'ble Apex Court after making reference to the earlier precedents observed thus :-

30. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in [Bhushan Kumar and Another v. State \(NCT of Delhi\) and Another](#) (2012) 5 SCC 424, it was held as under:-

“11. In Chief Enforcement Officer v. Videocon International Ltd.

(2008) 2 SCC 492 (SCC p. 499, para 19) the expression

“cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under [Section 190](#) of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under [Section 204](#) of the Code.”

31. Under the amended sub-section (1) to [Section 202](#) Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

32. [By Cr.P.C. \(Amendment\) Act, 2005](#), in [Section 202](#) Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words “...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction...” were inserted by [Section 19](#) of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the

Magistrate to enquire. Notes on Clause 19 reads as under:-

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

34. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint.

30. The Apex Court, therefore, held that since summoning of an accused is a serious matter affecting ones dignity and reputation in the Society, there has to be application of mind before proceeding against the accused persons and though it may not contemplate a detail order but the Magistrate has to be *prima facie* satisfied that there are

sufficient grounds for proceeding against the accused.

Shri Ponda has made a submission that the Code of Criminal Procedure do not specify any mode or manner of enquiry under Section 202 though the Apex Court in case of **Birla Corporation Vs. Adventz** (supra) has laid down the guidelines revolving around the exercise of the said power. He would rely upon the same judgment relied upon by the learned senior counsel for the petitioners and invite our attention to the specific paragraphs. He would canvass that the Magistrate had two options before considering the issuance of process and the Magistrate passed an order issuing of process instead of postponing the same. We do not find the said submission to be tenable since we have already held that there is no compliance of the provisions of Section 202 in letter and spirit and by this, we do not mean that it could have called for a detailed enquiry but we surely intend to convey that the Magistrate has failed to apply his mind before issuing the process against the accused.

31. Though Mr.Singhvi has observed that one of the aspect of non application of mind is the fact that the place of

residence of the petitioner Nos.5 to 11 is beyond the jurisdiction of the learned Magistrate, since, the process was issued, we would not deliberate on the said issue in detail as we are clearly of the view that the Magistrate has failed to take into consideration the very basis of exercise of his power and did not satisfy himself about the issuance of process. The Magistrate has in a mechanical manner referred to the list of documents and we really wonder whether these documents are really perused by the Magistrate before issuance of the process and before recording his satisfaction that the petitioners are guilty of offence of defamation. In any contingency, since, we have recorded that the petitioners cannot be held liable for defamation, and the Magistrate who has failed to conduct an inquiry, the impugned order cannot be sustained and deserves to be dismissed.

32. We are of the specific view that the impugned order passed by the Magistrate looked at from this angle also suffers from non-application of mind but we would not deliberate on the issue further since we have already formed an opinion that

the Magistrate has failed to take into consideration the very genesis of exercise of his power about being satisfied that the allegations in the complaint constitute an offence of defamation and there is no indication in the impugned order demonstrating his satisfaction based on the material placed before him. For the aforesaid reasons, we conclude that the order passed by the Magistrate is without application of mind and cannot be sustained and resultantly, we quash and set aside the impugned order. The writ petition is allowed in terms of prayer clause (b). No order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)