

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

CRIMINAL WRIT PETITION NO.5298 OF 2018

Ramachandra Venkataramanan

... Petitioner

Vs

M/s.Shapoorji Pallonji & Company Ltd. & anr.

... Respondents

Mr.Abhishek Manu Singhvi, Senior Advocate with Mr.M. Parasaran, Senior Advocate with Mr.Majeed Memon, Parvez Memon, Avishkar Singhvi, Siddharth Sharma, Waseem Pangarkar, Azeem Samuel, Chirag Naik i/b MZM Legal for Petitioner

Mr.Aabaad Ponda with Parag Sawant and Himank Singh, Akshay Doctor i/b Shri Sandeep Dattaram Kadam for Resp. No.1

Mr.A.R. Patil, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

**ORDER RESERVED ON: MARCH 7, 2019
ORDER DELIVERED ON: MARCH 27, 2019**

ORDER:

1. Rule. Rule made returnable forthwith by consent of the parties and heard finally at the stage of admission itself. Respondents waive notice through their respective Counsel.

2. By this Writ Petition, the petitioner/original accused prays that the order dated 11.10.2018 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai,

thereby issuing process against the petitioner in C.C. No.2240/SW/2018 under section 500 of the Indian Penal Code be quashed and set aside.

3. Respondent No.1 has lodged a complaint of defamation under section 500 of the Indian Penal Code against the petitioner/accused. The complainant Shapoorji Pallonji & Company Pvt. Ltd. is a part of Shapoorji Pallonji Group. According to the complainant company, the applicant/accused has made a defamatory statement on 30.5.2018 by issuing a press note on the website of the Tata Trusts where the applicant/accused is working as a Managing Trustee and Director of Air Asia India Ltd. He issued the press note to the print media and his statement was published on the websites of Tata Trusts and Electronic media. Few statements in the said press note were found to be defamatory and, therefore, the complaint was lodged by the complainant Shapoorji Pallonji & Company Pvt. Ltd. The learned Additional Chief Metropolitan Magistrate by his order dated 11.10.2018 issued process and hence, this Writ Petition.

4. This Criminal Case has history of earlier litigations between the parties which needs to be mentioned. Mr.Cyrus Mistry and

Shapoorji Pallonji Group and Tata Sons are having disputes over a number of issues since 2016. On 24.10.2016, the Board of Directors of Tata Sons replaced Mr.Cyrus Mistry from the post of Executive Chairman of Tata Sons. Therefore, Mr.Cyrus Mistry, who is large shareholder in Shapoorji Pallonji Group, sent emails in October, 2016 with defamatory, malicious allegations against the petitioner/accused. Thereafter, Mr.Cyrus Mistry was removed as Director of Tata Sons in February, 2017. Mr.Cyrus Mistry repeatedly circulated false and malicious imputations against the petitioner/accused on 25.10.2018 and, therefore, the petitioner filed complaint bearing CC No.1475/SS/2017 for criminal defamation against Mr.Cyrus Mistry, Shapoorji Pallonji and other Directors of group companies, namely, M/s.Cyrus Investments and M/s.Sterling Investments before the learned Metropolitan Magistrate. Process was issued. However, it was quashed by the Sessions Court and so, the petitioner filed Writ Petition No.282 of 2018 which is pending before this Court.

5. The complainant filed Company Petition No.82 of 2016 before the National Company Law Tribunal, Mumbai against Tata Sons and others on the ground of operation and mismanagement

in the affairs of Tata Sons. The company petition was decided and against that decision, appeal is pending before the National Company Law Appellate Tribunal.

6. On 28.5.2018, the CBI, New Delhi, registered FIR against the petitioner and 9 others under section 120B of the Indian Penal Code r/w sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 and by way of denial of his involvement in the said case, the petitioner/accused has issued press note on 30.5.2018, which is the subject matter of this petition.

7. Learned Senior Counsel appearing for the petitioner has submitted that the press note dated 30.5.2018 is to be read in context with the previous battle between Tata Sons and Shapoorji Pallonji. The CBI has registered an FIR due to the false statement of inducement by the respondent/complainant, against the petitioner. He has submitted that the NCLT by its order dated 12.7.2018 was pleased to dismiss the Company Petition No.82 of 2016 preferred by Cyrus Investments and Sterling Investments on merits and all the allegations were comprehensively rejected and dismissed by NCLT. He further submitted that the NCLT in its judgment has found the allegations to be “abominably baseless”

and “scurrilous”. Now, the matter is *sub-judice* before the Appellate Tribunal. The learned Counsel has further submitted that the Shapoorji Pallonji Group is a big organisation having a number of companies under its head. M/s.Cyrus Investments and M/s.Sterling Investments formed Shapoorji Pallonji Co. Pvt. Ltd. belong to Shapoorji Pallonji Group. While criticising the order of issuance of process, the learned Counsel for the petitioner has submitted that the complainant has addressed no defamatory statement against Shapoorji Pallonji Co. Pvt. Ltd. but the statement was made against the Shapoorji Pallonji Group because M/s.Cyrus Investments and M/s.Sterling Investments are a part of Shapoorji Pallonji Group and no statements were made against the Shapoorji Pallonji Co. Pvt. Ltd. He relied on section 199(1) of the Code of Criminal Procedure and in view thereof, the case of defamation cannot be filed by any other person except the person who is defamed.

8. The learned Senior Counsel while criticising the order dated 11.10.2018 passed by the learned Additional Chief Metropolitan Magistrate, has submitted that the order is devoid of merits because a proper reasoning leading to satisfaction is not given by

the learned Metropolitan Magistrate in the said order. He further pointed out that the learned Magistrate has used the word “appears” instead of “satisfied” and he has said that the case of defamation ‘might’ be made out against the accused. Thus, the learned Magistrate without making up his mind, has issued the process of defamation which is to be quashed.

9. The learned Senior Counsel has submitted that the allegations which are made in the Press note are not defamatory. Whatever is stated in the Press Note, it is by way of refuting the allegations made against him. If the contents of the allegations in the Press Note are read and if these words are called defamatory, then it has chilling effect in the society at large. Defamation is a bilateral proceedings and in criminal law, the case of defamation is strictly to be made out. The citizens’ right of free speech is protected under Articles 19 and 21 of the Constitution of India and that right should not be compromised. The Press Note on the face of it is not at all defamatory. After two years of heated litigation, the petitioner has issued press note, which is to be considered in collective sense with the history of proceedings before National Company Law Tribunal. No damage is caused to the reputation of

the complainant. Moreover, it is a proxy petition. The allegations in the press note involve four persons – (i) Cyrus Mistry; (ii) Shapoorji Pallonji; (iii) Sterling Investment; and (iv) Cyrus International. Out of them, Cyrus Mistry was the main target, however, he did not file the Petition but as it is a proxy war, the complainant, as a pawn, has filed the complaint for defamation. The learned senior counsel has submitted that this Press note cannot be read without taking into account the judgment of National Company Law Tribunal, which was delivered on 9th July, 2018. The learned Senior Counsel read over the relevant paragraphs in the judgment of National Company Law Tribunal, i.e, paragraph Nos.239 to 246 and submitted that this judgment of National Company Law Tribunal has been a part of the complaint because the proceedings are referred in the complaint. NCLT has dismissed the said complaint and now the complainant has filed the Appeals in NCLAT, which are pending. The learned Magistrate in his interim order has referred to NCLT proceedings so it was obligatory on the part of the Judge to look into NCLT order to test the defamation in the Press Note. The learned Senior Counsel argued that the complainant deliberately did not file the order of the NCLT because he cleverly wanted to suppress the said NCLT

order. He submitted that the suppression itself is one of the grounds for cancellation of issuance of process.

10. He stated that the order of NCLT was passed on 9th July, 2018 and this complaint was lodged on 18th September, 2018. On this point, he relied on the case of -

- 1) **Motorola Incorporated vs. Union of India**¹
- 2) **Mehmood Ul Rehman vs. Khazir Mohammad Tunda**²
- 3) **Subramaniam Swamy vs. Union of India**³

He has submitted under what circumstances, the process can be quashed under section 482 of Cr. P.C.

11. The learned Senior Counsel, on the point of offence of defamation, relied on the judgment of Hon'ble Supreme Court in the case of **S. Khushboo vs. Kanniammal, 2010 5 SCC 600**.

12. The learned Senior Counsel argued that there is a heavy burden on the Magistrate to scrutinize the complaint of defamation at the time of issuance of process. The Magistrate should be satisfied that the allegations constitute an offence and opinion should be formed after due application of mind. The learned

1 2004 Cri LJ 1576

2 (2015) 12 SCC 420

3 (2016) 7 SCC 221

Senior Counsel relied on the following judgments:

- (i) **Mehmood Ul Rehman vs. Khazir Mohammad Tunda, (2015) 12 SCC 420.**
- (ii) **Sunil Bharti Mittal vs. CBI, (2015) 4 SCC 609.**
- (iii) **G. Sagar Suri vs. State of U.P., 2000 (2) SCC 636**

13. The learned Senior Counsel has submitted that the Magistrate has used the word “might” which reveals doubt in the mind of the Judge. However, the complainant has deliberately suppressed the said order and therefore, the Magistrate could not apply his mind properly. The word “might” shows speculations in the mind of the Court and thus, after going through the order of National Company Law Tribunal, this “might” could have travelled till “No”. The learned senior counsel, on the point of suppression, relied on the judgment of **Iridium India Telecom Ltd. vs. Motorola Incorporated & Ors.**, reported in (2011) 1 SCC 74. He also relied on the judgment of Calcutta High Court in the case of **Shiv Kishan Agarwal & Ors. vs. State of West Bengal & Anr.**, reported in 2001 SCC Online Cal 43.

14. The learned Senior Counsel on the point of wide powers of the High Court under section 482 of Cr.P.C. has submitted that the powers are not inhibited and can be used to prevent abuse of

process of law, if *prima facie* no case is made out or if the complainant conceals material information or if the complaint is maliciously instituted with private grudge, relying on:

- (i) **Anand Kumar Mohatta & Anr. Vs. State (Government of NCT of Delhi), Department of Home & Anr., 2018 SCC Online SC 2447.**
- (ii) **State of Haryana & Ors. vs. Bhajan Lal & Ors., (1992) Supp (1) SCC 335;**
- (iii) **State of Karnataka vs. L. Muniswamy, 1977 (2) SCC 699**

15. The learned Senior Counsel for the accused argued when the company is not named, then whether the statement would reasonably lead people acquainted with the company to the conclusion that the company is one which was referred to in the alleged defamatory statement. He argued that it is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the freedom of speech and expression' is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a *prima facie* case for a statutory offence that Magistrates can proceed to take cognizance of the same. It should not be triggered by false and frivolous complaints,

amounting to harassment and humiliation to the accused.

16. Mr.Ponda, the learned Counsel for the respondent No.1, has opened his submissions with specific stand that Shapoorji Pallonji Co. Pvt. Ltd. is a part of Shapoorji Pallonji Group and it is unconnected to M/s.Cyrus Investments and M/s.Sterling Investments and is in no way concerned with the litigation between Mr.Cyrus Mistry and Tata Sons. It is altogether a distinct entity and the allegations made against the Shapoorji Pallonji Group, are applicable to the complainant company as it forms a part of the Shapoorji Pallonji Group. The learned Counsel pointed out the averments made in the complaint and has submitted that the complainant has never approached the CBI in relation to the affairs of the accused qua Air Asia. The complainant has not made a single allegation against the Tata Sons Trustees muchless baseless or motivated. The statement that the Shapoorji Pallonji Group indulged in revenge legal action and a smear campaign is run by the Shapoorji Pallonji Group; includes the complainant and hence, is defamatory statement against the complainant because the complainant has not run any smear campaign to discredit the accused and thus, there was no question of making any baseless

or motivated allegations against the accused. The learned Counsel argued that there is no justification in making an allegation against the entire Shapoorji Pallonji Group of which the company is a part.

17. Mr.Ponda further submitted that this Court has a limited scope in the writ jurisdiction under Article 227 of the Constitution of India. Only a mere error of law and error of facts cannot be corrected in writ jurisdiction; there should be something more than a mere error of law.

18. On this point, he relied on the following judgments:

- i) **Nagendra vs. Commissioner of Hills Division**⁴
- ii) **Hari Vishnu Kamath vs. Sayed Ahmed**⁵
- iii) **State of AP vs. P.V. Hanumanth**⁶
- iv) **Kamlesh Verma vs. Mayawati**⁷
- v) **Waryam Singh vs. Amarnath**⁸
- vi) **State of Bihar vs. Murad Ali Khan & Ors.**⁹
- vii) **Radhey Shyam Khemka & anr. vs. State of Bihar**¹⁰
- viii) **Rupan Deol Bajaj (Mrs.) & anr. vs. Kanwar Pal Singh**¹¹
- ix) **Mahavir Prashad Gupta & anr. vs. State of National Territory of Delhi & Ors.**¹²
- x) **M.M.T.C. Ltd. & anr. s. Medchl. Chemicals & Pharma**

4 AIR 1958 SC 398

5 AIR 1955 SC 233

6 (2003) 10 SCC 121

7 (2013) 8 SCC 329

8 AIR 1954 SC 215

9 (1988) 4 SCC 655

10 (1993) 3 SCC 54

11 (1995) 6 SCC 194

12 (2000) 8 SCC 115

- (P) Ltd. & anr.¹³
- xi) Central Bureau of Investigaton, Hyderabad vs. K. Narayana Rao¹⁴
 - xii) State of Madhya Pradesh vs. Surendra Kori¹⁵
 - xiii) Binod Kumar & Ors. vs. State of Bihar & anr.¹⁶
 - xix) P.S. Meherhomji vs. K.T. Vijay Kumar & Ors.¹⁷
 - xv) Iqbal Singh Marwah & Ors. vs. Meenakshi Marwah & Ors.¹⁸
 - xvi) M.N. Damai vs. S.K. Sinha Singh¹⁹
 - xvii) Dhanalakshmi vs. R. Prasanna Kumar & Ors.²⁰
 - xviii) State of Bihar & anr. vs. P.P. Sharma, IAS & anr.²¹
 - xix) State of UP vs. O.P. Sharma²²
 - xx) Rashmi Kumar (Smt.) vs. Mahesh Kumar Bhada²³
 - xxi) State of Kerala & anr. O.C. Kuttan & Ors.²⁴
 - xxii) Satvinder Kaur vs. State (Govt. of NCT of Delhi) & anr.²⁵
 - xxiii) Rajesh Bajaj vs. State (NCT of Delhi) & ors.²⁶
 - xxix) State of Karnataka vs. M. Devendrappa & anr.²⁷
 - xxv) Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & anr.²⁸
 - xxvi) West Bengal State Electricity Board vs. Dilip Kumar Ray²⁹
 - xxvii) State of Andhra Pradesh vs. Bajjoori Kanthaiah & anr.³⁰
 - xxviii) Ravinder Singh vs. Sukhbir Singh & anr.³¹

13 (2002) 13 SCC 234

14 (2012) 9 SCC 512

15 (2012) 10 SCC 155

16 (2014) 10 SCC 663

17 (2015) 1 SCC 788

18 AIR 2005 SC 2119

19 (2001) 5 SCC 156

20 AIR 1990 SC 494

21 1992 Suppl. 1 SCC 222

22 (1996) 7 SCC 705

23 (1997) 2 SCC 397

24 (1999) 2 SCC 651

25 (1999) 8 SCC 728

26 (1999) 3 SCC 259

27 (2002) 3 SCC 89

28 (2006) 14 SCC 568

29 (2007) 14 SCC 568

30 (2009) 1 SCC 114

31 (2013) 9 SCC 245

19. Mr.Ponda further argued that the statutory powers under section 482 of the Code of Criminal Procedure are to be exercised sparingly and in rarest of rare cases. In support of his submissions, he relied on the following judgments:

- i) **Kurukshetra University & anr. vs. State of Haryana**³²
- ii) **State of Haryana & Ors. vs. Bhajanlal & Ors.**³³
- iii) **Iridium India Telecom Ltd. vs. Motorola Incorporation & anr.**³⁴
- iv) **Medchl Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. & Ors.**³⁵
- v) **Girish Kumar Suneja vs. CBI**³⁶
- vi) **State of Tamil Nadu vs. Mariya Anton Vijay**³⁷
- vii) **Nagawwa vs. Veeranna Shivalingappa Konjalgi & Ors.**³⁸

20. This being a case of defamation, the impugned press note is reproduced as under:

*“May 30, 2018
Press Statement by R Venkataramanan*

In my capacity as non-executive director of Air Asia India Limited, I have been wrongly named as an

32 1997 4 SCC 451

33 1992 Supp (1) SCC 335

34 2011 14 SCC 74

35 2000 3 SCC 269

36 2017 14 SCC 809

37 2015 9 SCC 294

38 (1976) 3 SCC 736

accused by the CBI on operational matters where I had little or no role to play.

It is commonly known that the present accusations qua Air Asia India find their root in baseless allegations made by Mr.Cyrus P Mistry and the Shapoor Pallonji Group against Tata Trusts Trustees (me included) and Tata Sons in his 'revenge' legal actions.

Emails purportedly written by me have been circulated in the media in the context of the issue of 5/20 in the aviation sector. This has been a much debated policy matter and Air Asia India was one of the many airlines that had formally sought a review of this policy.

I reiterate that all allegations of wrong doing or illegality against me are baseless. These motivated allegations are part of the smear campaign run to discredit me and the work being done by the Tata Trusts, which contribute Rs.1,200 crores each year to philanthropic activities. Despite Mr.Cyrus Mistry and his company' efforts to discredit the Trusts, we resolve to enhance the quality of life of our people.

- R Venkataramanan"

(Emphasis applied)

21. First, I will consider the legal position as to the inherent powers under section 482 of the Code of Criminal Procedure and under the writ jurisdiction of the High Court. The Supreme Court in a catena of judgments has elaborately discussed the scope of the High Court specifying the judicial constraints, limitations and

necessity while invoking these powers. The learned Counsel for both the sides showered many rulings on this point. However, I would like to consider the ratio laid down in some of the cases for the sake of brevity and to avoid repetition.

22. All the judgments are on the same point holding that the High Court has limited scope under Article 227 of the Constitution of India and under section 482 of Code of Criminal Procedure and, therefore, the Constitutional Bench judgment of the Supreme Court in the case of **Nagendra vs. Commissioner of Hills Division (supra)** is considered. In the said judgment, it was held by the Supreme court that “one of the grounds on which the jurisdiction of the High Court on Certiorari may be invoked in an error of law apparent on the face of the record and not every error either of law or fact which can be corrected by a superior Court, in exercise of its statutory powers as the Court of Appeal or revision. While explaining the expression “error of law apparent on the face of record”, the Supreme court has stated that it is essential that error should be something more than a mere error of law, that it must be one which manifests on the face of the record.

23. All the above judgments are on the same issue and therefore, the case of 1976 In the case of **Nagavva vs. Veeranna (supra)** of the Supreme Court is considered because thereafter the same principle is reiterated. In the case of **Nagavva (supra)**, while explaining the scope of section 202 of Code of Criminal Procedure and the learned Magistrate's power of issuance of process, it is said that the accused has no standing in the proceedings under section 202. It is further held that while issuing process, the learned Magistrate is mainly concerned with the allegations in the complaint or evidence and it is not the province of the Magistrate to enter into detailed discussion of merits and demerits of the case nor can the High Court go into this matter in its revisional jurisdiction, which is a very limited one.

24. On the same point, in the case of **Girish Kumar Suneja vs. Central Bureau of Investigation**, a 3-Judge Bench of the Supreme Court, while dealing with revisional powers and inherent powers under section 482 of the High Court, relied on the case of **H.S. Bhajan Lal (supra)** in the context of quashing of FIR or complaint and held that powers under section 482 should be exercised in rarest of rare cases. In the said case, the Supreme

Court also relied on the case of **Shalini Sham Shetty** (page 123) and it is held that the High Court cannot exercise the power of superintendence at the drop of a hat.

25. In the case of **Mehmood UL Rehman** (*supra*), the Supreme Court held that no reasoned, formal or speaking order is required. However, it should reflect the application of mind. The Magistrate must be satisfied that there is a material to issue process and if the complaint on the face of it does not disclose commission of the offence, then the Magistrate should refrain himself from taking cognizance under section 190(1)(a) of Cr. P.C. It further held that :

“The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, *prima facie*, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly.”

26. In this case, the Supreme Court has clarified that if non-application of mind is revealed and no offence is made out, then the High Court under section 482 of Cr. P.C. is bound to invoke its inherent powers in order to prevent abuse of the power of the

criminal court. It is also observed that to be called to appear before the criminal court as an accused is a serious matter affecting one's dignity, self-respect and image in the society. Hence, the process of the criminal court shall not be made a weapon of harassment.

27. It is a settled position of law that for the Magistrate, it should not be a consideration at the time of issuance of process that the case is unlikely to result in conviction, but the Magistrate has to take into account only the sufficient ground to proceed and after application of mind, should find out whether the offence is constituted before issuance of process.

28. In the case of **Sunil Bharti Mittal** (*supra*), the Supreme Court held that "the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused,

though the order need not contain detailed reasons. The order would be bad in law if the reason given turns out to be *ex-facie* incorrect.

29. In the case of **G. Sagar Suri** (*supra*), the Supreme Court has dealt with the judicial responsibility of court issuing process.

30. In the case of **Anant Kumar Mohatta** (*supra*), the Supreme Court while discussing the scope of Section 482 of Cr. P.C. has observed that the powers of the High Court cannot be restricted in exercising the powers under section 482 to prevent the abuse of process or miscarriage of justice at the stage of FIR.

31. In the landmark case of **State of Haryana & Ors. vs. Bhajanlal** (*supra*), the Supreme Court has remarkably set the law of Section 482 and also powers under section 482 or Article 226. It classified the kinds of cases where the powers under section 482 can be used and cannot be used. It held that “where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused”, it can be the criterion to involve inherent powers.

32. In the case of **State of Karnataka vs. L. Muniswamy & Ors.** (*supra*), while explaining the inherent powers, it held that:

“The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to. achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the, ends of mere law though justice has got to be. administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to. save the inherent powers of the High Court to do justice between the State and its. subjects, it would be impossible. to appreciate the width and contours of that salient jurisdiction.”

33. Thus, the ratio laid down in all these erudite judgements is that though the High court is not supposed to use the powers under section 482 of Code of Criminal Procedure and its supervisory powers under Article 227 of the Constitution of India generously, it may unhesitatingly invoke the power to stop abuse of process of law, at the hands of the subordinate judiciary and to secure the ends of justice.

34. The initial objection raised by the petitioner is regarding locus of the respondent-company under section 199 (1) of the Code of Criminal Procedure to file the complaint of defamation as the complainant company is altogether a different entity than Cyrus Mistry or Shapoorji Pallonji group. In these proceedings, a peculiar stand is taken by the complainant company that the accusations of motivated allegations and smear campaign in the press note are not in fact done by the complainant-company and, therefore, though it is part of Shapoorji Pallonji group, the complainant, being a juristic person, needs to be treated independently. It was contended that due to the allegations, unnecessarily the identity of the company is merged in Shapoorji Pallonji group and so the company is defamed.

35. Thus, the said company which is unconnected with the acts and actions of Shapoorji Pallonji group cannot be blamed in this way. He has submitted that because of these allegations made in the press note, the reputation of the complainant company is lowered down in the Society and two clients have sent letters asking explanation and thus it has affected the business reputation of the complainant. He also submitted that the directors of the

complainant-company may be the shareholders in other company of Shapoorji Pallonji group or vice-versa. However, the shareholder has no right in the property of the company, which is a juristic person entirely distinct from his shareholders.

36. The complaint is filed by the Shapoorji Pallonji & Company Pvt. Ltd. It is mentioned in the cause title that it is a part of Shapoorji Pallonji Group. In the press note, though nothing is mentioned about the Shapoorji Pallonji & Company Pvt. Ltd., the name of Shapoorji Pallonji Group is appearing. It is an admitted fact that Shapoorji Pallonji Group has many companies which are distinct, legal entities with different Directors and shareholders. Thus, Shapoorji Pallonji Group is the genus and all these companies are the species and they are different entities. Therefore, these species have every right to have their own say, being separate and different entities though connected with the Shapoorji Pallonji Group. Therefore, the acts done and action taken by Shapoorji Pallonji Group, may not be attributed to a particular company. The submissions of the learned Senior Counsel for the petitioner that all the companies are known as Shapoorji Pallonji Group and they have one and the same face is

true. However, the learned Counsel Mr.Ponda has argued that the complainant company did not initiate the motivated smear campaign or made baseless allegations. Thus, the complainant company disowns any kind of motivated smear campaign which is allegedly done by Shapoorji Pallonji Group. Thus, in other way, though the face of all the companies is the same, every company has a different tongue and, therefore, the person who has not said anything, though belonging to a particular group, has locus to file a complaint. Therefore, if imputations are made against the group, the said company has locus to file the complaint that the statements tend to defame the complainant and also on the ground that original allegations which are referred to in the press were not made by this company and there is a mistaken identity, amount to defamation. The same is applicable to the complainant and, therefore, I cannot accept the submission made by the learned Senior Counsel for the petitioner on the point of locus, at this stage.

37. While issuing process, the learned Magistrate has considered the proceedings before the order of National Company Law Tribunal. The two companies, i.e., Cyrus Investments Pvt.

Ltd. and Sterling Investment Corporation Pvt. Ltd. have filed a Company Petition regarding mis-management and demanding the appointment of Administrator and new Board of Directors. The said companies are the companies of Shapoorji Pallonji group. The National Company Law Tribunal has rejected the Petition with reasoned order and has observed in paragraph 246, as pointed out by the learned counsel for the petitioner, that 'all the allegations are abominably baseless allegations thrown at a reputed person and not knowing what consequences follow when such scurrilous allegations are not supported by any material paper'. The said order was not available to the Magistrate to read, as it was not annexed to the complaint. However, this context is to be taken into account to understand the meaning of the statements in the press note.

38. In the case of **Shiv Kishan Agarwal** (*supra*), two judicial proceedings were pending about the dissolution of partnership and the judgment and citation of one person as witness was suppressed. The fact of the proceedings was suppressed in the complaint and so the learned Single Judge has taken a view that once the suppression of facts in the complaint is adopted, the only

treatment the complainant deserves is quashing of the proceedings. The complainant should be fair while approaching the Court.

39. On the point what constitutes defamation, it is useful to refer to the ratio laid down in **S. Khushboo (supra)**, which is as follows:

In the case of **S. Khushboo (supra)**, the Supreme Court considered whether a particular statement or words are defamatory or not, how it can be decided and what criteria can be applied. In the said case, the appellant made certain statements about the sexual behaviour of people in Tamil Nadu which were published in a magazine, so many organizations filed the complaint against her on Sections 411 and 500 of Indian Penal Code. The Supreme Court held that a morally provocative statement does not make out any offence. So also the general statement made about the sexual habits of the people in Tamil Nadu does not make out any offence. The Supreme Court gave guidelines that any remark which could reasonably amount to the offence of defamation, is to be verified. The defamation though is a factual question and the statutory defences are available to

the accused, the imperative question is whether the allegations in the complaint supported a *prima facie* case of defamation in the first place.

40. Defamation is broadly defined as false statement, damaging one's goodwill or reputation or image. Article 19 of the Constitution of India i.e., right to freedom, speech and expression gives no licence to any person to defame others as the fundamental right is enjoyed with reasonable restrictions. Generally, there is not much difference in goodwill and reputation of the company. It means a credibility and trustworthiness. Even something true may be also defamation in certain circumstances. Thus, lowering down one's estimation in the eyes of a public is defamation. A person may be dishonest, but he may be holding a reputation of high values. Thus, the right is *jus in rem*. However, the statement must be understood as defamatory by right thinking or reasonable minded persons. Therefore, there are certain yardsticks to decide whether the statement is defamatory or not, which are as follows :

- (i) The statement to be read and understood with a context. It is to be read in its entirety.

- (ii) Natural and ordinary meaning of the words is to be followed. What meaning the words would convey to the ordinary man is a litmus test.
- (iii) Whether the statement brings hatred, stress, contempt and ridicule, will decide whether it is defamatory or not.
- (iv) Imputation of fraud, dishonesty and corruption by rendering sub quality services, causing damage, sub quality manufacturing goods, use of abusive language are the glaring examples of defamation.
- (v) Every incorrect statement or written statement or every statement which is disapproved or not liked is not necessarily defamatory statement. In such a case, defamation is taken very subjectively, but the Court has to use reasoning of the ordinary man and adopt objective approach.

There are certain statements involving shades of irony, innuendo and sarcasm where indirectly or impliedly a person is defamed.

41. At the outset, it is made clear that while assessing the legality of the issuance of process in the offence of defamation, the exceptions laid down in section 499 of the Indian Penal Code are

not to be taken into account as that is a defence available to the accused. Therefore, whether the order of issuance of process is correct or not is to be judged only after considering the averments made and the alleged statements made in the complaint.

42. The real question which the Magistrate needs to ask himself at the time of verifying the complaint for issuance of process in the matter of defamation is whether the averments in the complaint and the statements made are capable, as a matter of law, of being defamatory. This cannot be tested subjectively. Different persons react differently to a same situation. Therefore, people have different assessments and judgments based on human nature, mindset, approach, thinking ability.

43. A person who is in the shoes of the complainant may be balanced, or ill-tempered or sensitive or emotional and, therefore, his reaction to the written words may be different. The reaction of a reasonable person or right thinking member of the society to the words spoken or written is the litmus test of finding out whether those words amount to defamation. Some people do not get affected by whatever is said or uttered against them. Their

approach is 'what they say, let them say'; some people get angry and retaliate; some abuse socially, publicly or through media; some people take legal course and many people ignore; some have no courage to fight; some cry and remain quietly sad. The social media is pervasive and gradually capturing most of the space of our lives in today's world. The words to disparage a person generally in the eyes of public is to be seen. The change in the social perception also has a bearing over the understanding of the words to see whether are capable of being defamatory.

44. Whether innocuous gossip or trivial accusation will be defamation or whether casual remarks or replies on social media is defamation, etc. are the issues that crop up before the Courts. However, a Judge has to see whether serious harm is caused to the person or it has a potential ill effect on his or her reputation. In the present case, the statements and the words do not manifest ill-will to damage the reputation of the complainant-company but it is a denial of the actions taken by Shapoorji Pallonji Group and Mr.Cyrus Mistry. The Judge has to be cautious while looking at the defamatory statements and has to control personification of his views about public feelings and opinion. It should be strictly a

reasonable person's opinion. It is also to be kept in mind that a reasonable person is not a lawyer or a Judge but a common man; a right thinking common man. Thus, the test can be objectively applied.

45. It is useful to refer to the observations of the hon'ble Supreme Court in the case of **Subramaniam Swamy vs. Union of India (supra)**, as under:

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

207. Another aspect requires to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither any FIR can be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the 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 v. T. Ganguly, Dy. Superintendent and another*, is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank and others v. Surendra Prasad Sinha* 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 concerned accused 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 persons 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 (1972) 1 SCC 450 1993 Supp. (1) SCC 499 means to wreak personal vengeance. In *Pepsi Foods Ltd. and another v. Special Judicial Magistrate*, a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

209. We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects.”

46. Coming to the press note, the allegedly offending words stated in it are ‘motivated’, ‘baseless’ and ‘smear campaign’. Smear means damaging the reputation by false accusation. These words are required to be read in the entire context. The petitioner has made this statement with the reference to earlier disputes. As

mentioned in the beginning, the matter carries a baggage of accusations, denials, claims and disclaimer. Both the parties are from the business world. Though they initially worked together, today, they are at loggerheads. Their disputes are discussed publicly by the media and the people. When two persons are fighting, they are bound to make some allegations against each other. If these allegations are abusive, they create an impression of hatred, contempt and ridicule against the person who is attacked. I am of the view that these words do not constitute defamation. One has to be careful in choosing the words while expressing his feelings. To express and speak is an invaluable fundamental right of an individual guaranteed under Articles 19 and 21 of the Constitution of India to all the citizens which is the soul of democracy. The law of defamation is one of legally acceptable reasonable restrictions in the Indian legal system. To oppose, deny, reject, defend, etc. are the ways of expression. It manifests emotional status and thinking process. However, it should not lead to harm, damage, which is a rider to the freedom of expression. Thus, one can disclaim, refuse, deny, reject certain charges or allegations made against him or her publicly with restrained words. Ultimately, it is a choice of words which may

constitute the offence of defamation.

47. Similarly, every reaction to the words – written or uttered, may not be a correct test to decide to treat the words capable of being defamatory. Therefore, Mr.Ponda's submission that two letters from other companies or customers enquiring about the press note statement, is evidence of defamation, is not acceptable. The impugned words do not create contempt, hatred or ridicule against the complainant / respondents, if the test of reasonable and right thinking common man is applied.

48. The Court has to be guarded and should have an eye to read between the lines when the complaint of defamation is filed. To call a particular statement defamation is subjectively easy and, therefore, it is necessary to see whether the complainant is using this process of law as a weapon against the other person to settle a score or some other dues. Undoubtedly, to stand before a Criminal Court is a humiliation and a matter of extreme stress and harassment and, therefore, the Court is required to find out the real issue in such a matter especially when the parties like the complainant and the accused are fighting various business battles on various battle fields.

49. Thus, in this case, I am of the view that the words which are used in the press note are not at all defamatory. They are moderate and temperate. They do not invite contempt, ridicule or hatred against the persons mentioned in the press note and muchless the complainant. Certain statements, if found incorrect, can be corrected without labelling them defamatory. The words used and the statement made in the press note can not be perceived as defamatory.

50. In the circumstances, Rule is made absolute in terms of prayer clause (b). The order dated 11.10.2018 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, issuing process against the petitioner in CC No.2240/SW/2018 is quashed and set aside.

(MRIDULA BHATKAR, J.)