**IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APL) NO. 602 OF 2018**

1. Madangopal S/o. Banarasilal Jalan,
Aged about 58 years, Occ.: Service,
Resident of C-1801, Oberoi Woods,
Goregaon East, Mumbai.

2. Deepak S/o. Wazirchand Sood, aged
about 53, Occupation : Service,
Resident of 2501, Tower 1, Summer
Trinity, New Prabhadevi Road,
Prabhadevi, Mumbai-400 025

3. Suil S/o. C.V. Krishnan Kutty Warier,
aged about 54, Occupation : Service,
Resident of C-304, Synchronicity of
Chandivali Farm Road, Powai,
Mumbai.

4. Amol S/o. Madhukar Apte,
Aged about 38 years, Occupation : Service,
R/o. B-1604, Videocon Towers,
Thakur Complex, Kandivali East,
Mumbai – 400 101.

…. **APPLICANTS.**

// **VERSUS** //

Partha S/o. Sarathy Sarkar,
Aged about 49 years, Occupation:
Professional, Resident of 20,
Surana Layout, Anant Nagar,
Nagpur – 440 013.

…. **NON-APPLICANT.**

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Shri D.V.Chauhan Adv. a/b Shri Chaitanya Dhruv, Adv. for Applicants.
The non-applicant in person.

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**CORAM : ANIL S. KILOR, J.**
**DATE OF RESERVING THE JUDGMENT : 18/10/2022**
**DATE OF PRONOUNCING THE JUDGMENT : 28/11/2022**

**JUDGMENT :**

1. Heard.

2. The applicants in the case at hand have filed the present application under Section 482 of the Code of Criminal Procedure (Cr.P.C.), challenging the correctness and legality of the order dated 30/11/2017 passed by Judicial Magistrate First Class, issuing process against the applicants for the offence punishable under Section 500 of the Indian Penal Code (IPC) and also prayed for quashing and setting aside Summary Criminal Complaint Case No.18664 of 2015.

3. The brief facts of the present case are as follows:

The non-applicant, while working on the post of General Manager in Future Generali India Life Insurance Company Limited, was informed vide letter dated 08/02/2011 that his services are no longer required and not to report for duty w.e.f. 09/02/2011.

4. Since the letter of termination dated 08/02/2011 did not speak of any violation of service terms and conditions or it did not give any reason for the termination and allegedly in violation of natural justice, a Special Civil Suit No.69 of 2012 came to be filed in the Court of Civil Judge Senior Division, Nagpur against (1) the Managing

Director and Chief Executive Officer of the Company, (2) the Company and (3) the Country Manager of the Company, for declaration and for loss caused on account of illegal termination of employment and for loss of reputation and consequent hindrance of opportunity for suitable employment and for unwarranted mental torture. The non-applicant thereby, claimed Rs.1,00,00,000/- against the defendants with future interest. He further sought declaration that the termination is illegal and thereby he claimed consequential directions of reinstatement. The non-applicant also made other prayers.

5. The defendants filed written statement with parawise reply. In clause (c) of the preliminary objection and in reply to the paragraph No.6 of the plaint, it is stated as under :

> *"… At this stage, it is essential to point out and to mention that the plaintiff though he was working as General Manager in the defendant company has misused is powers and the plaintiff is also aware of it. Therefore, before issuance of the letter of termination to the plaintiff, the matter was discussed in detail with the plaintiff and it was agreed between the plaintiff and the defendant that the termination simplicitor letter only will be issued to the plaintiff, which was in the interest of the plaintiff. Here it will also not be out of place to mention and at the same time very essential to point out that there was a complaint against the Plaintiff from one lady subordinate staff, who was working under the plaintiff. After carefully going through the complaint made by the female subordinate staff, who was working under the plaintiff it will be seen that it was nothing but the complaint regarding sexual harassment of female subordinate staff, who was working under the plaintiff. ..." (sic.)*

6. The non-applicant found the above referred underlined

portion of written statement as defamatory, attracting the offence under Section 499 of the IPC. He, therefore, filed a Criminal Complaint under Section 200 of the Code of Criminal Procedure (Cr.P.C.) vide Summary Criminal Case No.21326 of 2012 for the offence punishable under Section 500 of the IPC against the company-Future Generali India Life Insurance Co. Ltd., applicant No.1 herein Madan Gopal Jalan-Company Secretary and Legal Head as accused No.2, applicant No.2 herein-Deepak Sood as accused No.3, Dr. Kim Chai Ooi, Country Manager as accused No.4 and the Branch Manager of the company as accused No.5.

7. The learned Judicial Magistrate First Class vide order dated 30/11/2017 issued summons against accused Nos.1 to 4 in the said criminal case for the offence punishable under Section 500 of the IPC. Whereas, the complaint against accused No.5 was dismissed for want of *prima-facie* case.

8. Accused Nos. 1 to 4 in the said criminal case, including applicant Nos.1 and 2 herein, preferred Revision Application under Section 397 of the Cr.P.C., wherein while raising a ground that in view of the allegations in the suit filed by the respondent it was incumbent on the part of the defendants in the suit to explain in the written statement the facts and circumstances justifying themselves for the termination of the non-applicant. Thus, in the backdrop referred herein above, a

reference was made to the statement in the written statement about sexual harassment.

9. The non-applicant, considered the same as defamatory and filed another Summary Criminal Case No. 18664 of 2015 under Section 200 of the Cr.P.C. for the offence punishable under Sections 499/500 read with Section 34 of the IPC. In the said Summary Criminal Case No.18664 of 2015, the applicant Nos.1 and 2 were again made as accused Nos.1 and 2, respectively and the applicant Nos. 3 and 4 as accused Nos. 3 and 4.

10. The learned Magistrate thereupon issued direction to the Police Station Officer to inquire into the allegation of complaint. Accordingly, in compliance the police submitted the report giving opinion that no *prima-facie* offence is made out.

11. The learned Magistrate thereafter, passed an order below Exh.1 issuing process against the applicants for the offence punishable under Section 500 of the IPC, the same is under challenge in the present application with a prayer to quash the impugned order and Summary Criminal Complaint Case No.18664 of 2015.

12. I have heard Shri Devendra Chauhan, learned counsel for the applicants and the non-applicant in person.

13. The non-applicant in person, at the outset, has raised the following preliminary objections to the maintainability of the present application:

a) The applicants cannot be termed as 'persons aggrieved' as the applicants did not suffer any legal injury or deprivation / denial of a legal right. In support, he has relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Ravi Yashwant Bhoyar ..vs.. Collector*, reported in **(2012)4 SCC 407**.

b) It is mandatory to make the State as party in the proceedings filed under Section 482 of Cr.P.C. Whereas, State is not made party in the present proceedings.

c) When the remedy under Section 397 of Cr.P.C. by way of revision is available, application under Section 482 of the Cr.P.C. is not maintainable.

14. Before touching to the merits of the matter, I will first deal with Preliminary Objection to the maintainability. The Hon'ble Supreme Court of India in the case of *Kartik Chandra Majee.. vs. State of Jharkhand*, reported in **AIR 2017 SC 3096,** has held that judicial process is a solemn proceeding which cannot be allowed to be converted into an

instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with malafide and proceeding is malicious, instituted with an ulterior motive, High Court will not hesitate in exercise of its jurisdiction under Section 482 of the Cr.P.C. to quash the proceeding under category seven as enumerated in *State of Haryana ..vs.. Bhajan Lal* , reported in **AIR 1992 SC 604**.

15. In the present case, it is the case of the applicants that the trial Court ought not to have issued process as no *prima facie* case of defamation is made out by the non-applicant. It is submitted that therefore, issuance of process and continuation of criminal proceedings against the applicants is nothing but permitting the non-applicant to use a judicial process to degenerate into a weapon of harassment.

16. It is a settled law that issuance of process in a criminal case is a serious matter and Criminal Law cannot be set into motion as a matter of course. Hence, it cannot be said that the applicants are not aggrieved persons. Accordingly, the first objection to the maintainability is rejected.

17. As far as second objection that in the proceedings under Section 482 of the Cr.P.C. it is mandatory to add the State as party. The said submission is misconceived as the provision does not say so. Moreover, the present proceeding is arising out of a complaint between private parties, therefore, the State is not the necessary party in the

present proceedings. Accordingly, the second objection is rejected, as well.

18. The third objection is also liable to be rejected in view of the judgment of the Hon'ble Supreme Court of India in the case of *Prabhu Chawla ..vs.. State of Rajasthan*, reported in **(2016) 16 SCC 30**, wherein the Hon'ble Supreme Court of India has held that there is no total ban on exercise of inherent power where abuse of process of Court or other extraordinary situation warrants exercise of inherent jurisdiction.

19. Now, moving further to examine the merits of the matter. On merit, the learned counsel for the applicants makes the following submissions:

a) The learned trial Court has committed error in issuing process in ignorance of the law;

b) In absence of *prima facie* case, issuance of process by the trial Court and confirmation of the same by the revisional Court is erroneous.

c) Sufficient pleadings to fulfill the prerequisites of offence under Section 499 of the IPC, are absent.

d) The alleged defamatory statement made in the written statement was made in defence and in good faith, therefore, the ninth exception to Section 499 of the IPC would apply to the present case.

e) The *mens rea* and intention are the *sine qua non* and in absence of pleadings to that effect, the complaint itself is not maintainable.

f) On similar set of facts second complaint under Section 200 of Cr.P.C. is not maintainable, particularly when earlier is pending.

g) No specific allegations are made against each of the accused which is mandatory to arraign them as accused.

20. On the other hand, the non-applicant in person makes the submissions as under:

a) The order of issuance of process by the learned Judicial Magistrate First Class, and the judgment and order of the revisional Court, confirming the same is absolutely legal.

b) In view of the specific findings recorded by both the Courts below that a *prima facie* case is made out attracting the offence under Section 499 of IPC, the order of issuance of process is sustainable in the eyes of law.

c) If the averments make out an offence and there is no legal impediment to the trial, this Court cannot stifle a prosecution at its very threshold. In support, he relied on the judgment of High Court of Madras in the case of *Dr. J. Sudershan ..vs..R. Shankaran*, reported in **1992 Cr.L.J. 2427**.

d) When exercising jurisdiction under Section 482 of Cr.P.C. this Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. It is the function of the trial Judge. Therefore, this Court should not interfere with it under Section 482 of Cr.P.C.

e) Whether the case falls within ninth exception or not and other grounds raised by the applicants are the matter of evidence which can be established at the trial. He relied on the judgments of Hon'ble Supreme Court of India in the cases of *M.N.Damani ..vs.. S.K. Sinha & oth.* reported in **AIR 2001 SC 2037,** *Central Bureau of Investigation ..vs.. Shri Ravi Shankar Srivastava*, reported in **AIR 2006 SC 2872**, *Jeffrey J. Diermeier and Anr..vs.. State of West Bengal & Anr.*, reported in **(2010) 6 SCC 243** and the judgment of the High Court of Bombay in the case of *Rahul Gandhi ..vs.. Rajesh Mahadev Kunte*, reported in **2015(2)**

**Bom.C.R. (Cri.) 273**.

f) Any defamatory matter stated in the written statement or in any legal proceedings, amounts to publication and as such in the present case the prerequisite to attract the offence under Section 499 of the IPC can be said to be complied with. He relied on a judgment of the Madhya Pradesh High Court in the case of *Trichinopoly Ramaswamy Ardhanani & oth. ..vs.. Kripa Shankar Bhargava*, reported in **1990 Cri.L.J. 2616**, and the judgment of Bombay High Court in the case of *Shri Sopullo Datta Naik Dessai..vs..Shri Yashwant Govind Dessai and another*, reported in **MANU/MH/1182/2009**.

21. In the backdrop of rival contentions of the parties, I have perused the relevant documents and the judgments with the able assistance of the learned counsel for the applicants and the non-applicant in person.

22. The whole controversy revolves around a question whether the learned Magistrate before issuing the process has applied his mind to the material available on record, to *prima facie* get satisfied that the essential ingredients of defamation under Section 499 of the IPC are

present to constitute the offence?

23. Law of defamation seeks to protect individual reputation. The word "defamation" is the generic name for the wrong; Libel and Slander are forms of it. Defamation therefore, is of two kinds viz. Libel and Slander.

24. Broad distinction between the two is that libel is addressed to the eye while as slander to the ear.

25. Slander is the publication of defamatory statement in a transient form, which may be spoken words. Libel is a representation made in some permanent form e.g. writing, printing, picture.

26. In the above referred backdrop, at this juncture it would be appropriate to refer to Section 499 and 500 of the IPC which read thus :

> ***"499. Defamation —***
> *Whoever, by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*
> *Explanation 1 —It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*
> *Explanation 2 —It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*
> *Explanation 3 —An imputation in the form of an alternative or expressed ironically, may amount to defamation.*
> *Explanation 4 —No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect*

*of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

*First Exception —Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

*Second Exception—Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

*Third Exception — Conduct of any person touching any public question.—*
*It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.*

*Fourth Exception — Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.*
*Explanation —A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.*

*Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.*
*It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.*

*Sixth Exception—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.*
*Explanation —A performance may be submitted to the judgment of the public expressly or by acts on the part of the*

*author which imply such submission to the judgment of the public.*

*Seventh Exception —Censure passed in good faith by person having lawful authority over another —*
*It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

*Eight Exception —Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

*Ninth Exception : Imputation made in good faith by person for protection of his or other's interests.*
*It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person , or for the public good.*

*Tenth Exception : Caution intended for good of person to whom conveyed or public good.*
*It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.*

***500. Punishment for defamation** — Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."*

27. The above definition is subject to four explanations and ten exceptions. If a person is found guilty of having committed defamation in terms of Section 499 of the IPC, the punishment is stipulated in Section 500 of the IPC. The offence is non-cognizable and bailable.

28. It becomes evident from the reading of Section 499 of IPC

that, mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. Therefore, the intention or knowledge to cause harm are the essential ingredients to constitute the offence under Section 499 of IPC.

29. Let us examine the law on issuance of summons. The Hon'ble Supreme Court of India, time and again reiterated that Criminal case is a serious matter and Criminal Law cannot be set into motion as a matter of course. The Magistrate has to therefore, carefully scrutinize the evidence brought on record before issuance of summons. For instance, I may refer to some of the judgments of the Hon'ble Supreme Court of India, in this regard, namely:

30. The Hon'ble Supreme Court of India in the case of *Pepsi Foods Ltd. ..vs.. Special Judicial Magistrate*, reported in **(1998) 5 SCC 749,** has held as under :

> *"28.Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the*

*complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

31. The Hon'ble Supreme Court of India in the case of *Mehmood Ul Rehman ..vs.. Khazir Mohammad Tunda*, reported in **(2015) 12 SCC 420,** has held as under :

*"22. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*

32. *The Hon'ble Supreme Court of India in the case of Sunil Bharti Mittal ..vs.. CBI, reported in* ***(2015) 4 SCC 609,*** *has held as under:*

*"52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has*

> *been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*
>
> *53. However, the words "sufficient grounds for proceeding" appearing in the 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. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*
> *(emphasis supplied)*

33. The Hon'ble Supreme Court of India while examining what care shall be taken by the Magistrate while exercising discretion to issue process, the Apex Court of India in the case of *Subramanian Swamy ..vs.. Union of India*, reported in **(2016) 7 SCC 221,** has held thus:

> *"207. ... In Punjab National Bank 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 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 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 means to wreak personal vengeance. …"*

34. The Hon'ble Supreme Court of India in the case of *Birla*

*Corpn. Ltd. ..vs.. Adventz Investments & Holdings Ltd.*, reported in **(2019) 16 SCC 610,** has held as under :

> *"35. To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank v. Surendra Prasad Sinha, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment."*

35. From the above referred judgments of the Hon'ble Supreme Court of India it becomes evident that 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 is best demonstrated by disclosure of mind on the satisfaction. The Magistrate would be judicious in exercising discretion lest it would be an instrument in the hands of the private complainant 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 means to wreak personal vengeance as it is a serious matter affecting one's dignity and reputation in the society.

36. In the teeth of above referred well settled law, I will examine whether the learned Magistrate in the case at hand has taken necessary

care before exercising discretion to issue process. I, therefore, revert back to the facts of the case.

37. It is the case of the non-applicant that the order of termination dated 08/02/2011 did not speak of any violation of service terms and conditions and that it did not give any reason for the termination of the non-applicant.

38. In defence, the applicant No.1 company in its written statement refer to the discussion held with the non-applicant before issuance of termination order and also referred to a complaint of a lady subordinate staff, which according to the applicant No.1, was nothing but the complaint regarding sexual harassment.

39. The non-applicant considering the said defence as defamatory in nature, filed a criminal complaint vide Summary Criminal Case No. 21326 of 2012 in the Court of Judicial Magistrate First Class, Court No.10, Nagpur against the company-Future Generali India Life Insurance Co. Ltd., applicant No.1 herein Madan Gopal Jalan-Company Secretary and Legal Head as accused No.2, applicant No.2 herein-Deepak Sood as accused No.3, Dr. Kim Chai Ooi, Country Manager as accused No.4 and the Branch Manager of the company as accused No.5.

40. The learned Judicial Magistrate First Class vide order dated 30/11/2017 issued summons against accused Nos. 1 to 4 in the said

criminal case for the offence punishable under Section 500 of the IPC. Whereas, the complaint against accused No.5 was dismissed for want of *prima-facie* case.

41. Accused Nos. 1 to 4 in the said criminal case, including applicant Nos.1 and 2 herein preferred revision application under Section 397 of the Cr.P.C., wherein while raising a ground that in view of the allegations in the suit filed by the respondent it was incumbent on the part of the defendants in the suit to explain in the written statement the facts and circumstances justifying themselves for the termination of the non-applicant. Thus, in the backdrop referred herein above, a reference was made to the statement in the written statement about sexual harassment.

42. The non-applicant treating the same as defamatory, filed another Summary Criminal Case No.18664 of 2015 under Section 200 of the Cr.P.C. for the offence punishable under Sections 499/500 read with Section 34 of the IPC against the applicants.

43. The learned Magistrate thereupon issued direction to the Police Station Officer to inquire into the allegation of the complaint. Accordingly, after compliance the police submitted the report with its opinion that no *prima-facie* offence is made out.

44. The learned Magistrate thereafter passed an order below Exh.1 issuing process against the applicants for the offence punishable under Section 500 of the IPC.

45. The Hon'ble Supreme Court of India in the case of *S. Khushboo .vs.. Kaniamal and another*, reported in **AIR 2010 SC 3196**, after considering the key ingredients of the offence contemplated by Section 499 of IPC, has held that the definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/ her could cause such harm.

46. It is therefore, for inviting the provisions contained in Section 499/500 of the IPC which is penal in nature, the Magistrate has to consider if the requirement of *mens rea* which is a mandate for criminal defamation punishable under Section 500 of the IPC was fulfilled. If *mens rea* or criminal intention is lacking or is missing in the act of the accused, he cannot be held guilty for an offence of defamation within the meaning of Section 499 of IPC.

47. The Hon'ble Supreme Court of India in the case of *Subramaniam Swamy* (supra) has held that in the matters of criminal defamation the heavy burden is on the Magistrate to scrutinize the complaint from all aspects. The Magistrate has also to keep in view the

language employed in Section 202 of Cr.P.C. which stipulates about the residence of the accused at the place beyond the area the Magistrate exercises his jurisdiction. He must be satisfied that the ingredients of Section 499 of Cr.P.C. are satisfied. Application of mind in case of complaint is imperative.

48. To examine whether the complaint filed by the non-applicant under Section 200 of Cr.P.C. satisfies the ingredients of Section 499 of the IPC, I will refer to the relevant paragraphs of the complaint, which read thus :

> *"1. Cause of action in filing the instant complaint-sequence of events:*
> *a) The complainant had filed a civil suit bearing No-200069/2012, before the Hon'ble Court of Civil Judge (Sr. Division) Nagpur, seeking compensation for illegal termination of his employment, arraying accused no.1.*
> *b) That pursuant to the suit stated in the preceding para, accused no.2, filed a 'WS' dt/- 3rd Aug, 2012, wherein falsely and intentionally to justify the illegal termination of the complainant, defamed him of sexual harassment of an unnamed female.*
> *c) Aggrieved by the false, slanderous and defamatory allegations the complainant filed a criminal case no: SCC-21326/12, before the Hon'ble JMFC, Court No-10, Nagpur.*
> *d) The Ld. Magistrate issued process against the accused no-1 & 2 on 28th Jan, 2013. Copy of complaint & the Ld. Magistrate's order annexed vide Exh-A Colly.*
> *e) That accused No -1 & 2, filed revision application No- 14/2013, dt/- 2nd May, 2013, U/s 397 of CrPC, before the Hon'ble Addl. Session Judge, Nagpur (Exh -B).*
> *f) On 20th Sept, 2013, accused no – 1 & 2 made an application U/s -445 of Cr PC for releasing the accused persons on cash security; which the Ld. Magistrate permitted so on furnishing cash security of INR 15,000/- each; the copy of the application on behalf of the accused persons & the order of the Ld. Magistrate annexed vide Exh-C Colly.*
> *g) The accused No-1 & 2 in their criminal revision application*

*lamely justifying the illegal termination of the complainant's employment. again on unsubstantiated grounds falsely slandered and defamed the complainant of sexual harassment, reference vide pg no.31 & 34 of the instant complaint.*

*h) The complainant and the accused no- 1, 2 & 3 were colleagues in Future Generali Life Insurance and that time to time the complainant was raising the ultra-vires acts of the accused person(s) in violating regulatory provisions and cheating the common masses by siphoning off their premium amount, and thus accused person(s) had a clear motive borne out of grudge/grouse against the complainant in terminating his employment and thereafter in defaming and damaging him, morefully brought out in the affidavit of evidence along-with affidavit of documents, filed in the matter of suit no -200069/12. Copy of the affidavit of evidence and affidavit of documents, Exh-D Colly.*

*i) As inferable from Exh-B, a purported mail vide pg no.87 of the instant complaint received &/or caused to be received by accused no-3 in his personal mail id' (from one Smt. Ragini Das) was in accused no-3's possession. By virtue of the official position the accused No-3 ought to have substantiated the truth of the allegations in terms of the official policy vide pg no.166 to 169 of the instant complaint, more-so when the accused no-3 was aware that Smt. Ragini Das had attempted to falsely implicate her office colleagues of breaches which the complainant objected, raising ex-facie doubt of her credibility and integrity; (reference Exh-D) pg no.157 to 165 of the instant complaint. Giving a go-by to the official policy and in-spite of the documents on record yet accused No-3 insensitively making defamation in the public domain is within the ambit of Sec -499 read with Section 500 of IPC.*

*j) Concerning accused no-4, the complainant does not even know of him, yet his making/cause to make defamatory allegations in public domain as is evident from pg no -84 & 87 of the instant complaint; is within the meaning of Sec- 499 r/w Sec -500 of IPC .*

*k) The complainant was compelled to file the instant complaint for the false defamation(s) by the accused person(s); though the complainant through his counsel sought an apology from the accused persons, copy of notice annexed herewith vide Exh-E.*

*2. <u>Trail of falsehood by the accused persons</u> - That the accused person(s) made a false excuse of sexual harassment in justifying the termination of the complainant's employment and thereafter defame him is substantiated by the following facts – That in the entire 'WS' of the accused no- 2 dt/- 3rd Aug, 2012 in suit No - 200069/12, alleging sexual harassment by the complainant not a single document was filed evidencing the same, except for false averments – that in order to not further raise the issue, the name of the female is not disclosed and that the complainant sought a letter of termination simplicitor so that reputation of his isn't disturbed."*

49. The next question that arises for consideration is whether

reading the above referred relevant paragraphs of the complaint can it be said that a *prima-facie* case exists for issuance of process by the learned Magistrate.

50. It is evident from the complaint at no place it is averred that the alleged imputation is with the intention of causing harm to the reputation of the non-applicant or it was with knowledge or reason to believe that the imputation will harm the reputation of the person to whom it pertains. Hence, it can safely be said that the complaint does not fulfill the prerequisites of Section 499 of the IPC.

51. Mere using word 'willfully' in the complaint without giving further details, it cannot be said that necessary pleadings about intention and knowledge are made.

52. In the light of the above observation, let us move to the findings recorded by the learned Magistrate while issuing process, to examine whether the learned Magistrate has applied his mind to get satisfied that whether the ingredients of Section 499 of IPC are satisfied or not. For this purpose, it is appropriate to refer to the order passed by the learned Magistrate, issuing process against the applicants, which reads thus:

> *"SCC No. 18664/2015* *Partha / Deepak & ors.*
>
> ***Order below Exh.1.***
>
> *1. The complainant was working in Future Generali Insurance Company. It is the case of complainant that, time to time he was*

*objected the illegal practice of Future Generali and its officials. That is why the complainant was threatened by the officials for facing heavy consequences. In the month of 2011, Ragini Das tampered some official documents in implicating her colleague Dipankar Das for official misconduct committed by Ragini Das. Due to this act, Ragini Das has been caught for her professional misconduct. Then she submitted her resignation. The accused Sunil Wariar repeatedly threatened to complainant to submit his resignation and threatened that he will never be able to get an employment in any reputed company. Then the Future Generial Insurance company illegally terminated the complainant on February 2011 aggrieved by the same complainant filed civil suit bearing RCS No.69/2012 before the Hon'ble Civil Judge, Sr.Dn. Nagpur. Future Generial Insurance Company filed their written statement under the signature of accused Madan Jalan falsely alleging that the complainant sexually harassed the unnamed female, hence the company was terminated the employment of complainant. The accused Madan Jalan states on oath that he is aware of all the facts and circumstances of sexual harassment.*

*2. According to complainant, these acts of allegations constituted an offence of defamation and liable to be prosecuted for the offence punishable u/s 500 of Cr.PC.*

*3. My learned predecessor had examined the complainant u/s 200 of Cr.PC. Inquiry vide Sec. 202 of Cr.PC is also conducted. The statement of complainant, Deepak Sood, Madan Gopal Jalan, Sunil Wariar, Amol Apte, Arban Malik and Ragini Das were recorded. Heard the complainant in person. I have also perused the written statement of Future Generial Insurance company filed in RCC No.69/2012 filed before the Hon'ble Civil Judge, Sr.Dn., Nagpur.*

*4 .As observed in the case of J.Sudarshan Vs. R. Shankaran (1992 Cr.LJ 2427) by Hon'ble Madras High Court. When the allegations made in the pleading are per say defamatory, it is open to the aggrieved person to prosecute the person making the allegations irrespective of pendency of Civil litigation.*

*5. In the case of M. N. Damani Vs. S. K. Sinha and ors. AIR 2001 SC 2037, the Hon'ble Apex Court has been pleased to observe that when there is private complaint alleging that the respondent made imputation against the complainant and it is clear that the allegations were made with intent to or knowledge to harm reputation of complainant, prima facie case is made out for trial. At the initial stage, it is not justifiable for the Hon'ble High Court to quash the proceeding by saying that there was no reasonable prospect of conviction after trial. Therefore, question whether imputation were made in good faith in what circumstances with what intention etc. are to be examined on the basis of evidence in the trial. Hence, trial must go on.*

*6 . In the case of Bikramjit Ahaluwalia and ors. Vs. Simran Ahaluwalia (Cr.MC 447/2013) Judgment dated*

*1/5/2015 the Hon'ble Delhi High Court has observed that defamatory statement made in previous civil proceeding or while giving statement to police u/s 161 of Cr.PC gives ground for filing complaint of defamation. The question as to whether such statement falls under any of the exception to Sec. 499 of IPC or whether they were made in goodfaith or cannot be decided at preliminary stage.*
*7. In the light of observation made by the Hon'ble Madras and Delhi High Court and by Hon'ble Apex Court in the case referred, cognizance of an offence can be taken though the imputation are said to be made in petition filed before High Court or FIR lodged against the complainant. The allegation of imputation of sexual harassment and accordingly a email forwarded by Ragini Das and other accused persons and its filing in written statement itself a defamation. Hence, prima facie case is made out against all the accused persons. Hence, I pass the following order.*

***Order***

*1. Issue process against accused no.1 to 4 for an offence punishable u/s 500 of IPC.*
*2. Summons so issued shall be returnable on 28/12/2017.*

*Sd/-.*

*Nagpur* *(M. V. Bharade)*
*Date : 30/11/2017* *Judicial Magistrate, First Class,*
*Court No.10, Nagpur"*

53. From the above referred impugned order, it is evident that though the learned Magistrate has referred to the judgment of the Hon'ble Supreme Court of India in the case of *M.N.Damani ..vs.. S.K. Sinha & oth.* reported in **AIR 2001 SC 2037,** however, the learned Magistrate missed the requirement mentioned therein about the intention and knowledge, before issuing process and without recording any findings that the alleged imputation is *prima facie* with intention of causing harm to the reputation of the non-applicant or with knowledge or reason to believe that the imputation will harm the reputation of the non-applicant.

54. There are also no findings for not accepting the police report wherein after recording statements of the non-applicant and other concerned persons, including the applicants, the police have categorically observed that *prima facie* no offence attracts.

55. It is evident from the impugned order that the learned Magistrate has not at all dealt with the *mens rea* or criminal intention. Even he has not considered whether sufficient pleadings are made by the non-applicant as regards *mens rea* or criminal intention of the applicants as the *mens rea* is *sine qua non* to attract Sections 499/ 500 of IPC.

56. After going through the statement of the non-applicant given before the police, it can be revealed that even in the said statement nowhere the non-applicant has mentioned about any criminal intention or *mens rea* of the applicants or the company. Further, admittedly, there are no pleadings in the complaint about the *mens rea* or intention of the applicants. Thus, I have no hesitation to hold that in this case *mens rea* or criminal intention is lacking or for want of necessary pleadings it is missing in the act of the applicants and therefore, they cannot be held guilty for the offence of defamation within the meaning of Section 499 of IPC.

57. Now moving further to examine that when a Company, an

artificial person acts through its officers, directors, managing directors chairman etc., if commits an offence, who would be responsible for any action. In this regard, the Hon'ble Supreme Court of India in the case of *Sunil Bharti Mittal ..vs.. CBI*, reported in **(2015) 4 SCC 609** has held as under :

> *"42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*
>
> *43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*
>
> *44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada, the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.*
> 45. ...

45.1 …

*45.2. Sham Sunder v. State of Haryana*

*"9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."*

*45.3. ...*

*45.4. Maksud Saiyed v. State of Gujarat*

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

*45.5. R. Kalyani v. Janak C. Mehta*

*"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."*

*45.6. ...*

*45.7. ...*

*46. It is stated at the cost of repetition that in the present case, while issuing summons against the appellants, the Special Magistrate has taken shelter under a so-called legal principle, which has turned out to be incorrect in law. He has not recorded his satisfaction by mentioning the role played by the appellants which would bring them within criminal net. In* *this behalf, it would be apt to note that the following observations of this Court in the case of GHCL Employees Stock Option Trust v. India Infoline Ltd.:*

> *"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. (Thermax Ltd. v. K.M. Johny followed) xx xx xx*
>
> *21. In the instant case the High Court has correctly noted that issuance of summons against Respondents 2 to 7 is illegal and amounts to abuse of process of law. The order of the High Court, therefore, needs no interference by this Court."*

58. From the above referred observations of the Hon'ble Supreme Court of India, it becomes evident that an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Moreover, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Even under a special statute when the vicarious criminal liabilities fastened on the person on the premise that he was incharge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled.

59. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Director of the company when the accused is a company. Moreover, there are no pleadings how the vicarious criminal liability is fastened on them

on the premise that they are in charge of the affairs of the applicant No.1 company and responsible to it. There are no pleadings to *prima facie* disclose their active role coupled with criminal intent.

60. The applicants are, admittedly, connected with the company- Future Generali India Life Insurance Co. Ltd. which is accused No.1 in Criminal Complaint Case No.21326 of 2012, in various capacities.

61. It is evident from the impugned order of the learned Magistrate that he has not recorded his satisfaction about the *prima facie* case against the applicants individually and in their official capacity in the company, which is *sine qua non* for initiating criminal action against them. Moreover, in similar set of facts the applicant Nos. 1 and 2 are made accused without making any pleadings about their role or their criminal intention or *mens rea*, in earlier criminal cases. Furthermore, applicant Nos. 3 and 4 were also made accused without disclosing their role in the alleged offence.

62. It is significant in view of the fact that neither in the first complaint or in the police report which was called in the present matter, the non-applicant mentioned anything about the role of the applicants.

63. Thus, on this ground also in absence of necessary pleadings

to show that there is any vicarious criminal liability, on the premise that they are in-charge of affairs of the company and responsible for it coupled with their criminal intent, the complaint itself is not maintainable against the applicants and issuance of process against the applicants is illegal and amounts to abuse of process of law.

64. In view of the above referred observations and in absence of necessary pleadings, I do not think it necessary to go into the issue whether the alleged imputation amounts to defamation or whether it falls within the ninth exception of Section 499 of IPC.

65. It is imperative to state here that this Court has quashed and set aside the first Summary Criminal Case No.21326 of 2012 filed by the non-applicant on the similar grounds vide judgment and order dated 28/11/2022 passed in Criminal Application (APL) No.679 of 2019. The present case, admittedly, is arising out of the revision which was filed challenging the order of issuance of process in the first Criminal case referred herein above. Thus, there is one more ground that since the original complaint has itself been quashed and set aside, the second complaint on the similar set of facts needs to be quashed.

66. In light of the above referred findings recorded, I have no hesitation to hold that the learned Magistrate has mechanically issued the process against the applicants without applying his minds to the essential

ingredients of Section 499 of the IPC and without examining the role of the applicants individually and whether there is any vicarious liability against them.

67. Hence, in exercise of inherent powers of this Court under Section 482 of Cr.P.C. for ends of justice and to prevent abuse of the process of the Court, I am of the considered view that the present application needs to be allowed. Accordingly, I pass the following order :

i) The application is allowed.

ii) The impugned order dated 30/11/2017 passed by Judicial Magistrate First Class, Court No.10, Nagpur in Summary Criminal Complaint Case No.18664 of 2015 is hereby quashed and set aside, consequently the proceedings of Criminal Complaint Case No.18664 of 2015 pending before Magistrate First Class, Court No.10, Nagpur, is hereby quashed.

Rule is made absolute accordingly.

Pending application(s), if any, shall stand disposed of.

**<u>JUDGE</u>**

*RRaut..*