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

CRIMINAL APPLICATION (APL) NO. 1099 OF 2022

1. Mrs. Ragini W/o. Swarup Das,
Aged about 47 years, Occu. : Service,
NBFC, Mumbai

2. Swarup S/o. Late Pramod Kumar Das,
Aged about 47 years, Occ. Service,
Human Resources,
Both R/o. Samarpan Exotica, B403,
CCI Compound, Off Dattaapda Road,
Borivali (East), Mumbai – 400 066.

…. **APPLICANTS.**

// **VERSUS** //

Partha S/o. Sarathy Sarkar,
Aged - Major, Occ: Advocate,
Resident of 20, Surana Layout,
Anant Nagar, Nagpur – 440 013.

…. **NON-APPLICANT.**

Shri Rohit Joshi, Advocate a/b Shri Madhur Deo, Adv. for Applicant.
The non-applicant in person.

CORAM : ANIL S. KILOR, J.
DATE OF RESERVING THE JUDGMENT : 19/10/2022
DATE OF PRONOUNCING THE JUDGMENT: 30/11/2022

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. The applicants in the case at hand have approached this Court by way of the present application under Section 482 of the Code of Criminal Procedure, challenging the order dated 13/07/2022 passed by the Judicial Magistrate First Class, Court No.10, Nagpur in Summary Criminal Case No.6276 of 2017, issuing process against the applicants under Section 204 of the Criminal Procedure Code (Cr.P.C.).

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

The applicant No.1 and non-applicant were working with Future Generali India Life Insurance Co. Ltd. The applicant No.1 was subordinate to him. The applicant No.2 is husband of the applicant No.1. It was informed by the non-applicant that his services were terminated by the said Company on 08/02/2011.

5. Since the above referred letter 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 and allegedly issued without following the laws of natural justice, the non-applicant filed a Special Civil Suit No.69 of 2012 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. He thereby, claimed Rs.1,00,00,000/- against the defendants with future interest. He further sought declaration about his illegal termination with consequential directions of reinstatement. The non-applicant also made other prayers.

6. 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. <u>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</u>. ..." (sic.)*

7. 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.

8. Thereafter a Summary Criminal Case bearing SCC No. 6276 of 2017 was filed before the Judicial Magistrate First Class, Nagpur against the applicants under Section 200 of Cr.P.C. in respect of offences under Sections 499, 500, 120-B read with Section 34 of IPC.

9. Initially, it was rejected by the learned Magistrate vide order dated 12/04/2019. However, vide an order dated 12/04/2019 passed in a Revision Application filed at the instance of non-applicant, the order of the Magistrate was set aside and the matter was remanded back for fresh decision.

10. Thereupon, the learned Magistrate issued process vide impugned order dated 13/07/2022 against the applicants under Section 204 of Cr.P.C. for the offences punishable under Sections 120-B, 500 read with Section 34 of the IPC. The same is under challenge in the present application.

11. I have heard Shri Rohit Joshi, learned counsel for the applicants and the non-applicant in person.

12. 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.

13. 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**.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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 Magistrate 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 is erroneous.

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

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

e) No case is made out under Section 120-B of the IPC.

f) The Summary Criminal Case is barred by limitation in view of Section 468 of Cr.P.C.

g) No case of conspiracy is made out against the accused No.2/ applicant No.2.

19. 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 is absolutely legal.

b) In view of the specific findings recorded by the Court 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) There is sufficient material to attract Section 120-B of the IPC.

f) The Summary Criminal Case was filed well within limitation.

20. Considering the rival submissions and as the applicants have raised a ground that the criminal case filed by the non-applicant was barred by limitation, I will examine the said issue first before considering the case on merits.

21. To examine whether the complaint under Section 200 of Cr.P.C. filed by the non-applicant was within limitation, it would be appropriate to refer to Section 468 of Cr.P.C. which reads thus:

> *"**468. Bar to taking cognizance after lapse of the period of limitation :***
> *(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
> *(2) The period of limitation shall be-*
> *(a) six months, if the offence is punishable with fine only*
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
> *(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.*
> *(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."*

22. The maximum punishment for the offence punishable under Section 500 of the IPC is simple imprisonment for a term which may extend to two years or with fine or with both. Similarly, the maximum punishment for Section 120-B of IPC will be same as for abetment of the offence under Section 499/500 of IPC. The limitation, therefore, for a private complaint filed for the offence under Section 499/500 and 120-B of IPC will be three years.

23. In the present case, undisputedly, the e-mail, issued by applicant No.1, is dated 7th February 2011. The copy of the said e-mail was filed by the defendants along with the List of Documents filed as a

part of written statement by the non-applicant in Special Civil Suit No. 69 of 2011. In the List of Documents, dated 01/11/2012 the said document is at Sr.No.2.

24. In the said backdrop, it can be said that since the non-applicant was the plaintiff in the said suit and the said document was filed along with the List of Documents, by the defendants to the said suit, on 01/11/2012, the non-applicant gathered the knowledge about the said e-mail on 01/11/2012.

25. Whereas, the Summary Criminal Case No.6276 of 2017 was filed by the non-applicant against the applicants on 16/03/2017. Thus, if the date of knowledge of the non-applicant as 01/11/2012, is considered, it can be said that the complaint was filed after more than 4½ years i.e. beyond the period of three years' limitation as provided under Section 468 of Cr.P.C.

26. No doubt, the limitation provided under Section 468 of Cr.P.C. is subject to extension of period of limitation under Section 473 of Cr.P.C. In the present case, there is no order extending such limitation by recording reasons disclosing satisfaction about the explanation of delay. In the circumstances, at the first place, the complaint is not maintainable as the same is barred by limitation.

27. Moving further on merit of the matter. 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 Section 499 of the IPC, are present to constitute the offence?

28. 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.

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

30. 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.

31. 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."*

32. 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.

33. 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.

34. 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:

35. 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."*

36. 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."*

37. 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."*

38. 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. …"*

39. 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."*

40. 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.

41. 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.

42. 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.

43. 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.

44. In the teeth of above referred well settled law, to examine whether the learned Magistrate in the case at hand has taken necessary care before exercising discretion to issue process, I will refer to the impugned order, which reads thus :

> *"SCC No. 6276/2017* Partha Sarathy Vs Ragini
>
> ***ORDER BELOW EXH. 1***
>
> (Passed on 13th day of July, 2022)
>
> *This is a complaint filed under Sec. 200 of Cr.P.C. for the offence punishable under Sec. 499, 500, 120-B R/w 34 of the Indian Penal Code. Heard the complainant, in person and perused the written notes of submission. I have gone through the verification of the complainant. Thereafter, the report of Police under Section 202 of Cr. P.C. was called upon, wherein the police submitted that the non-applicant No.1 had sent the email to Sunil Wariar only for personal information and not for complaining about anybody to the company.*
>
> 2] The record shows that non-applicant No.1 is the wife of non-applicant No.2. Non-applicant No.1 had stated in her statement to police that she has sent the e-mail to Sunil Wariar for personal information and not for complaining about anybody. I have gone through the contents of e-mail sent by non-applicant No.1 to Sunil Wariar, which is at Page No.94 of the record, wherein non-applicant No.1 had stated that she had been humiliated/ harassed by her conversation with the complainant, which is mentioned in details in the e-mail.
>
> *3] Having gone through the material on record and after hearing the complainant, I find that there is a sufficient material prima-facie on record to proceed against non-applicant Nos. 1 and 2 under Sec. 120-B and 500 R/w 34 of I.P.C.. Hence, I pass the following order.*
>
> **ORDER**
>
> *1) Issue process against non-applicant Nos. 1 and 2 under Sec. 120-B and 500 R/w. 34 of I.P.C. vide Sec. 204 of Cr.P.C.*
>
> 2) Issue summons to the witnesses after the filing of witness list as per Sec. 204 (2) of Cr.P.C.
>
> *Sd/-*
>
> Nagpur (G.N. Bagrodia)
>
> *Date:- 13/07/2022* *Judicial Magistrate First Class, Court No.10, Nagpur."*

45. In the impugned order, there are no findings recorded by the learned Magistrate that the alleged imputation is *prima facie* with the

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 or there was conspiracy of the applicant.

46. 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 Section 499/ 500 of IPC.

47. On perusal of the complaint, it can be seen that, 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. In the circumstances, they cannot be held guilty for the offence of defamation within the meaning of Section 499 of IPC. Thus, on merit also the learned Magistrate committed error in issuing process vide impugned order.

48. The applicant No.2/accused No.2 is husband of applicant No.1/ accused No.1, who issued the disputed e-mail. There are no pleadings against the applicant No.2 to satisfy the allegation of conspiracy. Thus, it is apparent that he has been unnecessarily roped into the present litigation and thus, it amounts to abuse of process of law.

49. Moreover, as no case of defamation is made out for want of necessary pleadings, the case under Section 120-B of the IPC also fails.

50. 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.

51. 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 Criminal Application is allowed.

ii) The impugned common order dated 13/07/2022, passed by Judicial Magistrate First Class, Court No.10, Nagpur is hereby quashed and set aside and consequently proceedings of Summary Criminal Case No. 6276 of 2017 is quashed.

Rule is made absolute accordingly.

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

<u>JUDGE</u>

RRaut..