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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30th November, 2023

Pronounced on: 23rd February, 2024

+ CRL.M.C. 3307/2011

SH. JAI BHAGWAN

..... Petitioner

Through: Mr. Salim A. Inamdar, Mr. Modassir
Husain Khan and Ms. Shruti Kapur,
Advocates.

versus

THE STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Mr. Aman Usman, APP for the State.
Mr. M.L. Yadav and Mr. Anshul
Yadav, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India seeks the following prayers:-

“It is, therefore, most respectfully prayed that this Hon'ble court may graciously be pleased to pass:

- i) Quash the summoning order dated 15.12.2010 passed by Mr. Sonu Agnihotri, MM. District North-East, Karkardooma Court, New Delhi in C.C. no. 38/ 08 titled as Rajender Kumar versus Jai Bhagwan u/s 3(x) of SC/ST of the Prevention of Atrocities act 1989;
- ii) Quash the order passed by Sh. S. K. Sharma ASJ in Revision No. 7/ 2011 titled as Jai Bhagwan Vs. State & Rajendar Kumar.
- iii) Pass any such and further order(s) as this Hon'ble Court may deem fit and proper in the above mentioned facts and circumstances.”



2. Briefly stated, the case of the complainant, Sh. Rajender Kumar (respondent no. 2 herein) is as under:

- i. On 26.09.2007, the complainant/respondent no. 2 was working as a Store Keeper at BSES YPL at GTB Hospital Office, Nand Nagri, Delhi. At about 04:30 PM, the petitioner reached the said office and wrongly crossed out the attendance of the complainant/respondent no. 2 for 04.09.2007 and marked the same as a 'holiday' in the presence of the latter.
- ii. It was alleged that when the complainant/respondent no. 2 asked the petitioner about the reason for the above action, he replied with remarks insulting the caste to which the former belonged.
- iii. It was further the case of the complainant that repeated complaints were made to the employer of the complainant/respondent no. 2, the SHO of PS Dilshad Garden, and other police authorities, but to no avail.
- iv. The complainant/respondent no. 2 filed a complaint before the National Commission for Scheduled Castes on 14.11.2007. The commission issued a notice to the Deputy Commissioner of Police, North-East, Seelampur, Delhi on 21.11.2007, however, no action was taken.
- v. After being unsatisfied with the aforesaid, respondent no. 2 filed a complaint before the learned Metropolitan Magistrate on 11.06.2008 who in turn directed the I.O. to submit an Action Taken Report (ATR). The SHO of P.S. Dilshad Garden on 25.07.2008 after investigating the matter submitted a status report in furtherance of the directions given by learned Metropolitan Magistrate.



- vi. In the meanwhile, the DCP also got the complaint investigated through ACP Simapuri as well as ACP PG (Cell) N.E. and submitted his report dated 10.12.2007. However, both the reports were held against the respondent no. 2.
- vii. Given the status reports submitted by the officials, the learned Metropolitan Magistrate, *vide* order dated 21.08.2008 dismissed the prayer of respondent no. 2 seeking direction under Section 156 (3) of the Cr.P.C for registration of FIR.
- viii. However, the learned MM proceeded with the complaint case of respondent no. 2, bearing No. 38/08, and recorded the statements of the complainant/respondent no. 2, Sh. Dayanand Sharma, Sh. Vishnu Prasad, the employees of BSES and Ct. Neelkamal as CW 1-4 respectively as pre-summoning evidence.
- ix. After recording the pre-summoning evidence led by respondent no. 2 and it's examination, the learned Metropolitan Magistrate found that a *prima facie* case exists against the petitioner for issuance of summon to the latter for the offence punishable u/s 3(1) (x) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') *vide* order dated 15.12.2010.
- x. Feeling aggrieved by the summoning order passed by the learned Metropolitan Magistrate, the petitioner filed a revision petition before the learned ASJ seeking setting aside the order passed by the learned Metropolitan Magistrate. However, the same was dismissed by the learned ASJ *vide* judgment dated 04.08.2011.



xi. Hence, the present petition filed by the petitioner assailing the order passed by the learned ASJ and learned Metropolitan Magistrate.

3. Learned counsel appearing on behalf of the petitioner submitted that in the status reports filed by the police before the learned Trial Court, it has been categorically stated that the complainant/respondent no. 2 was motivated to settle his personal score concerning his transfer. There were no eyewitnesses to the incident and the petitioner was not even present at the spot at the relevant point in time. In view thereof, it was submitted that the learned Trial Court has erred in passing the impugned order without giving due consideration to the status reports.

4. It is the case of the petitioner that respondent no. 2 has made false allegation that he was present on the date of incident at GTB store whereas in fact, he was on casual leave from his office on the said date. It is further submitted that staff from the office at GTB store have given true statements of the alleged incident in the enquiry by the local police and had not supported the allegations levelled by the respondent no. 2 against the present petitioner.

5. *Per contra*, learned APP for the State submitted that the status report filed by the police before the learned Trial Court is not governed by principles of the CrPC. It was submitted that a police officer may be biased towards a particular party and thus, may conduct a biased enquiry which might not reveal the accurate facts. Thus, the only remedy left with a particular person aggrieved by an incident is to file a complaint under Section 200 of the Cr.P.C.

6. Learned counsel appearing on behalf of the complainant submitted that the Trial Court has applied its mind in the present case and has passed a



detailed and well-reasoned order after proper application of mind. It was submitted that in any case, at the stage of issuance of summons, the scope of examination of facts by the Trial Court is very limited and any defence sought to be put up by the proposed accused cannot be a considered at that stage.

7. Heard learned counsel for the parties and perused the record.
8. It is a matter of record that the complainant/respondent no.2 had initially filed a complaint alongwith a prayer seeking direction under Section 156 (3) of the Cr.P.C., in pursuance of which, an Action Taken Report ('ATR') was called for from the concerned police station and after an enquiry, a status report was filed on 25.07.2008. Apart from the said status report, an enquiry report of DCP/North-East dated 24.07.2008 was also placed on record and the learned Metropolitan Magistrate, after going through the same, *vide* order dated 21.08.2008 observed as under:-

"I have perused the action taken reports filed on behalf of SHO, PS : Dilshad Garden, Delhi as well as DCP/NE. As per the ATRs matter has been got enquired through ACP, Seemapuri as well as ACP/PG Cell, N/E. Further as per the ATR enquiry revealed that respondent herein namely Mr Jai Bhagwan has made a complaint against the Rajender Kumar, complainant herein to BSES Authorities in which he had mentioned that complainant herein had threatened to falsely implicate him in some false case. Further as per the ATR, present complaint appears to be motivated with a view to settle some personal scores and despite being transferred and relieved from the office, the complainant returned back against the wishes of his senior officers. Further as per ATR, there is no eye witness to the incident. Further as per ATR, Jai Bhagwan, accused herein was not present in the office at the time of the alleged incident. Further as per ATR complainant and accused herein are supporters of opposite unions in BSES and are always in search of opportunities to let one another down. Alongwith the ATR received from DCP/NE, IO had placed on record photocopy of entire proceedings of the enquiry conducted by police. The said record contains the statement made by following persons:



(i) Raj Kumar (ii) Navin Chand Floria (iii) complaint made by respondent herein against the complainant herein. (iv) Visarnbar Dyal (v) Roshni Devi (Vii) Mohan Lal (viii) Inderveer Singh (ix) Bhola Prasad (x) Mahesh Kumar alongwith other documents. The version of the complainant has not at all found support from the so called enquiry conducted by the police.”

9. However, the aforesaid reports were not taken into consideration by the learned Metropolitan Magistrate while issuing summons under Section 204 of the Cr.P.C. in the impugned order dated 15.12.2010.

10. The impugned order primarily relies upon the statement of the complainant who examined himself as CW-1 and other witness namely Mr. Dayanand Sharma (CW-2).

11. Section 3(1)(x) of the SC-ST Act, 1989 as it stood prior to the amendment by Act 1 of 2016, provided as under: -

"3. Punishments for offences of atrocities. - (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or Scheduled Tribe in any place within a public view.

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

12. It is well settled law that the ingredients of the aforesaid offence would be satisfied if the alleged insult with regard to the caste of the complainant is made in public view. It was the case of the complainant that on the date of occurrence i.e., 26.09.2007, the said allegation was made by the petitioner in presence of Dayanand Sharma, who has been examined as CW-2. A perusal of the record reflects that as per the complaint the incident occurred on 26.09.2007 around 04:30 P.M. In the statement recorded before the learned



Trial Court, respondent no.2 (CW-1) has stated that he made a verbal complaint to his immediate boss on the same day (who has not been examined nor details given). It is further stated that he made a complaint to the Chief Executive Officer, BSES Ltd. Y.P.L. on 27.09.2007 (Ex. CW-1/A) and had also forwarded a copy of the same to SHO PS Dilshad Garden, Commission of SC/ST in the office of BSES Distt. Nand Nagri. Moreover, he had faxed the copy of the complaint to the Chief Minister and Lieutenant Governor on 27.09.2007 as well. It is further stated that another complaint was made to the DCP (North-East) on 04.10.2007 (Ex. CW-1/B).

13. Ex.CW-1/A, which was the first written complaint filed by respondent no.2 to CEO, BSES does not name the aforesaid witness Dayanand Sharma (CW-2) as being present at the time of the incident. Similarly, the forwarding letter to DCP, North-East District (CW-1/B) dated 04.10.2007; there is no mention of the allegation being made in the presence of aforesaid Dayanand Sharma. It is only in Mark Ex. CW-1/D, dated 05.10.2007 which is stated to be his statement recorded before the Station House Officer (SHO), P.S. Dilshad Garden, the name of aforesaid witness Dayanand Sharma (CW-2) is reflected for the first time. As per the enquiry report by ACP dated 10.12.2007, the concerned Investigating Officer had recorded the statements of staff members of store in GTB Hospital (alleged place of occurrence). The statement of witnesses had categorically come on record to say that the complainant/respondent no.2 was not in the office on the said date of incident. It is further relevant to note that the statement of said witnesses recorded during the inquiry were all on 05.10.2007 or 06.10.2007 and as pointed out hereinabove, the name of Mr. Dayanand Sharma (CW-2), as a witness to the



incident was for the first time introduced by respondent no.2/complainant in Mark Ex. CW-1/D, which is his statement recorded before the Station House Officer (SHO), P.S. Dilshad Garden on 05.10.2007.

14. The learned Trial Court although observed that there are certain contradictions between the testimonies but failed to notice that Dayanand Sharma (CW-2) during his testimony has categorically stated as under: -

“.....On 26.09.2007 I went to PS Dilshad Garden and I written a statement to SHO PS Dilshad Garden, the same is mark CW-2/A, bearing my signatures at pt. A.....”

15. A perusal of complaint (Ex. CW-2/A) reflects that there is no endorsement on the said document with regard to its receipt with the concerned police station. In fact, the complainant also examined Ct. Neel Kamal (CW-4), who was the concerned Constable of the DCP Office, Complaint Branch and the complaints filed by the complainant were brought on record, however, nothing was brought on record to reflect that statement (Ex. CW-2/A) was given by Dayanand Sharma (CW-2), to the said SHO, PS Dilshad Garden on that date as stated in his statement before the learned Trial Court. It is pertinent to note that the case of the respondent no. 2/complainant is that on 26.09.2007 he gave a verbal complaint to his superior. The first written complaint was given on 27.09.2007 to CEO, BSES, with a copy of the same to the SHO, PS Dilshad Garden. In these circumstances, the claim of Dayanand Sharma (CW-2) that he gave a statement to SHO, PS Dilshad Garden on 26.09.2007 gets completely falsified. When there was no complaint



with SHO on 26.09.2007, then there was no occasion for Dayanand Sharma (CW-2) to give his statement to SHO, PS Dilshad Garden on the said date.

16. The aforesaid facts demonstrate that the presence of Dayanand Sharma (CW-2) at the time and place of incident was shown as an afterthought. As pointed out hereinbefore the name of Dayanand Sharma (CW-2) was first time taken by the respondent no. 2/complainant in Mark Ex. CW-1/D, which is his statement, recorded before the Station House Officer (SHO), P.S. Dilshad Garden on 05.10.2007. The said date is relevant on account of the fact that the statements of other staff members of the BSES office, where the incident had admittedly taken place, had been recorded and were not supporting the case of the complainant.

17. In the absence of the testimony of Dayanand Sharma (CW-2), the case of respondent no. 2/complainant could not satisfy the ingredients of Section 3(1) (x) of the SC/ST Act. The Hon'ble Supreme Court in **Hitesh Verma v. State of Uttarakhand And Another, (2020) 10 SCC 710**, has held and observed as under,

“11. It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26-1-2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:

“3. (1)(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;”

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view”.



15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered “in any place within public view” is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in *Swaran Singh* [*Swaran Singh v. State*, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527], it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.”

18. The aforesaid fact was not appreciated by the learned Metropolitan Magistrate as well as by the learned ASJ in its proper perspective. The significance of the enquiry reports in the present case assumes importance on account of this factor and the learned Metropolitan Magistrate should have applied his mind to the same while appreciating the pre-summoning evidence recorded by the respondent no. 2/complainant.

19. The Hon’ble Supreme Court, in **Vadilal Panchal vs. Dattatraya Dulaji Gha Digaonkar and Anr.**, (1961) 1 SCR 1: AIR 1960 SC 1113, has observed and held as under: -

“9. The general scheme of the aforesaid sections is quite clear. Section 200 says inter alia what a Magistrate taking cognisance of an offence on complaint shall do on receipt of such a complaint. Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process



and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. Section 203, be it noted, consists of two parts : the first part indicates what are the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. Section 204 says that if in the opinion of the Magistrate there is sufficient ground for proceeding, he shall take steps for the issue of necessary process.

10. Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials which he had to consider, before passing his order under Section 203 CrPC. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent-complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct.

It is manifestly clear from the provisions of Section 203 that the judgment which the Magistrate has to form must be based on the statements of the complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment.

In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the Inquiring Officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under Section 202 and has applied his mind judicially to the materials before him, we think that



if would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses — all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.”

(emphasis supplied)

20. The aforesaid observation of three-judge Bench of Hon’ble Supreme Court was with respect to a case where appellant therein, was made an accused in a complaint filed before the learned Presidency Magistrate, Bombay by the respondent therein alleging that the appellant therein had fired shots resulting in death of one Sitaram and also injured one other person. The Coroner of Bombay in an inquest into the aforesaid incident and the Coroner’s Jury returned a verdict that the deceased Sitaram died of the gunshot wound caused by the appellant therein “under such circumstances as would render the firing to be in exercise of the right to private defence and as such justified.” In view of the aforesaid findings and the complaint filed by the respondent, the police could not take any action. In view of the same respondent therein filed his complaint before the learned Presidency Magistrate who in further referred the same to Superintendent of Police, CID for enquiry report under Section 202 of the Cr.P.C. After receiving the report learned Presidency Magistrate passed the following order:

“4....The Police have recorded in detail the statements of all witnesses produced by the complainant as well as of all the occupants of the car. There is, therefore, material on record showing fully whether the circumstances existed making out the right of private defence available to the accused. The fact whether the case falls within one of exceptions or not can be established on the evidence of the witnesses produced by the prosecution itself though of course the burden of proof lies on the accused. From the statements, recorded by the police in this case and



from the surrounding circumstances of the case, I have come to the definite conclusion that the report of the police stating that the shot was fired by the accused in self-defence is true. As I have stated the statement of the police surgeon conclusively supports the conclusion. I have come to the conclusion that the statements of the four eyewitnesses brought by the complainant are false. These eyewitnesses are not credible witnesses. It will be harassment to the accused and waste of public time if any process is issued in this case....”

[Para 4 of **Vadilal Panchal** (*supra*)]

In view of the above observation, learned Presidency Magistrate dismissed the said complaint under Section 203 of the Cr.P.C.

21. In the present case, learned Metropolitan Magistrate did not order an enquiry under Section 202 of the Cr.P.C. It is important to note that the complaint filed by the respondent had the following subject and prayers:-

“COMPLAINT U/S 3 CLAUSE (X) AND SUB SECTION (2) AND CLAUSE (VII) OF SCHEDULED CASTES AND SCHEDULED TRIBES PREVENTION OF ATROCITIES ACT, 1989.

It is, therefore, most respectfully prayed:-

- a) The Hon'ble Court in the aforesaid facts and circumstances of the case may kindly be prayed to investigate the matter by a Senior Police Officer and get his report for proper action within a short time.
- b) The Hon'ble Court may kindly be pleased to take cognizance against the accused person in the aforesaid facts and circumstances of the case and to prosecute him against the aforesaid offences done by the accused, in the interest of justice”

22. The reports which came on record were in pursuance of the order passed by learned Metropolitan Magistrate for the consideration of prayer regarding direction for investigation. At this stage, it is important to further refer to the order dated 21.08.2008 passed by learned Metropolitan Magistrate while deciding the said prayer by observing as under:



“In my considered opinion in the present case, entire evidence to prove the version of the complainant on judicial is within the reach of the complainant. There has been only vocal altercation as alleged between the complainant and accused. Also to my mind no purpose is going to be served in the facts and circumstances of the case by directing the SHO, PS : Dilshad Garden, Delhi to register the FIR particularly keeping in view the stand of the police at this stage. As such request of the complainant for directions U/s 156(3) CrPC is declined.”

The above said observation is pursuant to the findings of the learned Metropolitan Magistrate as mentioned in the preceding paragraphs of the said order, after taking into consideration the enquiry reports, which formed part of the judicial record, in pursuance of the directions given by him.

23. It is further pertinent to note that the said report under Section 156(3) of the Cr.P.C. forms part of the judicial record and there is no bar in the Code of Criminal Procedure for examining such enquiry reports before reaching a decision with respect to summoning proposed accused in a complaint case. In view of the principles laid down by the Hon’ble Supreme Court in the aforesaid judgment (**Vadilal Panchal (supra)**), the learned Metropolitan Magistrate, although was not bound to accept the result of the enquiry or investigation but should have applied his judicial mind to the material placed alongwith the enquiry report to form his judgment.

24. In a catena of judgments, the Hon’ble Supreme Court has consistently held that summoning a person in a criminal case cannot be a mere formality. The Hon’ble Supreme Court, in **Sunil Todi & Ors. v. State of Gujarat & Anr., 2021 SCC OnLine SC 1174**, has observed and held as under:

“**39.** This Court has held that the Magistrate is duty bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a *prima facie* sufficient ground for proceeding. In *Mehmood UI*



*Rehman v. Khazir Mohammad Tunda*²¹, this Court followed the dictum in *Pepsi Foods Ltd. v. Special Judicial Magistrate*²², and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed:

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd. v. Judicial Magistrate* [*Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.”

“22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. 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 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. 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.”

25. This Court, in exercise of its power under Section 482 of the Cr.P.C. can examine the enquiry report which is a part of the Trial Court Record. The Hon’ble Supreme Court, in **Mahmood Ali & Ors. v. State of U.P. & Ors., 2023 SCC OnLine SC 950**, has observed and held as under:

“**13.** At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other



attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

26. In view of the above discussion, this Court is of the considered view that the impugned summoning order dated 15.12.2010 passed by the learned Metropolitan Magistrate has not considered the aforesaid facts and circumstances highlighted in the preceding paragraphs emanating from the enquiry reports which were part of the judicial record. The result of the said enquiry cannot be simply brushed aside only because the complainant has examined himself during the pre-summoning evidence. The factual contradictions falsified the presence of Dayanand Sharma (CW-2) to satisfy the ingredients of 'public view' in terms of Section 3(1) (x) of the Act. The attempt of respondent no. 2 to show the presence of Dayanand Sharma (CW-2) assumes significance in background of the enquiry report placed on record which is duly noted in the order dated 21.08.2008 passed by the learned Metropolitan Magistrate as follows:-

"Further as per the ATR, present complaint appears to be motivated with a view to settle some personal scores and despite being transferred and relieved from the office, the complainant returned back against the wishes of his senior officers. Further as per ATR, there is no eye witness to the



incident. Further as per ATR, Jai Bhagwan, accused herein was not present in the office at the time of the alleged incident. Further as per ATR complainant and accused herein are supporters of opposite unions in BSES and are always in search of opportunities to let one another down."

27. Keeping in view the aforesaid facts and circumstances and the principles laid down by the Hon'ble Supreme Court in **Mahmood Ali & Ors. v. State of U.P. & Ors. (*supra*)**. This Court is of the opinion that the present case warrants the exercise power envisaged under Section 482 of the Cr.P.C. in the interest of justice and therefore, the impugned order dated 15.12.2010 passed by learned Metropolitan Magistrate and judgment dated 04.08.2011 passed by learned ASJ in Criminal Revision No. 02/11 alongwith the proceedings emanating therefrom are hereby quashed and set aside.
28. The present petition is allowed and disposed of accordingly.
29. Pending application(s), if any also stand disposed of.
30. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

FEBRUARY 23, 2024/nk/sn