

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 2659 of 2013
With
CRAN 1/2013
With
CRAN 2/2015**

**H.T. Media Limited & Anr.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners : Mr. S. K. Bajoria
Mr. Narattam Acharya

For the Opposite Party 2: Mr. Prashant Kr. Tripathi

Heard on : 28.07.2023, 15.09.2023.

Judgment on : 13.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioner for quashing of the proceedings being C. Case No. 275 of 2012 under Section 500 of Indian Penal Code pending before the Learned 2nd Judicial Magistrate at Sealdah.
2. The contentions of the petitioners in the instant applications are stated as follows:
 - i. Petitioner no. 1 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 18-20,

Kasturba Gandhi Marg, New Delhi – 110001. Petitioner no. 2 publishes and/or is the owner of daily newspaper “Mint”.

- ii. The petitioners contended that the private complaint case being C. Case No. 275 of 2012 filed by the opposite party no. 2 alleging that the Newspaper “Mint” had published defamatory article against the complaint/opposite party no. 2 which were denied by the petitioners to be completely false, frivolous, motivated, manufactured, unwarranted, untenable and fabricated born with ulterior motive and mala fide intentions, in an attempt to harass the petitioner compelling and coercing the petitioner and the newspaper to refrain from publishing the correct and true news in the newspaper.
- iii. The Learned Magistrate, without following the procedure under Section 200 and 202 of the Code of Criminal Procedure upon receipt of the complaint took cognizance of the offence as complained of. The Learned Magistrate in compliance of the procedure under Section 200 of the Code of Criminal Procedure issued process in terms of the provisions as under Section 204 of the Code of Criminal Procedure, against the petitioner.
- iv. Petitioner no. 1 is H.T. Media Limited, a company registered under Companies' Act, 1956 having its registered office at Hindustan Times House, 2nd Floor, K.G. Marg, New Delhi and owns a newspaper named “Mint”.

3. The facts stated in the complaint do not envisage a prima facie case to attract the provisions of Sections 500 of the Indian Penal Code. There was neither any intention nor any personal enmity with the complainant/respondent no.2 to publish alleged incorrect report against it, rather it was plain and simple reporting of the facts. None of accused knows the Opposite Party no 2, either personally or professionally, and therefore Petitioner cannot possibly hold any ulterior motive against the Opposite Party no 2 to defame it for any reason whatsoever.
4. The Learned Judicial Magistrate while issuing summons/process committed gross illegality by overlooking the provisions of Section 202 (1) of Cr.P.C, which makes its mandatory for the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by the police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. In the instant case, the registered office of the petitioner herein which is called the place of residence is situated at New Delhi, outside the jurisdiction of the Courts. In the present case, the Ld. Judicial Magistrate has failed to even appreciate that the Opposite Party No.2 has intentionally not annexed the newspaper, "Mint" containing the said news item, wherein the correct address details of the Petitioners are mentioned. The Opposite Party No.2 has intentionally and mala fide concealed the correct facts, which the Ld. Judicial Magistrate has conveniently and mechanically overlooked. In spite of the fact that the Petitioner is having office and residence at New Delhi, i.e. beyond the

jurisdiction of the Ld. Judicial Magistrate, he has issued the summons in the complete and blatant violation of the provisions of the law.

5. It is submitted that it is a settled principle of law that in a case where the learned magistrate feels appropriate to take cognizance of an offence, he still has the discretion under Section 202 of Cr.P.C to postpone the issue of process against the accused, which becomes mandatory in case the accused resides outside the jurisdiction of such Court. Summoning of an accused in a criminal case is a serious matter. An 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 on oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charges against him to the accused. It is not that the Ld. Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Ld. Magistrate has to carefully scrutinize the evidence brought on records and may even himself put questions to the complainant and his witness to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by Petitioners and/ or any of them.
6. It is abundantly clear that the Ld. Magistrate has failed to follow the mandatory procedure outlined under Section 202 (1) of Cr.P.C. and has committed grave error in law in issuance of process leading to miscarriage of justice.
7. The Learned Advocate for the petitioner submitted that –

- i. The allegations made in the complaint petition are completely false, frivolous, motivated, manufactured, unwarranted, untenable and fabricated.
- ii. The process has been directed to be issued by the Ld. 2nd Judicial Magistrate against the Petitioner amongst others, on the basis of the said Complaint of the opposite party no.2, has been ordered in a mechanical manner and without due or proper application of mind.
- iii. There was neither any intention nor any personal enmity with the complainant/Respondent no.2 to publish alleged incorrect report against it, rather it was plain and simple reporting of the facts.
- iv. None of accused knows the Opposite Party no 2, whether personally or professionally, and therefore Petitioner cannot possibly hold any ulterior motive against the Opposite Party no. 2 to defame it for any reason whatsoever.
- v. The Learned Judicial Magistrate has erred in summoning the Petitioner as there is not and cannot be any Intention or any object on the part of your petitioner to make any defamatory statement against the opposite party no 2 herein, nor any intention having been alleged, and that without intention and object there to cannot be any commission of offence is the gist of the offence of abetment, by aid.
- vi. The bare perusal of the complaint petition does not even reveal a prima-facie case and the complaint does not even contain necessary averments against the applicant to constitute an offence of defamation.

- vii. The Learned Judicial Magistrate while issuing summons/process committed gross illegality by overlooking the provisions of Section 202 (1) of Cr. P.C, which makes its mandatory for the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by the police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.
- viii. The Learned Magistrate failed to consider the provisions under Section 177 of the Code of Criminal procedure at the time of determining the jurisdiction in the said case.
- ix. Normally the expression 'cause of action' used, in criminal cases as stated in Section 177 of the Code of Criminal Procedure, reference is the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression 'cause of action' is, therefore, not a stranger to criminal case.
- x. It is a settled principle of law that where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned under which a criminal proceeding is instituted to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party and in that case the Hon'ble Court can exercise its extraordinary power under Section 482

of the Code of Criminal Procedure to prevent abuse of the process of the Court.

- xii. In the impugned matter, the Ld. Judicial Magistrate has failed to even appreciate that the Opposite Party No.2 has intentionally not annexed the newspaper, "Mint" containing the said news item, wherein the correct address details of the Petitioner are mentioned.
- xiii. The Opposite Party No.2 has intentionally and with malafide intentions concealed the correct facts, which the Ld. Judicial Magistrate has overlooked.
- xiv. Despite the fact that the Petitioner is having office and residence at New Delhi, i.e. beyond the jurisdiction of the Ld. Judicial Magistrate, he has issued the summons in the complete and blatant violation of the provisions of the law.
- xv. The summoning order is ex-facie bad as the allegations made in the complaint are absurd and are based on figment of imagination of opposite party no. 2.
- xvi. In the facts and circumstances of case, continuation of the impugned proceedings and/ or proceeding any further in the same would cause travesty of justice and it is just convenient proper and necessary as also it is expedient that the same is liable to be and should be quashed.
- xvii. It is in the ends of justice that the impugned proceedings be quashed.

8. The accused no. 2 is the editor of the said newspapers whereas the accused no. 3 is a reporter/journalist of the said newspaper working for gain at the abovementioned address of the accused company.
9. On 11.04.2012 the accused persons published an article at page 4 of their daily newspaper 'Mint' covering a legal proceeding of the complainant company pending before the Hon'ble High Court at Calcutta. The said article was authored by accused no. 3 and edited by the accused no. 2. In the said publication accused persons brought serious allegations and imputations against the complainant company and its management including Shri Pawan Kumar Ruia. Some portions of the said publication which was based on distorted, manufactured and untrue facts are, inter alia, quoted hereinbelow:

(i) *"At Tuesday's tripartite meeting with the State Government and Dunlop's workers, Ruia Group chairman, Pawan Kumar Ruia proposed severance pay for the rest of the firm's employees under a voluntary retirement scheme."*

(ii) *"Ruia said he wished to re-open the Sahaganj factory ahead of 18 April – the day a division bench of Calcutta High Court is expected to hear Dunlop's appeal against a judgement of the same court, appointment liquidator to take control of the firm's current assets and to reclaim those that it sold to subsidiaries five years ago."*

(iii) *"Justice Sanjib Banerjee of the High Court ruled on 26th March that Dunlop had illegitimately sold its prized properties across the country, including its 1 acre office in Mumbai's Worli neighborhood, to subsidiaries for shares issued by them at a premium of Rs. 990 each."*

The liquidator was asked to immediately take control of the assets the Dunlop still owns and to initiate legal steps to regain control of those it sold in 2007.”

(iv) “Through Dunlop’s legal challenge to Banerjee’s order was admitted by the appeals Court, it didn’t stall the appointment of a liquidator. It ordered the liquidator to immediately prepare an inventory of the firm’s assets.”

(v) “.....the minister said, adding that Dunlop’s workers aren’t immediately convinced that the chartered accountant-turned acquirer of stressed assets has long term plans of reviving the Company.”

10. The petitioner stated that the overall contents of the above quoted publication are outrageously malevolent, blatantly false, malafide and mischievous in nature and has been made by the accused persons to rouse public hatred, contempt and ridicule over the management of the complainant company and further jeopardized the integrity, prestige, repute, goodwill and future business prospects of the complainant company with its existing clients as well as the business community and prospective buyers of the products manufactured by the Company.

11. The Learned Advocate for opposite party no. 2 submitted that the opposite party no. 2 and opposite party no.3 being the editor and news reporter of the newspaper ‘Mint’ published distorted and concocted facts against the complainant company and its management which has affected reputation and goodwill of the company and Shri Pawan Kumar Ruia in specific. The public in general was confounded at the publication of the news generating

discontentment over the issues claimed to have been dealt by Shri Pawan Kumar Ruia at a meeting with the Hon'ble Minister. Shri Pawan Kumar Ruia did not utter anything as published in the newspaper since he was absent in the meeting and such statement has ruined his reputation and lowered his position in the society and the immediate business circle where he has been demeaned with suspicion and lack of confidence. Such remark was derisive and contemptuous. The reporting of the Court proceedings too was unlawful. Accordingly, the instant revisional application shall be dismissed.

12. Section 202 of the Cr.P.C. states as follows:

“Postponement of issue of process - (1) *Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, ¹[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction]. postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by, a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made, –

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions or

(b) Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer in charge of a police station except the power to arrest without warrant.”

13. Section 177 of the Cr.P.C. states as follows:

“Ordinary place of inquiry and trial - Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.”

14. Section 499 of the Indian Penal Code states as follows:

“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, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

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 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 enquiry 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.

*Eighth 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 for 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.”*

15. Section 500 of the Indian Penal Code states as follows:

“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.”*

16. In **Aroon Purie vs. State of NCT of Delhi and others**¹, the Hon’ble Supreme Court observed:

“In Jawaharlal Darda & Ors. Vs. Manoharrao Ganpatrao Kapsikar & Anr.², the reporting made by a newspaper about the proceedings in the Legislative Assembly touching upon the issues of misappropriation of Government funds meant for certain projects, was the subject matter of complaint alleging defamation. The decision shows that the article being accurate and true reporting of the proceedings of the House, which was reported in good faith in respect of conduct of public servants entrusted with public funds intended to be used for public good, the protection was extended and the power under Section 482 of the Code was utilised. Paragraph 5 of the decision is as under: “5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary

¹ 2022 SCC OnLine SC 1491

² (1998) 4 SCC 112

enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court.”

20. Similarly, in *Rajendra Kumar Sitaram Pande vs. Uttam*³, a reporting made to a superior officer alleging misconduct on the part of complainant was taken to be completely protected by exception 8 to Section 499 of the IPC and the proceedings were quashed. The relevant portion from paragraph 7 of the reported decision is as under: -

“7. ... Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of

³ (1999) 3 SCC 134

issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. ...”

17. In **Gambhirsinh R. Dekare vs Falgunbhai Chimanbhai Patel**⁴, the Hon’ble Supreme Court observed:

“14. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by any one other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record. It is apt to remind ourselves the answer of the Editor of the Scotsman, a Scottish newspaper. When asked what it was like to run a national newspaper, the Editor answered "run a newspaper! I run a country". It may be an exaggeration but it does reflect the well known fact that it can cause far reaching consequences in an individual and country's life.

15. The Scheme and Scope of Press and Registration of Books Act, 1867 (hereinafter referred to as "the Act") also brings forward the same conclusion. Section 1 of the Act is the interpretation clause and the expression "Editor" has been defined as follows:

1. Interpretation-Clause.-(1) In this Act, unless there shall be something repugnant in the subject or context,-

"editor" means the person who controls the selection of the matter that is published in a newspaper;

16. Section 5 of the Act provides for rules as to publication of newspapers and prohibits its publication in India except in conformity

⁴ (2013) 3 SCC 697

with the rules laid down. Section 5 (1) of the Act which is relevant for the purpose reads as follows:

5. Rules as to publication of newspapers.-No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) Without prejudice to the provisions of Section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

17. From a plain reading of the aforesaid provision, it is evident that every copy of every newspaper published in India is mandated to contain the names of the owner and Editor thereof. It is in the light of the aforesaid obligation that the name of the accused No. 2 has been printed as Editor. Section 7 of the Act makes the declaration to be prima facie evidence for fastening the liability in any civil or criminal proceeding on the Editor. Section 7 of the Act reads as follows:

7. Office copy of declaration to be prima facie evidence.- In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, or the editor of every portion of that issue of the newspaper of which a copy is produced.

18. Therefore, from the scheme of the Act it is evident that it is the Editor who controls the selection of the matter that is published in a newspaper. Further, every copy of the newspaper is required to contain the names of the owner and the Editor and once the name of the Editor is shown, he shall be held responsible in any civil and criminal proceeding. Further, in view of the interpretation clause, the presumption would be that he was the person who controlled the selection of the matter that was published in the newspaper. However, we hasten to add that this presumption under Section 7 of the Act is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. The view which we have taken finds support from the judgment of this Court in the case of *K.M. Mathew v. K.A. Abraham*⁵, in which it has been held as follows:

20. The provisions contained in the Act clearly go to show that there could be a presumption against the Editor whose name is printed in the newspaper to the effect that he is the Editor of such publication and that he is responsible for selecting the matter for publication. Though, a similar presumption cannot be drawn against the Chief Editor, Resident Editor or Managing Editor, nevertheless, the complainant can still allege and prove that they had knowledge and they were responsible for the publication of the defamatory news item. Even the presumption under Section 7 is a rebuttable presumption and the same could be proved otherwise. That by itself indicates that somebody other than editor can also be held responsible for selecting the matter for publication in a newspaper.

*K.M. Mathew v. State of Kerala*⁶, relied on by Mr. Dave, in our opinion, same instead of supporting his contention, goes against him. In the said case it has been observed as follows:

⁵ (2002) 6 SCC 670

⁶ (1992) 1 SCC 217

9. In the instant case there is no averment against the Chief Editor except the motive attributed to him. Even the motive alleged is general and vague. The complainant seems to rely upon the presumption under Section 7 of the Press and Registration of Books Act, 1867 ('the Act'). But Section 7 of the Act has no applicability for a person who is simply named as 'Chief Editor'. The presumption under Section 7 is only against the person whose name is printed as 'Editor' as required under Section 5(1). There is a mandatory (though rebuttable) presumption that the person whose name is printed as 'Editor' is the Editor of every portion of that issue of the newspaper of which a copy is produced. Section 1(1) of the Act defines 'Editor' to mean 'the person who controls the selection of the matter that is published in a newspaper'. Section 7 raises the presumption in respect of a person who is named as the Editor and printed as such on every copy of the newspaper. The Act does not recognise any other legal entity for raising the presumption. Even if the name of the Chief Editor is printed in the newspaper, there is no presumption against him under Section 7 of the Act.

20. In this case the accused was the Chief Editor of Malayalam Manorama and there was no allegation against him in the complaint regarding knowledge of the objectionable character of the matter published. In the absence of such allegation, the Magistrate decided to proceed against the Chief Editor. On an application by the Chief Editor, the process issued against him was recalled. The High Court, however, set aside the order of the Magistrate and when the matter travelled to this Court, it set aside the order of the High Court. This Court made distinction between 'Editor' and 'Chief Editor'. In no uncertain terms the Court observed that the Press and Registration of Books Act recognizes 'Editor' and presumption is only against him. The Act does not recognize any other legal entity viz., Chief Editor, Managing Editor etc. for raising the presumption. They can be proceeded against only when there is specific allegation.

21. We may here observe that in this case, this Court has held that the Magistrate has the power to drop proceeding against an accused against whom he had issued process in the following words:

8. It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it does not disclose any offence against the accused.

22. However, this Court in *Adalat Prasad v. Rooplal Jindal*⁷, has specifically overruled *K.M. Mathew (Supra)* in regard to the power of the Magistrate to recall its order issuing process. It has been observed as follows:

15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Code of Criminal Procedure does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

16. Therefore, in our opinion the observation of this Court in the case of *K.M. Mathew v. State of Kerala (supra)*, that for recalling an erroneous order of issuance of process, no specific provision of law

⁷ (2004) 7 SCC 338

is required, would run counter to the scheme of the Code which has not provided for review and prohibits interference at interlocutory stages. Therefore, we are of the opinion, that the view of this Court in Mathew's case (supra) that no specific provision is required for recalling an erroneous order, amounting to one without jurisdiction, does not lay down the correct law.

23. Thus our reference to K.M. Mathew (supra) may not be construed to mean that we are in any way endorsing the opinion, which has already been overruled in Adalat Prasad (supra)."

18. The allegations in the complaint did not indicate any ulterior motive on the part of the newspaper to malign the reputation of the complainant company through abusive language and imputation. A general statement was published addressing the interest of a certain group of employees belonging to the company of the complainant. An action proposed to have been taken in house without any ramification to affect the public at large. In view of this Court, the statement published against the Chairman of the Ruia Group and the Government in presence of the workers of the complainant company in the opinion of this Court was made in good faith falling within the Third Exception of Section 499 of the Indian Penal Code where a particular conduct of the complainant company proposing to initiate certain steps in the functioning of the company and subsequent developments thereto has been published, which if materialized would be beneficial to the employees of the complainant company exclusively. Such commitments as alleged to have been wrongly stated by the newspaper, would not amount to an imputation of the character of the concerned person if such proposed futuristic approach does not accomplish. Under Section 7 of the scheme and scope of Press and Registration of Books Act, 1867, prescribed the editor to

be in control of selection of the matter and shall be responsible in any civil or criminal proceedings. However, in the instant case, there is no averment in the complaint attributing the motive to defame the complainant and his company. Apart from general statement, there is no specific allegation. The complaint was not supported by the copy of the newspaper to corroborate the claim of the complainant. Further it had been mentioned in the complaint that the statements with regard to the Court proceedings had been substantially correct with regard to the appointment of an official liquidator to act as special officer of the Hon'ble Court. Such publication of Court proceedings would fall under the Fifth Exception to Section 499 of the Indian Penal Code. Moreover, there was no publication with regard to the merits of the case, pending before the Court.

19. The Learned Magistrate did not comply with Section 202 of the Code of Criminal Procedure which had to be mandatorily complied with. The complaint itself revealed the address of the opposite parties pertaining to Delhi beyond the jurisdiction of the Learned Trial Court. The Learned Trial Court mechanically issued the process without following the provisions enumerated in Section 202 of the Code of Criminal Procedure which is a statutory mandate to be followed. Such non-compliance envisaged in Section 202 of the Code of Criminal Procedure indubitably affects the rights of the petitioners. The complaint in itself apart from vague allegations does not reveal specific criminal intention on the part of the petitioners to defame or malign the complainant company in the eyes of the public at large affecting his reputation and goodwill or cause any kind of injury to his

profession. The complaint does not reveal the commission of a cognizable offence by the petitioners whose act falls under the Exceptions of Three and Five of Section 499 of the Indian Penal Code.

20. In view of the above discussions and the cited decisions to allow continuing with the trial will result in abuse of the process of law and as such the instant revisional application being CRR 2659 of 2013 is allowed.
21. In view of the above discussions, the proceedings being C. Case No. 275 of 2012 under Section 500 of Indian Penal Code pending before the Learned 2nd Judicial Magistrate at Sealdah is quashed.
22. Accordingly, CRR 2659 of 2013 along with CRAN 1 of 2013 and CRAN 2 of 2015 stand disposed of.
23. There is no order as to cost.
24. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)