

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1932 of 2020

with

CRAN 1 of 2022

Mr. Debasish Basak

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Debangana Bhattacharya,
Mr. Ranjit Singh.

For the State : Ms. Sujata Das.

Hearing concluded on : 05.09.2023

Judgment on : 29.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being Complaint Case No. AC-5953/19, under Sections 420/406/384/120B/34 of the Indian Penal Code, 1860, pending before the Court of Learned 7th Judicial Magistrate, Alipore, South 24 Parganas.
2. The petitioner's case is that the petitioner herein is an agent of IDFC First Bank Limited (Formerly known as M/s. Capital First Home Finance Limited). Subsequently in terms of the order dated 6th December, 2018 passed by Hon'ble National Company Law Tribunal, Mumbai Bench in connection with Company Petition No. 3925 of **2018 the said M/s Capital First Limited and M/s. Capital First Home Finance Limited were merged with M/s. IDFC Bank Limited.**
3. The Deputy Registrar of Company pursuant to rule 29 of the Companies (Incorporation) Rules, 2014 issued the Certificate of Incorporation dated 12th January, 2019 and accordingly the name of petitioner Company was changed from M/s. IDFC Bank Limited to M/s. IDFC First Bank Limited.
4. The petitioner is working for gain at IDFC First Bank Finance Limited) (Formerly known as M/s Capital First Home Finance Limited) at KRM Towers, 7th Floor, No. 1, Harrington Road, Chetpet Chennai – 600 031 and branch office at Apeejay House, Block – B, 7th Floor, 15, Park Street, Police Station – Park Street, Kolkata – 700 016.

5. The Complaint Case, being no. AC-5953/19, has been initiated on the basis of the Petition of Complaint, filed by the de facto complainant (i.e. Opposite Party no. 2 herein), therein alleging the commission of the offences, punishable under Sections 420/406/384/120B/34 of the Indian Penal Code, 1860, before the Learned Additional Chief Judicial Magistrate, Alipore.

6. **The allegations leveled against the petitioner, inter alia, to that effect are:-**

- i) *The Opposite Party no.2, is a business man and runs his business as a proprietor, under the name and style as “M/s U. K. Traders”, having its office at 1, Teretta Bazar Street, Kolkata – 700 073.*
- ii) *The Opposite Party No. 2, is the registered owner of the 5 self contained flats, situated on the Top Floor, of the building, situated at premises no. 494, Tarapada Santra Sarani, P.O. – Thakurpukur, P.S. – Haridevpur, District – South 24 Parganas, and the said properties have been purchased from the accused persons no. 4 to 7, through their lawful attorney, accused no. 3 by way of a registered Development Agreement, Power of Attorney and Deed of Conveyance at a valuable consideration money of Rs. 90,00,000/- and the Deed was duly registered at the Office of Additional District Sub-Registrar at Behala, in Book no. 1, for the year 2018.*
- iii) *That before registration of such Deed of Conveyance, the Opposite Party no. 2, had already paid the consideration amount of Rs.*

90,00,000/- to the accused no. 3, proprietor of the accused no. 2 company and said amount has been received on acknowledging the same through money receipt.

- iv) The petitioner impersonating himself as an agent of the Capital First Home Finance Limited, approached and induced the Opposite Party no. 2, to avail of the loan facility from his company, i.e. Capital First Home Finance Limited **by mortgaging the 5 self contained flats of the Opposite Party no. 2.**
- v) That due to such allurement of the petitioner and his company, i.e. Capital First Home Finance Limited, the Opposite Party no. 2, availed of one loan facility from Capital First Home Finance Limited by mortgaging the said 5 self contained flats of the Opposite Party no.2, bearing the Loan Account no. 17699091 (Housing Finance Loan) of Capital First Home Finance Limited and the Opposite Party no. 2 had paid the necessary monthly EMI of Rs. 69,00,000/- approximately per month in respect to his aforementioned loan facility to Capital First Home Finance Limited, till August 2019.
- vi) It is stated that, since very long, the accused persons, illegally and unlawfully detained the possession of the 5 self contained flats of the Opposite Party no.2, in their own custody and failed and neglected to handover the aforesaid property to the Opposite Party no.2, till date of the complaint.

- vii) *It is also stated that the Opposite Party no.2, has been suffering from serious illness since long and last 2 years, Opposite Party no. 2 is under the medical treatment of Dr. K. Sengupta and doctor advised him to take rest. That several times, the Opposite Party no. 2, requested the accused persons and the Capital First Home Finance Limited and its concerned officers to give him time, till April, 2020 to pay the aforesaid EMI and at least 10 times and lastly on 17.12.2019, requested the accused persons to handover the vacant possession of the 5 self contained flats of the Opposite Party no. 2, but the accused persons, being aided and abetted with each other hatched up a Criminal conspiracy and demanded extortion money of Rs. 60,00,000/- from the Opposite Party no. 2, in presence of the witnesses.*
- viii) *That while the Opposite Party no. 2, protested and raised strong objection against their such illegal demands of extorting money, then the accused persons assaulted the Opposite Party no.2, physically and further threatened him with serious consequences.*
- ix) *That by the unfair trade practice of the accused persons, they put the Opposite Party no. 2, in serious hardship, financial loss, damages, inconvenience, mental pain, agony and trauma. On the basis of such allegation, the instant petition of complaint has been filed.*

- 7. Mr. Debangana Bhattacharya, learned counsel for the petitioner** has submitted that the Opposite Party no. 2, has himself averred in the petition of complaint being AC 5233/19, that he has taken several loans, including loan against property and business loan from several banking and non-banking financial institutions and defaulted in repayment of the EMI amount to the concerned institutions. Furthermore, it has been acknowledged by the Opposite Party no.2 himself that he has repaid the loan amount till August, 2019, from which it can be evident that the Opposite Party no. 2, is using dilatory tactics just to escape from the repayment of the loan amount and thereby he can make wrongful gain for himself. In such circumstances, the continuance of the instant proceedings is clear abuse of the process of law and thus liable to be set aside.
- 8.** It is further stated that the Opposite Party no. 2 has arraigned the petitioner as an accused as he is an agent of Capital First Home Finance Limited but has not made the Capital First Home Finance Limited as a party to instant complaint. In *Aneeta Hada Vs. Godfather Travels and Tours Pvt. Ltd.*, it has been observed by the Hon'ble Apex Court that the one cannot oblivious to the fact the company is juristic person and has its own respectability. Without arraigning the company as an accused, makes the whole allegations brought against the petitioner dubious in nature, as the petitioner has worked as a mere agent of the company, not in his personal capacity.

9. Thus the impugned proceedings are vexatious and harassive in nature and as such the same is liable to be quashed.

10. **In spite of due service there is no representation on behalf of the Opposite Party.**

11. The following are two paragraphs, being no. 5 and 6 in the petition of Complaint are as follows:-

- i) *That the accused person no. 1 impersonated himself as he is an agent of Capital First Home Finance Limited and approached and induced the complainant to avail loan facility from his company Capital First Home Finance Limited **by mortgaging the complainant's aforesaid 5 (Five) self contained Flats situated on the Top Floor of the Building** situated at the Premises No. 494, Tarapada Santra Sarani, P.O. Thakurpukur, Police Station Haridevpur, Kolkata – 700063, Mouza- Purba Barisha, J.L. No. 23, R.S. No. 43, R.S. Dag No. 1788, Khatian No. 809, within the present limits of the Kolkata Municipal Corporation Ward No. 124, District South 24 Parganas.*
- ii) *That due to such allurement of the accused person no. 1 and his company Capital First Home Finance Limited, the complainant availed one loan facility from Capital First Home Finance Limited by mortgaging his aforesaid 5 (Five) self contained Flats situated on the Top Floor of the Building situated at the Premises No. 494, Tarapada Santra Sarani, P.O. Thakurpukur, Police Station Haridevpur, Kolkata – 700063, Mouza Purba Barisha, J.L. No. 23, R.S. No. 43 R.S. Dag No. 1788, Khatian No. 809, within the present limits of the Kolkata Municipal Corporation, Ward No. 124, District South 24 Parganas bearing his Loan Account Number is*

17699091 (Housing Finance Loan) of Capital First Home Finance Limited and the complainant has paid necessary monthly EMI of Rs. 69,000/- (Rupees Sixty Nine Thousand) approximately per month in respect of his aforesaid Loan facility to Capital First Home Finance Limited till August 2019.

- 12. Admittedly the Complainant has obtained loan from the petitioner's company by mortgaging the property in dispute. The loan is still outstanding and due, as it has not been repaid.**
- 13. The dispute is thus clearly a civil dispute** and the ingredients required to constitute the offences alleged are not even prima facie present in this case against the petitioner.
- 14. The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:-
 - a) M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).**
 - b) Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).**
 - c) Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).**
 - d) R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).**

- e) **Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).**

15. **Next, admittedly the petitioner approached the complainant to avail of the loan on behalf of his company being Capital First Home Finance Limited, which has not been made an accused in this case.**
16. The Supreme Court in ***Dayle De' Souza Vs Government of India Through Deputy Chief Labour Commissioner (C) and Anr., in SLP (Crl.) No. 3913 of 2020, on October 29, 2021***, held:-

“27. In terms of the ratio above, a company being a juristic person cannot be imprisoned, but it can be subjected to a fine, which in itself is a punishment. Every punishment has adverse consequences, and therefore, prosecution of the company is mandatory. The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well.”

17. Finally, it is stated that the mandatory provision of Section 202 Cr.P.C. has not been complied with by the Learned Magistrate while issuing process.
18. The only address of the petitioner is at Apeejay House, 15, Park Street, 7th Floor, Block-B, Police Station-Park Street, Kolkata 700016 within the jurisdiction of Bankshall Court.
19. The proceedings have been initiated at Alipore Court, within the Jurisdiction where the complainant resides.
20. The Order issuing process dated 24.12.2019 is as follows:-

Order Dated**24.12.2019**

The record is put up by petition.

Initial deposition of Uttam Kumar Chatterjee, the complainant is taken on S.A. u/s 200 Cr.P.C.

Heard the Ld. Advocate for the complainant. Perused the available materials on record. Considered.

It appears that a prima facie triable case punishable u/s 420/406/384/120B/34 of I.P.C. has been established against the accused persons namely, 1) Debasish Basak, 2) M/s A.G. Construction, 3) Soumen Chakraborty, 4) Alope Kumar Sikdar, 5) Arun Kumar Sikdar, 6) Konika Sarkar and 7) Gita Biswas as mentioned in my complaint.

Issue process against the accused persons at once.

Hence, complainant is directed to file the requisites at once.

To 24.03.2020 for S.R. and appearance.

Dictated and Corrected by me.

Sd -

**Judicial Magistrate, 7th Court,
Alipore, South 24 Parganas**

21. In 2018(3) AICLR 625(Cal.), S.S. Binu vs. State of West Bengal

(Cal.), the court held:-

“100. *To sum up, the reference made by the Learned Single Judge on the five issues are answered as follows:-*

I. According to the settled principles of law, the amendment of sub-section (1) of Section 202 Cr.P.C. by virtue of Section 19 of the Criminal Procedure (Amendment) Act, 2005, is aimed to prevent innocent persons, who are residing outside the territorial jurisdiction of the Learned Magistrate concerned, from harassment by unscrupulous persons from false complaints. The use of expression "shall", looking to the intention of the legislature to the context, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

II. Keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202 Cr.P.C., the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward off false complaints against such persons who reside at far off places with a view to save them from unnecessary harassment and the Learned Magistrate concerned is under obligation to find out if there is any matter which calls for investigation by Criminal Court in the light of the settled principles of law holding an enquiry by way of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove.

III. When an order of issuing summon is issued by a learned Magistrate against an accused who is residing at a place beyond the area in which he exercises his jurisdiction without conducting an enquiry under Section 202 Cr.P.C., the matter is required to be remitted to the learned Magistrate concerned for passing fresh orders uninfluenced by the prima facie conclusion reached by the Appellate Court.

IV. Keeping in mind the object underlined in Section 465 Cr.P.C. that if on any technical ground any party to the criminal proceedings is aggrieved he must raise the objection thereof at the earliest stage. In the event of failure on the part of an aggrieved party to raise objection at the earliest stage, he cannot be heard on that aspect after the whole trial is over or even at a later stage after his participation in the trial.

V. In cases falling under Section 138 read with Section 141 of the N.I.Act, the Magistrate is not mandatorily required to comply with the provisions of Section 202 (1) before issuing summons to an accused residing outside the territorial jurisdiction of the learned Magistrate concerned.”

22. Section 202 Cr.P.C. lays down:-

“202. Postponement of issue of process. -

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [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 Session; 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 witnesses 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 Code on an officer- in- charge of a police station except the power to arrest without warrant.”

23. This court also relies upon the case of **Birla Corporation Ltd. vs. Adventz Investments and Holdings (Criminal appeal No. 875, 876, 877 of 2019)**. The Supreme Court on 9th May, 2019 observed and held in respect of Section 202 Cr.P.C. as follows (The relevant paragraph are reproduced herein):-

26. *Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.*

27. *The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that*

there is sufficient ground for proceeding against the accused.

28. *In National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-*

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

29. *In Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-*

“2. Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the

Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused.”

30. *Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-*

“11. In Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492 (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings;

rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.”

31. *Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.*

32. *By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words “...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction...” were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-*

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause

seeks to amend sub-section (1) of Section 202 to make it obligatory upon 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 a 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.”

33. *Considering the scope of amendment to Section 202 Cr.P.C., in Vijay Dhanuka and Others v. Najima Mamtaaj and Others (2014) 14 SCC 638, it was held as under:-*

“12.The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.” Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017)

3 SCC 528 and *National Bank of Oman v. Barakara Abdul Aziz and Another* (2013) 2 SCC 488.

34. *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. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman, this Court held as under:- “22.the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. 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 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., 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 Cr.P.C., the High Court under Section 482 Cr.PC. 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.”*

35. *In Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others* (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was 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. The 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.” The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in *GHCL Employees Stock Option Trust v. India Infoline Limited* (2013) 4 SCC 505.

36. 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 and Others v. Surendra Prasad Sinha* 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.

37. At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused. In *Jagdish Ram v. State of Rajasthan and Another* (2004) 4 SCC 432, it was held as under:-

“10.The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

56. As held in *Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another* AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry under Section 202 Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is

evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under Section 204 Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

60.....*The Magistrate who is conducting an investigation under Section 202 Cr.P.C. has full power in collecting the evidence and examining the matter. We are conscious that once the Magistrate is exercised his discretion, it is not for the Sessions Court or the High Court to substitute its own discretion for that of the Magistrate to examine the case on merits. The Magistrate may not embark upon detailed enquiry or discussion of the merits/demerits of the case. But the Magistrate is required to consider whether a prima case has been made out or not and apply the mind to the materials before satisfying himself that there are sufficient grounds for proceeding against the accused.....*

61. The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the

accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity.....”

- 24. Thus it is clear** that Section 202 Cr.P.C. makes it obligatory upon the Magistrate that before summoning the **accused residing beyond** his jurisdiction he shall inquire into the case himself or direct investigation to be made by a Police Officer or by such other person as he thinks fit, for finding out whether or not there is sufficient ground for proceeding against the accused.
- 25. In the present case** only the complainant has been effectively examined under Section 202 Cr.P.C., who has stated about the facts/offences alleged in the present case. **The deposition of the sole witness is clearly not in respect of the statements made in the written complaint and thus not part of an inquiry.** Thus in view of the judgment in ***Vijay Dhanuka and Ors. vs Najima Mamtaj and Ors. (Supra)***, it is clear from the said order dated 05.03.2019 that **no inquiry as obligatory under Section 202 Cr.P.C. has been conducted.**
- 26.** The Magistrate did not comply with the provision of Section 202 Cr.P.C., even though the petitioners reside (District Kolkata) outside the jurisdiction of the Court (District 24 Parganas (South)).

27. In the present case the Magistrate did not Conduct any inquiry into the case himself or direct an investigation as required under Section 202 Cr.P.C. before directing the issue of process and as such the order is not in accordance with law, and is thus an abuse of the process of law.

28. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in **State of Karnataka v. L. Muniswamy (1977) 2 SCC 699** held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding*

ought to be quashed. In para 7 of the judgment, the following has been stated :

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

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. 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 mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated

in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their

face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 29.** The present case falls under category 1 and 3 of **Para 102 of Bhajan Lal (Supra)**.
- 30.** Thus in view of the above there is no prima facie case made out against the petitioner in respect of the offenses alleged and permitting the proceedings to continue would be an abuse of the process of law and in the interest of justice, the proceeding is liable to be quashed.
- 31. CRR 1932 of 2020 is allowed.**
- 32.** The proceedings being Complaint Case No. AC-5953/19, under Sections 420/406/384/120B/34 of the Indian Penal Code, 1860, pending before the Court of Learned 7th Judicial Magistrate, Alipore, South 24 Pargana is hereby quashed in respect of the petitioner namely Debasish Basak.
- 33.** All connected applications, if any, stands disposed of.
- 34.** Interim order, if any, stands vacated.
- 35.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 36.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)