

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4314 of 2022

With

CRAN 2 of 2024

CRAN 5 of 2024

Managing Director and Chief Executive Officer (C.E.O.)

-vs-

The State of West Bengal & Ors.

For the Petitioner : Mr. Satadru Lahiri,
Mr. Soumyajyoti Nandy,
Mr. Deepankar Thakur,
Ms. Megha Das.

For the Opposite Parties : Mr. Bibek Chatterjee,
Mr. Souma Subhra Ray,
Ms. Paramita Sahu,
Ms. Susmita Saha.

Hearing concluded on : 13.11.2024

Judgment on : 19.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding being Complainant Case No. C/76/2022 under Sections 500/506/34 of the Indian Penal Code, 1860 presently pending before the learned Judicial Magistrate, 5th Court, Barrackpore, North 24-Parganas as well as all orders passed in connection with the said proceeding.
2. The petitioner's case is that he is working for gain as Managing Director and Chief Executive Officer (CEO), Manappuram Finance Ltd., (hereinafter referred to as 'the Company') of IV/470(Old) W63A (New), Manappuram House, Valapad, Thrissur , Kerala: 680567.
3. The petitioner's further case is that in the year 2020, the Complainant/opposite parties took loan of Rs. 10,24,320/- (Rupees Ten Lakh Twenty Four Thousand Three Hundred and Twenty only) from the Company against gold pledged with the said Company. While taking loan the Complainant/opposite parties represented that the gold is of 22 carets and none else has any claim over the same. However, subsequently upon enquiry it was found that the said gold is spurious and the Complainant/Opposite Parties deceitfully obtained loan from the Company.
4. The petitioner's also states that pursuant to a Letter of Complaint lodged by Mr. Prakash K, the Area Head of the Mannpuram Finance Limited, a specific case being Belghoria Police Station case No. 727 of 2020 dated 19.12.2020 was registered for investigation against the

Complainant/Opposite Parties for commission of the complained offences punishable under Sections 420 of the Indian Penal Code, 1860. However, the Investigating Agency without causing any investigation and/or making any endeavour to unearth the truth illegally submitted FRMF vide FRMF No. 298/21 dated 19.06.2021, thereby opining the said criminal prosecution as a case of Mistake of Fact.

5. Being aggrieved and/or dissatisfied with the Final Report as submitted in connection with Belghoria Police Station Case No. 727/20 dated 19.12.2020, the Complainant of the said Criminal Proceeding preferred an application under Section 173(8) of Code of Criminal Procedure, 1973, thereby praying for further investigation on the grounds stated therein. The said application is pending before the learned Additional Chief Judicial Magistrate, Barrackpore, for further hearing.
6. **It is further stated that the Company initiated an arbitral proceeding under the Arbitration and Conciliation Act, 1996 against the Complainant/ opposite party No. 2 vide Arb. O.P. 302 of 2021 dated 23rd September, 2021.**
7. In the said proceeding the Company was awarded Rs. 5,16,320/- along with interest of 18% till full realization of the loan amount as well as Rs. 4,140/- as legal cost from the Complainant /Opposite Party No. 2.
8. The said award has been communicated to the Complainant/Opposite Parties and the Company is in the process of executing the award.

9. The Petitioner now submits that nearly five months after the award has been passed in arbitration proceeding and near about eight months after submission of Final Report the Complainants/Opposite Parties preferred the instant Petition of Complaint before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas over an omnibus and false allegation of defaming them and/or harming their reputation by allegedly implicating them in false criminal cases.
10. **The allegations leveled by the complainant in the petition of complaint is as follows :-**

*“.....In 2020 the Complainants/Opposite Parties pledged gold ornaments to avail a gold loan for an amount of Rs. 10,24,320/- from the Company namely Manappuram Finance Ltd. from its Rathtala branch office. **At the time of pledging the Company was satisfied about the quality of the gold and also satisfied that the same were of 22 Carats and no other person have any rights over them.** The Complainant/Opposite Parties have been paying the installments on regular basis. However, all of a sudden, the Company lodged a false written complaint with the Officer-in-Charge of Belghoria Police Station being Belghoria Police Station Case No. 727 dated 19.12.2020 under Section 420 of Indian Penal Code, 1860, which was subsequently dropped by the Learned Additional Chief Judicial Magistrate, Barrackpore, as FRMF has been submitted in connection with the instant case opining ‘Mistake of Fact’. However, the Company did not challenge the same. It is further alleged that the Accused Persons fraudulently obtained **an arbitral award** of Rs. 5,16,320/- (Rupees Five Lakhs Sixteen Thousand Three Hundred and Twenty only) along with the interest of 18% till the full realization of the loan amount as well as Rs. 4,140/- as the legal cost from the Complainant/Opposite Parties. The Complainant/Opposite Party No. 1 has been arrested*

in connection with the instant case and owing to such arrest as well as initiation of false criminal prosecution, the Complainant/Opposite Parties has suffered severe damage towards their reputation. Their image and reputation seriously lowered in estimation of local people as well as their known ones. The Complainant/Opposite Parties further alleged that the Accused Persons have purposely done this to extort money from them.....”

11. Learned counsels for both parties filed their short notes.
12. Learned counsel appearing for the petitioner has argued on the point that from the petition of complaint it is evident that the petitioner herein has been implicated as accused No. 2, not by his name but by his position and **admittedly his only address has been shown as Kerala.**

13. **The relevant part of the cause title is as follows:-**

“.....MD & C.E.O., Manappuram Finance Ltd., IV/470 (old) W638A (New), Manappuram House Valapad, Thrissur, Kerala, India-680567.....”

14. As such it is the stand of the learned counsel for the petitioner that the mandatory provision of Section 202 of the Cr P C has not been complied with by the complainant.

15. **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.”

16. In *Vijay Dhanuka and Ors. vs Najima Mamtaj and Ors.*, (2014) 14

SCC 638, on March 27, 2014, the Supreme Court held:-

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he

thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. *The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:*

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that 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.”

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.

13. *In view of the decision of this Court in Udai Shankar Awasthi v. State of U.P. [(2013) 2 SCC 435 : (2013) 1 SCC (Civ) 1121 : (2013) 2 SCC (Cri) 708] , this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment: (SCC p. 449, para 40)*

“40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it [Ed.: The matter between the two asterisks has been emphasised in original as well.] mandatory to postpone the issue of process [Ed.: The matter between the two asterisks has been emphasised in original as well.] where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.”

(emphasis supplied)

14. *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:*

“2. (g) ‘inquiry’ means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;”

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner

of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.”

- 17. 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.”

18. This Court also relies upon the case of **Birla Corporation Ltd. vs. Adventz Investments and Holdings Ltd. & Ors. (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 Mamtaj 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.P.C. 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.....”

19. 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.**

20. In *Sunil Todi and Ors. vs State of Gujarat and Anr., Criminal Appeal No. 1446 of 2021, on 03.12.2021*, the Supreme Court held:-

“31. The second submission which has been urged on behalf of the appellants turns upon Section 202 CrPC, which is extracted:

“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, 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 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.”

32.

33. *The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23 June 2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far off places as an instrument of harassment. In **Vijay Dhanuka v. Najima Mamtaj**²⁰, this Court dwelt on the purpose of the amendment to Section 202, observing:*

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process ‘in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words ‘and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false

complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

‘False complaints are filed against persons residing at far-off places simply to harass them. In order to see that 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.’

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.”

34. 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.”

*These decisions were cited with approval in **Abhijit Pawar v. Hemant Madhukar Nimbalkar**²³. After referring to the purpose underlying the amendment of Section 202, the Court observed:*

*“25. ... the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment *Mehmood Ul Rehman v. Khazir Mohammad Tunda* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]...”*

35. *While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in **Vijay Dhanuka** which had held that the exercise by the Magistrate for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused is nothing but an enquiry envisaged under Section 202 of the Code.*

36. In *Birla Corporation Ltd. v. Adventz Investments and Holdings*²⁴, the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted:

“26. 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 CrPC or whether the complaint should be dismissed by resorting to Section 203 CrPC 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 CrPC, 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.”

Hence, the Court held:

“33. 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 the 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* [*Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124]...”

The above principles have been reiterated in the judgment in ***Krishna Lal Chawla v. State of U.P.*²⁵**.”

The Court considered the same later, in the light of a proceedings under Section 138/141C N.I. Act.

21. The Magistrate did not comply with the provision of Section 202 Cr.P.C., even though the petitioner resides (in Kerala) outside the jurisdiction of the Trial Court, in a different State.
22. 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.
23. The proceedings in this case no. C-76 of 2022 is for offences punishable under Sections 500/506/34 of the Indian Penal Code. **The nature of allegations** in the petition of complaint needs an inquiry under Section 202 Cr.P.C. to ascertain the fact whether the complaint has any valid foundation for issuance of process ***(Birla Corporation Ltd. vs. Adventz Investments and Holdings Ltd. & Ors. (Supra))***.
24. Thus considering the facts and circumstances of the present case, the nature of case pending between the parties, the non-compliance of Section 202 Cr.P.C. by the Magistrate before issuance of process is prima facie an abuse of process of Court.
25. The next contention of the petitioner is that the ingredients required to constitute the offences alleged in the present case are clearly not present in respect of the petitioner herein.
26. **The order issuing process is as follows:-**

“06.06.2022

Today is fixed for S/A

Complainant filed hazira and also filed some documents in firstly
 Complainant examined on documents u/s 200 CRPC
 Hence issue process upon the accused u/s 500/506/34 IPC.
 To 25-11-2022 for S/R

O/C by me”

27. The judgment in ***Dipankar Bagchi vs State of West Bengal & Anr.,***
2009 SCC OnLine Cal 1877, decided on August 5, 2009, in Para 7

has been relied upon on behalf of the petitioner:-

“7. In the petition of complaint it has been alleged that the accused with a view to canvass the complainant is a subversive element of the society made oral imputation that he is a dangerous and desperate man and can commit various offence like murder, consequently the close friends and relatives of the complainant started avoiding him. It has been further alleged that in connection with a proceeding under section 107 of the Code it was alleged by the accused that the complainant is a desperate and dangerous person to public peace and tranquility. Thereafter, the accused made false accusation against the complainant and his mother which figured the complainant a loathsome person in the estimation of the society and consequently complainant is suffering from ex-communication and interdict and his reputation and social status has been damaged. The imputation that the complainant is a dangerous and desperate person and can commit Crime including murder and he is desperate and dangerous to public peace and tranquility is not per se defamatory. Therefore, there must be some prima facie evidence that in the estimation of the general public by such imputation the reputation of the complainant has been harmed and lowered down. In the case at hand, the complainant in support of his allegations examined two persons, viz., one Adhir Kumar Biswas his neighbour and his son-in-law Kabindra Dutta Gupta under section 200 of the Code of Criminal Procedure. According to the witness Adhir Kumar Biswas after the accused Dipankar Bagchi lodged a case under section 107 of the Code of

*Criminal Procedure against the complainant the local people started disliking the complainant although he is a good gentleman. The accused Dipankar Bagchi intentionally harassed the family of the complainant. While according to the witness Kabindra Dutta Gupta the accused spread rumor about the complainant in the locality that he is a man of loose character and drunkard. Consequently, para people started avoiding him and his family and the witnesses being his son-in-law, his prestige has been lowered down. None of the said witnesses neither alleged nor it is their evidence due to such imputation the moral and intellectual character of the complainant has been lowered down in their estimation and thereby his reputation has been harmed. The inference of the said witnesses that due to such imputation the reputation of the complainant has been lowered down in the estimation of the public is of no use to make out an offence of defamation. **No witnesses have been examined in whose estimation the reputation of the complainant has been lowered down due to such imputation made by the accused.***

28. In the present case also no witnesses in support of the complainant's case have been examined.

29. Section 499 of the Indian Penal Code lays down as follows:-

“Section 499. Defamation.— Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case 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 a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

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

Fourth Exception.— Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.
Explanation.— A Justice of the Peace or other officer holding an 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 authorized 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.”

30. Section 500 of the Indian Penal Code lays down as follows:-

“Section 500. Punishment for defamation.—

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Scope.— *The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person.*

Ingredients of offence.— *The offence of defamation consist of three essential ingredients, viz.:*

(1) Making or publishing any imputation concerning any person;

(2) Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and

(3) Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.”

31. In 2014, Dr. Subramanian Swamy made corruption allegations against Ms. Jayalathitha. In response, the Tamil Nadu State Government filed defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the

Indian Penal Code (IPC). A two-judge bench of the Supreme Court comprising Justices Dipak Misra and P. C. Pant decided the case.

- 32.** Section 499 defines defamation and Section 500 prescribes the punishment. Defamation is defined as spoken or written words or visible representations, concerning any person intended to harm his/her reputation. Exceptions to this include an ‘imputation of truth’ required for a ‘public good’, or the conduct of any person touching any public question, or expressing opinions on a public performance.
- 33.** The challenge before the Court was twofold – first, whether criminalising defamation is an excessive restriction on freedom of speech, and second, whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.
- 34.** On 13 May 2016, the Court held that Section 499 is not an excessive restriction under Article 19(2). It held that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public wrong. It held that criminal defamation is not a disproportionate restriction on free speech, because protection of reputation is a fundamental right as well as a human right.
- 35.** The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under Article 21. Using the principle of ‘balancing of fundamental rights’, the court held that the right to freedom and speech and expression cannot be “allowed so much

room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area”.

36. Further, the Court held that Sections 499 and 500 IPC are not vaguely worded or ambiguous. Using the **Constituent Assembly Debates** to understand what the framers of the Constitution meant by the word “defamation” in Article 19(2), the Court held that the word is its own independent identity. It stands alone and defamation laws have to be understood as they were when the Constitution came into force.
37. The Supreme Court in **Subramanian Swamy vs. Union of India, Ministry of Law and others, (2016) 7 SCC 221**, while deciding the case held:-

*“We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in **Section 202 Cr.P.C.** which stipulates about the resident of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of **Section 499 Cr.P.C.** are satisfied. Application of mind in the case of complaint is imperative.*

*We will be failing in our duty if we do not take note of submission of Mr. Bhambhani, learned senior counsel. It is submitted by the learned senior counsel that Exception to **Section 499** are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in M.A. Rumugam (supra) that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to **Section 499 IPC**, it would be necessary for the person who pleads the Exception to prove it. He has to prove good faith for the*

purpose of protection of the interests of the person (1998) 5 SCC 749 making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of the issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same.

*In view of the aforesaid analysis, we uphold the constitutional validity of **Sections 499 and 500** of the Indian Penal Code and **Section 199** of the Code of Criminal Procedure. During the pendency of the Writ Petitions, this Court had directed stay of further proceedings before the trial court. As we declare the provisions to be constitutional, we observe that it will be open to the petitioners to challenge the issue of summons before the High Court either under **Article 226** of the Constitution of India or **Section 482 Cr.P.C.**, as advised and seek appropriate relief and for the said purpose, we grant eight weeks time to the petitioners. The interim protection granted by this Court shall remain in force for a period of eight weeks. However, it is made clear that, if any of the petitioners has already approached the High Court and also become unsuccessful before this Court, he shall face trial and put forth his defence in accordance with law.”*

The Court further held:-

*“The court while deciding over the matter considered various landmark judgments including the *Gian Kaur v. State of Punjab* (1996) 2 SCC 648, *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others* (1983) 1 SCC 124 to come to the peroration of inclusion of the right to reputation under Article 21. Over the issue of the exaggeration of ‘defamation’ under the restrictions of Article 19(1)(a) the court referred to the speech of Dr. B. R. Ambedkar and pointed out the intention of drafters to include reasonable restrictions on free speech and expression*

through the means of Article 19(2) without specifically defining the terms like 'defamation', 'public order' etc. and left it to the courts to decide what would constitute as restriction and what not so as to not restrict the meaning of any such term.

The court disregarded the dissection of rights and their enjoyment under Article 19 and 21 as contested by petitioners while holding that every citizen enjoys every right under the constitution simultaneously and took reference from Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305 and the Maneka Gandhi v. Union of India and another (1978) 1 SCC 248. To decide upon the constitutionality of Section 499 and its exceptions the bench, while individually determining each exception and various clauses in the provision, clearly enunciated that there is no vagueness in the whole section. The argument of petitioner over the 'public good', the court referred the argument as unnecessary and concluded that what can be termed as a public good is a subject matter of facts and has to decide on a case-to-case basis. The court declared section 499 of IPC, as well as Section 199 of Cr.P.C. constitutional as it being a subject matter of magistrate to ensure that the judicial process doesn't become a tool of harassment and inherent duty of the magistrate to take care of it and concluded that the judiciary is independent of the political stigma, therefore, the arguments of petitioners stand void."

- 38. The facts as stated in the written complaint in this case comes under 5th and 9th exceptions as laid down under Section 499 of I.P.C. and thus the ingredients required to constitute the offence alleged under Section 500 of I.P.C. is clearly absent in the present case.**
- 39. Next offence alleged is under Section 506 of I.P.C.**
- 40. Section 506 of I.P.C., lays down:-**

“506. Punishment for criminal Intimidation.-

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both,

if threat be to cause death or grievous hurt, etc.-

and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.- The essential ingredients of the offence under sec. 506 are as follows:-

(1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;

(2) The accused did so with intent to cause alarm to the victim of offence;

(3) The accused did so to cause the victim to perform any act which he was not legally bound to do.”

- 41. In *Mohammad Wajid & Anr. vs State of U.P. & Ors., Criminal Appeal No. 2340 of 2023 (arising out of SLP (Criminal) No. 10656 of 2022)*, on August 08, 2023, the Supreme Court held:-**

“27. *A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”*

- 42. The Court further held:-**

“30. *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.”

- 43. The term Criminal intimidation has been defined under Section 503 of I.P.C.**
- 44. Section 503 of I.P.C., lays down:-**

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B’s house. A is guilty of criminal intimidation.”

45. In Vikram Johar Vs The State of Uttar Pradesh & Anr., Criminal Appeal no. 759 of 2019, arising out of SLP (Crl.) no. 4820/2017.

“14. Before we proceed to further examine the facts of the present case, we may notice the ambit and scope of power of the Court at the time of considering the discharge application.

15. This Court in *Union of India Vs. Prafulla Kumar Samal & Another*, (1979) 3 SCC 4 had occasion to consider Section 227 Cr.P.C., which is Special Judge’s power to pass order of discharge. After noticing Section 227 in paragraph No.7, this Court held following:-

“7. XXXXXXXXXXXX

The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons

of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

16. *After considering the earlier cases of this Court, in paragraph No.10, following principles were noticed:-*

“10. *Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act

merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

17. *A Three-Judge Bench of this Court in State of Orissa Vs. Debendra Nath Padhi, (2005) 1 SCC 568, had occasion to consider discharge under Section 227, it was held by the court that Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements.*

18. *Another judgment of this Court, which is to be referred is Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others, (2015) 6 SCC 287. This Court in the above case has noticed the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions. This Court, in fact, has made observations that application under Section 156(3) Cr.P.C. has to be supported by an affidavit so that person making allegation should take responsibility of what they have said in the complaint. In paragraph No.30, following has been held:-*

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine

manner without taking any responsibility whatsoever only to harass certain persons.

That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

19. *It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.*

20. *After noticing the nature of jurisdiction to be exercised by the Court at the time of discharge, we now revert back to the facts of the present case, where taking an allegation of complaint as correct on the face of it, whether offences under Sections 504 and 506 is made out, is a question to be answered.*

21. *We need to notice Sections 503, 504 and 506 for appreciating the issues, which has come up for consideration, which are to the following effect:-*

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.— A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person,

intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal intimidation.—

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—*And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

22. Section 504 of I.P.C. came up for consideration before this Court in *Fiona Shrikhande Vs. State of Maharashtra & Another*, (2013) 14 SCC 44. In the said case, this Court had occasion to examine ingredients of Section 504, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to *prima facie* satisfy whether there are sufficient grounds to proceed against the accused. In paragraph No.11, following principles have been laid down:-

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a *prima facie* case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to *prima facie* satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to

enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have.”

23. *In paragraph No.13 of the judgment, this Court has noticed the ingredients of Section 504, which are to the following effect:-*

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not

sufficient by itself to warrant a conviction under Section 504 IPC.”

24. In another judgment, i.e., *Manik Taneja and Another Vs. State of Karnataka and Another*, (2015) 7 SCC 423, this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 I.P.C. After noticing Section 503, which defines criminal intimidation, this Court laid down following in paragraph Nos. 11 and 12:-

“11. XXXXXXXXXXXXXXX

A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the

comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

25. *In the above case, allegation was that appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506.*

26. *Now, we revert back to the allegations in the complaint against the appellant. The allegation is that appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant’s house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that appellant came and abused the complainant does not satisfy the ingredients as laid down in paragraph No.13 of the judgment of this Court in Fiona Shrikhande (supra).*

27. *Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states following: -*

“...The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of some one in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.”

- 46. In present case,** the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Sections 500/506/34 of the IPC could not be said to have been disclosed in respect of the petitioner herein.
- 47. Accordingly it is clear that the ingredients required to constitute the offences alleged under Sections 500/506/34 of IPC are not prima facie present against the petitioner.**
- 48. The Supreme Court in *M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021*, citing several precedents held :-**

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under **Section 482** Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

49. In **Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, decided on April 20, 2022**, the Supreme Court held:-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”

50. In **Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra)** the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

22. In *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before

cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

24. *In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)*

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said

court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

- 51. The materials on record** herein clearly do not make out a prima facie case under Sections 500/506/34 of the Indian Penal Code against the accused/petitioner and there are no materials in this case for proceeding against the accused/petitioner towards trial and this is a fit case where the inherent power of the court should be exercised.
- 52.** In the present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in offences under Sections 500/506/34 of IPC and as such the proceeding in this case is liable to be quashed.
- 53. CRR 4314 of 2022 is allowed.**
- 54.** The proceeding being Complainant Case No. C/76/2022 under Sections 500/506/34 of the Indian Penal Code, 1860 presently pending before the learned Judicial Magistrate, 5th Court, Barrackpore, North 24-Parganas as well as all orders passed in connection with the said

proceeding **is hereby quashed in respect of the petitioner, namely Managing Director and Chief Executive Officer (C.E.O.) of Manappuram Finance Limited.**

55. All connected applications, if any, stands disposed of.
56. Interim order, if any, stands vacated.
57. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
58. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)