CRM-M-51102-2019 (O&M) and
CRM-M-23655-2024

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on: 16th July, 2024
Date of decision: 22nd August, 2024

1. **CRM-M-51102-2019 (O&M)**

Deepak Kapoor

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

2. **CRM-M-23655-2024**

Sarvesh Mathur

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by :- Mr. R.S. Rai, Senior Advocate with
Mr. Rajeev Anand, Mr. Vikas Gogne, Ms. Rubina and
Mr. Satyam Chaturvedi, Advocates for the petitioner in
CRM-M-51102-2019 and for
(Respondent Nos. 2 to 8 in CRM-M-23655-2024).

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Sarvesh Mathur, Respondent No.2 in
CRM-M-51102-2019 and petitioner in CRM-M-23655-2024
in person (through video conferencing facility).

***

MANISHA BATRA, J (ORAL):-

CRM-4509-2024

While dictating the orders in the main petitions, it has been noticed that this application has not been disposed of so far.

CRM-M-51102-2019 (O&M) and
CRM-M-23655-2024

Prayer has been made by the applicant-petitioner in CRM-M-51102-2019 for placing on record copy of order dated 19.01.2024.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Copy of order dated 19.01.2024 is ordered to be placed on record as Annexure R-2/37.

Main petitions

1. These petitions have been taken up together since challenge in both these petitions is to a common order dated 09.10.2019 passed by the Court of Judicial Magistrate Ist Class, Gurugram in criminal complaint No. 33 dated 30.05.2017 titled as 'Sarvesh Mathur Vs. M/s Price Water House Coopers Private Limited and others' whereby only Deepak Kapoor was ordered to be summoned as accused to face trial under Section 500 of IPC and the complaint was dismissed qua the remaining persons named as accused and even the prayer made by the complainant for issuing of process under Sections 182, 204, 406, 420, 468, 469, 471, 477, 477-A, 500(except against accused Deepak Kapoor), 506 and 120-B of IPC against the respondents No. 2 to 8 had been declined.

2. Additionally, in petition No. CRM-M-23655-2024, prayer has been made for setting aside the order dated 01.04.2024 passed by Additional Sessions Judge, Gurugram in criminal revision petition bearing No. 14/2020 titled as 'Sarvesh Mathur Vs. State of Haryana and others' whereby the order dated 09.10.2019 passed by Magistrate had been upheld.

3. For the purpose of continuity and coherence, the **petitioners** in both petitions shall be hereinafter referred to as per the original nomenclature as given in the complaint whereas the persons named as accused Nos. 3 to 8 in complaint shall be referred to as respondent Nos. 3 to 8.

4. Brief facts of the case relevant for the purpose of disposal of these petitions are that the aforementioned complaint has been filed by the complainant Sarvesh Mathur on the allegations that he was appointed as Chief Finance Officer (CFO) of M/s Price Water House Coopers Private Limited India (for short 'PWC') on 11.03.2008. The persons named as accused Nos. 4 to 8 in the complaint and accused Deepak Kapoor (to be referred as accused) were responsible for day to day affairs of PWC which has pan India operations. The complainant alleged that during his service period, he started noticing various financial irregularities which were running into crores of rupees and which attracted violation of several enactments including Income Tax etc. and also attracted provisions of Indian Penal Code. These irregularities were in the nature of falsification of accounts of PWC, wilful manipulation of books of accounts thereby resulting in under-statement of profits leading to evasion of tax, adjustment of crores of rupees between separate legal entities without raising of bills, filing of wrong returns of financial assessment years and wrongful book keeping of various expenses. Some office bearers of the PWC were also making false misrepresentations to banks and committed violations of RBI Act/FEMA and other rules and

regulations pertaining to service tax laws and violation of accounting standard.

5. The complainant alleged that he brought the aforementioned irregularities to the notice of the higher authorities of PWC. Though during the year 2010, his performance was rated as 'having exceeded performance standard/expectations' by the then Managing Director of PWC i.e. the accused Deepak Kapoor who was subsequently posted as Chairman of PWC, but due to his raising voice qua the various irregularities committed in the company by its office bearers and on being convinced that the complainant would not connive in the various activities of the accused Nos. 2 to 8, he was forced to resign after being harassed and humiliated. His employment with PWC ended on 31.12.2011. Still fearing exposure, the accused Deepak Kapoor issued a letter dated 27.02.2012 to him thereby terminating his services irrespective of the fact that his employment had already ceased w.e.f. 31.12.2011.

6. The complainant further alleged that subsequently PWC filed a complaint against him with Gurugram police. This complaint was withdrawn on 03.04.2012 only after forcing the complainant to sign some undertakings restraining him from bringing the offences committed by PWC to the notice of the government authorities and by destroying copies of incriminating documentary evidence against PWC which had been forwarded by the complainant to his personal e-mail account only to defend himself. He was also forced to sign an illegal affidavit-cum-undertaking. The complainant filed a complaint against PWC on 19.03.2012 but was made to withdraw the same. He did not succumb to

the pressure of the accused and filed another complaint on 13.08.2012. By alleging that the persons named as accused Nos. 2 to 8 in the complaint as well as PWC had done acts of defamation and criminal intimidation against him apart from committing offences of cheating, falsification and forgery of record and criminal breach of trust, the complainant prayed for summoning the PWC and its office bearers named in the complaint as accused and to issue process against them for commission of various offences.

7. In preliminary evidence, the complainant examined himself as CW-1 besides producing his daughter Yashasvini Mathur as CW-2. Certain documents were also produced in evidence. On considering the evidence so produced on record as well as the contentions raised by the complainant, the learned Judicial Magistrate Ist Class, Gurugram vide his order dated 09.10.2019, dismissed the complaint qua PWC and all the persons named therein who were sought to be summoned as accused except accused Deepak Kapoor, who too was ordered to be summoned only for commission of offence punishable under Section 500 of IPC.

8. Feeling aggrieved from the order dated 09.10.2019, the complainant filed criminal revision petition No. 14 of 2020 before the Court of learned Additional Sessions Judge, Gurugram which was dismissed vide order dated 01.04.2024 and being dissatisfied from the same, the complainant has filed petition bearing No. CRM-M-23655-2024 whereas feeling aggrieved from the order dated 09.10.2019 passed by the Judicial Magistrate Ist Class, Gurugram, the accused Deepak

Kapoor has filed petition bearing No. CRM-M-51102-2019 before this Court.

9. The respondents in both the petitions have filed their respective replies converting the pleas taken by the opposite parties.

10. The complainant while appearing in person through video conferencing facility, vehemently argued that the petition filed by the accused Deepak Kapoor under Section 482 of Cr.P.C. was not maintainable as the proper remedy for the accused was to file a revision petition against the impugned order passed by the Magistrate. He argued that the provisions of Section 482 of Cr.P.C. were misused as misleading averments had been made by the accused. He did not approach the Court with clean hands and suppressed material facts. He stressed that the impugned order dated 09.10.2019 did not deserve any interference to the extent to which process under Section 500 of IPC had been issued against the accused Deepak Kapoor by the Magistrate on being *prima facie* satisfied that there were sufficient grounds for proceeding thereunder as against the accused. However, the same was perverse and not sustainable in the eyes of law to the extent to which the learned Magistrate dismissed the complaint against PWC and accused No. 3 to 8 and summoned only accused Deepak Kapoor that too under Section 500 of IPC alone and further to the extent to which the prayer made by the complainant to summon PWC and accused Nos. 3 to 8 for commission of offences punishable under Sections 406, 420, 468, 469, 471, 477, 477-A, 500, 506 and 120-B of IPC was rejected. He argued that overwhelming evidence had been produced by him to prove that accused No. 3 to 8 and accused Deepak Kapoor who were office bearers of PWC, in conspiracy with

each other, indulged in falsification of books of account of PWC and cheated the concerned departments of Government by showing false transactions which amounted to embezzlement of huge amount of money by use of forged documents and when he objected to the same, then they defamed him by terminating his services and criminally intimidated him.

11. It was further argued by the complainant that the Magistrate while issuing the process, was only required to see whether a *prima facie* case was made out from the allegations levelled in the complaint or not and he was not to conduct a mini trial which was so conducted by him. He argued that the documents relied upon by him had not been examined in entirety. The fact that there were sufficient grounds for proceeding further and for issuing process against all the persons named as accused including PWC had not been properly taken into consideration. A grave miscarriage of justice was caused to him by dismissal of the complaint filed by him against PWC and its six other office bearers as named in the complaint apart from the accused Deepak Kapoor.

12. The next argument raised by the complainant was that while passing the impugned order dated 01.04.2024, the learned Additional Sessions Judge, Gurugram also did not apply her judicious mind. She failed to appreciate that the order passed by her was infact in defiance to the spirit of order dated 29.09.2021 passed in ***CRWP-1090-2021 (O&M),*** whereby this Court had refused to quash the complaint. It was further argued that the delay if any in filing the complaint stood condoned as no order had been passed by the Magistrate on the application filed by him seeking condonation. With these broad submissions, he urged that the

impugned orders dated 09.10.2019 and 01.04.2024 passed by the courts below were liable to be set aside to the extent to which the complaint was dismissed qua PWC and the persons named as accused Nos. 3 to 8 in the complaint and also to the extent to which no process was ordered to be issued against accused Deepak Kapoor under the offences mentioned in the complaint (except Section 500 of IPC) and urged that the petition filed by him be accepted, PWC and accused Nos. 3 to 8 be ordered to be summoned as accused, accused- Deepak Kapoor be ordered to be summoned for commission of all the offences as mentioned in the complaint and the petition filed by accused- Deepak Kapoor be dismissed.

13. *Per contra*, it was argued by learned counsel for the accused Deepak Kapoor, that criminal proceedings had been initiated by the complainant against him only with an intention to harass him. Infact, the services of the complainant were ordered to be terminated with effect from December 31, 2011 due to various reasons including his unsatisfactory professional performance. During the notice period, the complainant illegally accessed, copied and transferred confidential information and data of PWC and took the same into his possession. Termination letter was issued to him on 27.02.2012. A complaint was filed by PWC against the complainant and on his voluntarily executing an affidavit-cum-undertaking, the said complaint was withdrawn. The complainant had filed another complaint on 19.03.2012 but had withdrawn the same. He had filed this complaint on 25.05.2017 i.e. after a period of more than five years from the date of termination of his services and from the date of knowledge of alleged commission of

offence of defamation and therefore, the complaint filed by him thereby seeking issuance of process under Section 500 of IPC was time barred.

14. Learned counsel for the accused Deepak Kapoor further argued that at the time of issuance of the letter terminating the services of the complainant, he himself was only an instrumentality of the PWC for conveying the decision of the same to the complainant by issuing the letter in his official capacity. This letter of termination of services of the complainant was a communication only between the company and the complainant. There was nothing on record to show that by issuing the same, any offence of defamation had been committed by PWC or by himself or any other official of the company. The ingredients for commission of offence of defamation as defined under Section 499 of IPC and punishable under Section 500 of IPC were not at all made out against him as there were no specific allegations against him. The company had not been summoned as an accused. The accused could not be made vicariously liable for the correspondence that was sent on behalf of the company by him in his capacity as the then Chairman of the company. No material could be produced on record by the complainant to show that there was any criminal intent on the part of the accused to defame the complainant or to prove his active role coupled with the said criminal intent.

15. It was further argued by learned counsel for the accused that while passing the impugned order dated 09.10.2019, the learned Magistrate failed to consider the fact that the evidence produced on record by the complainant in the form of testimony of his daughter and

himself was not at all sufficient to justify the issuance of process for commission of offence punishable under Section 500 of IPC. The testimony of CW2 was of no avail as the contents of termination letter dated 27.02.2012 were neither addressed to her nor to any other person apart from the complainant and therefore, these contents could not be considered to have been 'published' or 'disseminated' by the accused. He further submitted that the termination letter dated 27.02.2012 had never been challenged by the complainant before any court of law. It contained no imputation that amounted to lowering the character/moral of the complainant in the eyes of general public. The contents thereof did not fall under the definition of 'defamation' as given under Section 499 of IPC. The learned Magistrate while passing the impugned order failed to appreciate that there was no *prima facie* evidence on record to prove that any imputation was made against the complainant by him or that some harm was caused to the reputation of the complainant by lowering down his moral or intellectual character in respect of his caste or of his calling or lowering his credit in the estimation of others. While concluding, he argued that, as such the complaint as filed by the complainant as well as the impugned order dated 09.10.2019 were liable to be set aside to the extent to which process was issued against the accused Deepak Kapoor and the petition filed by him deserved to be accepted.

16. With regard to PWC and accused Nos. 3 to 8, it was argued that the learned Courts below committed no illegality or irregularity in dismissing the complaint qua them and hence learned counsel argued that the prayer made by complainant for setting aside the impugned orders to the extent did not deserve any acceptance.

17. The complainant and learned counsel for the accused were heard at considerable length by this Court.

18. The accused Deepak Kapoor has been summoned by the Court of Magistrate to face trial for commission of offence punishable under Section 500 of IPC. Undisputedly, a Magistrate has power to take cognizance of an offence under the provisions of Section 200 of Code of Criminal Procedure in a private complaint and to issue the process when the material produced on record, in his opinion, is sufficient to do so. The sustainability of exercise of such power, is to be considered in view of the legal and factual position. The Hon'ble Supreme Court laid down the golden standard for summoning an accused in its decision in ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others, (1998) SCC (Criminal) 1400,*** wherein it was observed that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of ordinary 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 the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against 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.

19. As per Section 204 of the Code, if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance of the accused in a summons case or in a warrant case. The sine qua non for exercising the power under Section 204 of Cr.P.C. to issue process, is the subjective satisfaction regarding the existence of sufficient ground for proceeding. In '***Mahmoodul Rehman and others Vs. Khazir Mohammad Tunda and others, (2015) 12 SCC 420'***, the Hon'ble Supreme Court held thus:-

> *"22.....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..........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 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under*

Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction……….To be called to appear before 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."

20. In ***Sunil Bharti Mittal Vs. CBI (2015) 4 SCC***, the Hon'ble Supreme Court interpreted the expression "sufficient ground for proceeding" and held that there should be sufficient incriminating material against the accused concerned before proceeding under Section 204 of Cr.P.C. It was observed as follows:-

> *"the words '**sufficient ground for proceeding**' appearing in Section 204 are of immense importance. These words amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside, if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would not be bad in law, if the reason given turns out to be ex-facie incorrect."*

21. Keeping in view this position of law with regard to the powers of Magistrate to issue process in a private complaint, it is to be considered at the very outset as to whether the petition filed by the

accused Deepak Kapoor under Section 482 of the Code of Criminal Procedure for quashing the order of summoning him as an accused is maintainable, since he did not avail the remedy of filing revision against the order dated 09.10.2019 and directly approached this Court seeking quashing of complaint and the above said order. In this context, reference can be made to ***'Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736'*** wherein the Hon'ble Supreme Court laid down certain conditions whereunder a complaint can be quashed invoking the power under Section 482 of the Code, which are as follows:-

> (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
>
> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
>
> (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .
>
> (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

22. Reliance can also be placed upon ***Ganesh Nand Chala Vs. Swami Daya Nand (1980) Criminal Law Journal 100***, wherein a question arose before the High Court of Delhi as to whether a petition under Section 482 of Cr.P.C. for quashing the complaint without filing revision against an order summoning the petitioner to stand trial was permissible or not? In view of the finding that cognizance of offence being taken against mandatory provisions of code, the impugned order was quashed in exercise of powers under Sections 482 of Cr.P.C.

23. In ***Raj Kapoor and others Vs. State (Delhi Administration) and others AIR 1980 (Supreme Court) 258***, it was observed by Hon'ble Supreme Court that the inherent power of the High Court under Section 482 of Cr.P.C. does not stand repealed when the revisional power under Section 397 overlaps. It was observed that nothing in the Code, not even Section 397 affected the amplitude of the inherent power preserved in so many terms by the language of Section 482. It was held that there was no total ban on the exercise of inherent power where abuse of the process of the Court or other extra ordinary situation excites the jurisdiction of the Court.

24. In ***'Madhu Limaye Vs. State of Maharashtra, AIR 1978, Supreme Court 47'***, the question of consideration before Supreme Court was whether High Court can exercise its inherent powers to quash an interlocutory order. It was observed that in case the impugned order clearly brings about the situation which is an abuse of process of Court or for the purpose of securing the ends of justice, interference by High Court is absolutely necessary.

25. The question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

26. Similarly, in a recent judgment dated 22.02.2024 titled as ***'Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261'***, the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

27. On applying the ratio of law as laid down in above cited cases, it is observed that in the instant case, the accused has come up with a case of inherent lack of jurisdiction of the Court in passing of the impugned order dated 09.10.2019 to the extent to which process under Section 500 of IPC was issued against accused Deepak Kapoor. This being the position, even the availability of alternative remedy by way of revision petition or any other provision would not act as an impediment in entertaining the petition under Section 482 of Cr.P.C. As such, in view of the principles enunciated in the above referred cases and the facts and circumstances of the case, the preliminary objection as raised by the complainant is ruled out.

28. Let us now proceed further to consider the question whether the impugned order dated 09.10.2019 as passed by the Judicial

Magistrate thereby issuing process under Section 500 of IPC against the accused Deepak Kapoor and dismissing the complaint with regard to the prayer made by the complainant for issuing process against the PWC, accused Deepak Kapoor and other office bearers of PWC whose names were mentioned as accused Nos. 3 to 8 in the complaint, under the remaining Sections as mentioned in the complaint requires interference or not?

29. This Court firstly takes up the question with regard to not summoning of the accused Deepak Kapoor, PWC and respondent Nos. 3 to 8 for commission of offences punishable under Sections 406, 420, 468, 469, 471, 477, 477-A, 506 and 120-B of IPC. Though in the complaint, prayer had been made for issuance of process under all the aforementioned Sections as well as under Sections 182 and 406 of IPC against PWC and its office bearers named as accused Nos. 3 to 8 in the complaint, however, in the petition filed before this Court, the complainant has not made any prayer for issuance of process under aforementioned two provisions, therefore, this Court will not make any discussion with regard to applicability of provisions of Sections 182 and 406 of IPC and will restrict discussion with regard to the allegations that the accused Deepak Kapoor in-connivance with PWC and respondent Nos. 3 to 8 had committed the offence of cheating, forgery, use of forged documents, fraudulent cancellation of valuable security and falsification of accounts etc..

30. The learned Magistrate while passing the impugned order dated 09.10.2019 observed that the complainant had mainly relied upon

e-mails issued by the office bearers of PWC to show adjustment regarding outside system and apart from those e-mails there was no material on record to show that the company or its office bearers had evaded payment of any tax or had created any false accounts. It further was observed that no evidence was adduced to substantiate the contention of falsification of account or evasion of tax liability. By further observing that no cogent evidence had been produced on record to establish a *prima facie* case qua the commission of other offences alleged in the complaint except offence punishable under Section 500 of IPC, the learned Magistrate had dismissed the complaint inentirety qua PWC and respondent Nos. 3 to 8 and had issued process for commission of offence punishable under Section 500 of IPC against accused Deepak Kapoor only by observing that there was a *prima facie* case to issue process thereunder and the said order was affirmed by the learned Additional Sessions Judge, while passing order dated 01.04.2024.

31. Let us now consider as to whether the complainant had produced sufficient evidence on record to issue process for commission of aforementioned offences under Sections 420, 468, 469, 477, 477-A, 506 and 120-B of IPC against PWC, accused Deepak Kapoor and accused Nos. 3 to 8.

32. So far as the offence of **cheating** is concerned, the same is defined under Section 415 of IPC. The ingredients essential to constitute the offence of 'cheating' under Section 415 are:

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b)The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii)In cases covered by (ii) (b), the act or omission should be one which causes damage or harm to the person induced in body, mind, reputation or property."

33. The essential ingredients to attract **Section 420** of IPC are:-

(*i)cheating;*
(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into valuable security, and the
(iii) mens rea of the accused at the time of making the inducement."

34. The offence of **forgery** is defined under Section 463 of IPC. The basic elements of this offence are:-

(i) the making of a false document or part of if, and (ii) such making should be with such intention as is specified in the Section viz (a) to cause damage or injury to (i) the public, or (ii) any person or (b) to support any claim or title, or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract, or (e) to commit fraud or this fraud may be committed."

35. Commission of offence of forgery with the intention of committing cheating is punishable under Section 468 of IPC and for the purpose of this Section, it must be proved that the accused forged some

document and in forging the same, he had the intention that it would be used for the purpose of cheating, whereas, Section 469 of IPC provides punishment for commission of offence of forgery, intending that the document forged shall harm the reputation of any person and Section 471 of IPC provides punishment for fraudulent or dishonest use of a forged document as genuine.

36. The question for consideration is that the evidence produced on record by complainant established the ingredients of commission of aforementioned offences by PWC, accused Deepak Kapoor and respondent Nos. 3 to 8 or not? In this context, it may be mentioned that the complainant has rested his case upon the oral testimonies of his daughter- Yashasvini Mathur who appeared as CW-2 and himself (CW-1). In documentary evidence, the complainant placed reliance upon **Mark 'A'** photocopy of his performance evaluation as made by PWC, **Mark 'B'** copy of letter dated 27.02.2012 issued by PWC through accused Deepak Kapoor in the capacity of Chairman of the company thereby intimating that his services stood terminated w.e.f. 31.12.2011 on expiry of three months of severance notice, **Mark 'C'** copy of e-mail dated 07.12.2011 sent by the complainant to some officer of PWC and also intimating that if PWC decided to file any unwarranted FIR or frivolous case against him or took steps to sabotage his career, malign his reputation, cause any harm to his family or himself, in that event, he would be entitled to sue PWC for appropriate legal remedies and damages and would also be constraint to forward the e-mails to appropriate authorities, **Mark 'D'** copy of termination letter, **Mark 'E'** copy of affidavit-cum-undertaking shown to be sworn by the complainant

on 03.04.2012, **Mark 'F'** copy of letter dated 03.04.2012 issued by PWC, **Mark 'G'** copy of letter dated 24.12.2013 issued by Assistant Director of Income Tax (Investigation) Unit (V) (2) New Delhi and **Mark 'H'** copy of letter dated 10.02.2014 written by the Karanjawala and Company to the complainant on behalf of PWC.

37. The statements of the complainant Sarvesh Mathur and his daughter Yashaswini Mathur as recorded are reproduced by way of preliminary evidence, as under for the sake of convenience:-

"***Statement of Sarvesh Mathur S/o Late H.B. Mathur R/o A-702, Park View City-1, Sohna Road, Sector 48, Gurgaon.***

On SA

That I was working as chief finance officer of Price Water House Coopers Pvt. Ltd. (PWC) during March 2008 to December 31.12.2011. That during my service with PWC I had initially received very good evaluation from them. Subsequently I noticed lot of violations being committed which would have led to wrongful gain to PWC and wrongful loss to the Public Exchequer. I brought this to the notice of the management and suggested corrective Action. However, I was overruled, humiliated and hurt financially. The violations highlighted by me went into several crores of rupees and included clearing of evasions of Income Tax from the accounts and violation of various rules and regulations. Due to my uncompromising attitude, I was forced to resign and my employment with PWC ended on 31.12.2011. During my employment, I had told PWC in writing that I will be constrained to forward the documentary evidence of various violations being committed by them, *despite me bringing it to their attention on that occasion through an MOU to appropriate authorities pursuant to the onus cast upon me vide applicable provisions of the Indian Penal Code. Fearing exposure, PWC issued a forced termination letter dated 27.02.2012 even though I had ceased to be their employee on 31.12.2011.*

This was done with a view to defame me and lower my reputation in the eyes of general public, respective employees and statutory authorities. Subsequently I was forced to sign some documents on terms and conditions dictated by PWC which included that I will not divulge any of the wrongdoings and violations to anyone that PWC, has on several occasion, intimidated, cheated and defamed me by using forged and fabricated termination letter, although I was only acting as per the duty cast upon me. It is noteworthy that the Hon'ble Supreme Court has last year ordered investigation in PWC by the Directorate of Enforcement and the Institute of Chartered Accounting of India. The court had also noted that appropriate proceedings might have to be launched again qua PWC at appropriate forums. Due to the above referred action of PWC, my reputation has been damaged in the eyes of general public, family, respective employees and various statutory authorities. My family and myself have suffered mental torture, harassment and injury. The court is requested to summon all the accused i.e. PWC and their seven Directors/officers mentioned in my criminal complaint and to punish them in accordance with law under sections of the IPC invoked by me including 499, 500, 477, 477A, 420, 406, 204 and 120B of IPC.

CW-2 Statement of Yashasvini Mathur D/o Sarvesh Mathur R/o A-702 Park View City-1, Sohna Road, Gurugram

on SA

Stated that before joining PWC my father Sarvesh Mathur worked for various reputed firms like Tata Telecom, Alcatel Modi and Ispat Industries. He was respected and highly regarded everywhere by his friends, family, professional colleagues. Even at PWC, he was highly rated by everyone including global traders. However, due to the termination letter dated 27.02.2012 signed by PWC chairman Mr. Deepak Kapoor, his professional reputation, integrity and moral character, has been lowered in my eyes along with our family, friends, and his colleagues in our vicinity."

38. On a bare perusal of the statements of the complainant and his daughter, it is reflected that the testimony of CW-2 Yashasvini Mathur was restricted only to the extent that the reputation of her father was lowered in the eyes of his family members, friends and colleagues in their vicinity as well as herself due to termination of his services by PWC. So far as the testimony of complainant is concerned, though he is shown to have stated that he had noticed several violations being committed leading to wrongful gain to PWC and wrongful loss to public exchequer including evasions of income tax, falsification of account and violation of rules, however, he did not explain as to how the ingredients for commission of offences of cheating, forgery, use of forged documents, fraudulent cancellation of any valuable security or falsification of account had been established as against PWC or its office bearers named as accused in the complaint. The documents mark 'A' to mark 'H' as relied on by the complainant were only photocopies that could not be considered to be admissible in evidence as they were not

proved in accordance with law. Moreso, even otherwise they did not prove the ingredients for commission of the aforementioned offences. There is no whisper in his statement as to which particular document had been falsely created, forged and used and by which particular accused and how the use thereof caused prejudice to him thereby making out a case in his favour to seek issuance of process as against PWC and its office bearers including accused Deepak Kapoor. Nor his statement can be considered to be *prima facie* sufficient to prove that PWC, accused Deepak Kapoor and accused Nos. 3 to 8 hatched any conspiracy for the purpose of committing offnecs of cheating and forgery etc. As such, there can be no hesitation to hold that the learned trial Magistrate committed no error in rejecting the prayer made by the complainant to issue process against the PWC and its seven office bearers as named in the complaint, for commission of offences punishable under Sections 420, 468, 469, 471and 120-B of IPC.

39. So far as offence under Section 477 of IPC is concerned, it deals with fraudulent cancellation, destruction etc, of Will, authorities to adopt or valuable securities or committing mischief in respect of certain documents. As per this provision any person, who fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys or defaces, or attempts to cancel, destroy or deface or secrets or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such documents, shall be punished with, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

40. In the instant case, neither from the allegations in the complaint nor from the preliminary evidence led by the complainant, it is revealed that there was any fraudulent or dishonest cancellation or destruction of any document which purported to be any valuable security, will etc., either by the PWC or its office bearers i.e. accused Nos. 3 to 8. Even during the course of arguments, the complainant could not point out as to how the provisions of Section 477 of IPC were attracted in this case.

41. Similar is the position with regard to Section 477-A of IPC. This provision is enacted to punish falsification of accounts belonging to the employer by some clerk, officer or servant. In order to bring home an offence under this Section, the complainant was required to establish that accused Deepak Kapoor and respondents No. 2 to 8 who are admittedly employees/office bearers of PWC, while acting in that capacity destroyed, altered, mutilated or falsified any book, paper, writing, valuable security or account which belonged to or was in possession of PWC or had been received by them, with intent to defraud PWC. Obviously, this Section is not applicable where the falsification of accounts is made by the employer himself. The bare oral statement of the complainant in this case cannot be considered to be sufficient to show that the provisions of Section 477-A had been attracted either against PWC or any of the persons named as accused in the complaint. Therefore, no ground to interfere with the orders passed by learned courts below on this point as well is made out. It is a different matter altogether that it has come on record that on the basis of complaints separately filed

by the complainant with the Income Tax Authorities and Enforcement Directorate etc., penalty of Rs. 230 crores has been imposed upon PWC.

42. It has also been revealed from the material placed on record before this Court that in a petition filed by the complainant bearing No. ***CRWP-1090-2021 (O&M)*** titled as ***'Sarvesh Vs. State of Haryana'*** seeking registration of FIR on the basis of complaint filed him, observations have already been made that since the matter has already been examined by the Enforcement Directororate, therefore, no ground has been made out issuance of any direction in this regard. As such, this Court finds that the complainant has neither any *locus standi* nor PWC or its office bearers were liable to be summoned and face trial for commission of offences punishable under Sections 420, 468, 469,471, 477 and 477-A read with Section 120-B of IPC for committing acts of some financial defaults by PWC on the basis of evidence produced on record by the complainant.

43. So far as the offence of criminal intimidation is concerned, the same is defined under Section 503 of IPC. This Section is in two parts:

The first part refers to the act of another with injury to his person, reputation or property or to the person or reputation of any person in whom that person is interested; the second part refers to the intent with which the threatening is done. It is well settled that a mere threat does not constitute an offence unless the threat is to cause injury to the person threatened and an alarm is caused to him. While appearing as CW-1, the complainant though stated that he was forced to sign some documents but did not utter even a single word to the effect that he was criminally threatened or intimidated by either of the respondent Nos. 3 to 8 or by accused Deepak Kapoor. The bare allegation in the complaint that he was criminal intimidated, could not be considered to be sufficient. As such, it can be stated that the evidence produced on record by the complainant was not *prima facie* sufficient to issue process under Section 506 of IPC against PWC, or accused Nos. 3 to 8 or against accused Deepak Kapoor and hence the learned Magistrate committed no illegality in dismissing the complaint to the extent to reliefs so claimed.

44. The Court of learned Additional Sessions Judge while exercising its revisional jurisdiction and while passing the order dated 01.04.2024 is also shown to have discussed the evidence produced on record by the complainant in context with the provisions of aforementioned Sections in detail and held that no case for issuance of process under these provisions was made out against PWC or accused Nos. 2 to 8. The Court of learned Additional Sessions Judge refrained from making any observation with regard to issuance of process under Section 500 of IPC against accused Deepak, keeping in view of pendency of petition filed by him before this Court and rightly so. As per the discussion made above, the findings as given by learned Additional Sessions Judge, thereby affirming the order passed by learned Judicial Magistrate of not issuing process against PWC, accused Deepak Kapoor and respondent Nos. 3 to 8 for commission of aforementioned offences call for no interference.

45. With regard to the offence punishable under Section 500 of IPC, it is relevant to mention here that the complainant himself recorded

a statement before the Court of learned Additional Sessions Judge, Gurugram on 30.03.2024 to the effect that he did not press the relief as claimed in his revision petition for summoning PWC and its six office bearers (named in complaint as accused Nos. 3 to 8) under Section 500 of IPC and dropped the relief so claimed against them to that extent while addressing arguments. It was, however, vehemently argued by him that the order of learned trial Court/Magistrate, thereby summoning the accused Deepak Kapoor under Section 500 of IPC was well reasoned and did not deserve to be set aside.

46. Now the next question that arises for consideration before this Court is as to whether the impugned order dated 09.10.2019 whereby the accused Deepak Kapoor was ordered to be summoned as such and to face trial for commission of offence punishable under Section 500 of IPC requires any interference to that extent or not?

47. The offence of defamation is defined under Section 499 of IPC which reads as under:-

> ***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 expected, to defame that person.*
>
> *Explanation 1. XX XX XXX*
>
> *Explanation 2. XX XX XXX*
>
> *Explanation 3. XX XX XXX*

> *"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."*

48. A bare reading of the contents of Section 499 of IPC makes it clear that to constitute the offence of 'defamation' as mentioned in this Section, there has to be imputation and it must have been made in the manner as provided in the section i.e. with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and *mens rea* is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or had known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The gist of offence of defamation is the dissemination of harmful imputation. When a defamatory statement is published, it is not only the publisher but also the maker who becomes responsible. It is of the essence that in order the constitute the offence of defamation, it must be communicated to a third person because what is intended by the imputation, is to arouse the hostility of others. If a person merely writes defamatory words and keeps the writing with himself, the offence is not made out. Likewise, if the libeller merely communicates the libel to the person defamed, it does not constitute an offence under the said Section,

although it may amount to an insult and may be punishable as such. The question whether the libel infact has been communicated to some third person is material. It is not enough that the libeller posted it to a third person.

49. Further for invoking provisions of Section 499 of IPC, it is not only essential that the impugned imputation harming the reputation of the person must be alleged to have been made or published but also that it must be shown, amongst others, to have directly or indirectly, *inter alia* lowered the moral or intellectual character of the concerned person 'in the estimation of others'.

50. **V. Mitter (Author)** in his commentary on Law of Defamation & Malicious Prosecution (Twelfth Edition) expounds on the subject with reference to **fourth explanation** as follows :-

> *"And further since in Explanation 4, appended to the section, it is laid down that no imputation is said to harm a person‟s reputation unless it lowers him in the estimation of others, it follows that there can be no publication unless it reaches at least a third person, in whose estimation the reputation of the person defamed could possibly suffer."*
>
> *(emphasis supplied)*

51. Following the view taken by the full bench decision of the Privy Council in ***Queen Empress Vs. Taki Husain, 7A 205 (FB) - 4A.W.N. (1884) 340***, Allahabad High Court in a very early decision reported as ***Khima Nand and Anr. vs. Emperor, 1936 SCC Online All 307: 1937 Crl. LJ 806*** held that:-

> *"The only rule is that there can be no offence of defamation unless the defamatory statement is published or*

communicated to a third party, that is, to a party other than the person defamed...”

(emphasis supplied)

52. In a very well researched judgment on the subject rendered by Patna High Court in case reported as ***Sardar Amar Singh Vs. K.S. Badalia, 1964 SCC OnLine Pat 186***, it was held thus :-

> *“One of the ingredients of the offence of defamation is that there should be making or publication of any imputation concerning any person. Such imputation may be by words either spoken or written. The defamatory matter has to be published. In other words, it has to be communicated to a person other than the person defamed. The word ‘makes’ in Section 499 refers to the originator of the defamatory matter. I can usefully refer here to Volume III, 6th edition of Dr. Sir Hari Singh Gour's Penal Law of India, page 2340, where the learned author has noted that the word “makes” in S. 499 has been used in its etymological sense as connoting “to make public” or “to make known to people in general”. Publication implies communication to at least one person other than the person defamed. In other words, communication must be to a third party, that is, to a party other than the person defamed (vide* **Khima Nand v. Emperor, 38 Cri LJ 806 (All)***…”*

(emphasis supplied)

53. Similar question had arisen before the High Court of Andhra Pradesh in case reported as ***Challa Subbarayudi Vs. Darbha Ramakrishna Rao, 1967 SCC Online AP 137*** and the following view was taken:-

> *“13. Publication is the communication of the words or doing the defamatory act in the presence of at least one other*

> *person than the person defamed. Communication to the plaintiff himself would not be enough because defamation is an injury to one's reputation and reputation is what other people think of man, and not his own opinion of himself. Publication of the defamatory act or statement therefore is an essential element for the constitution of defamation."*
>
> *(emphasis supplied)*

54. In the context of similar criminal complaint under Section 500 IPC, the Kerala High Court in the matter reported as **'*P.R. Ramakrishnan Vs. Subbaramma Sastrigal and Anr., 1986 SCC Online Ker 309*'** took the following view:

> *"….To attract the definition of the offence of defamation as contained in S. 499 of the IPC., the imputation should have been made or published"whoever makes or publishes any imputation" are the relevant words employed in the section. The word "makes" is intended to supplement the sense of "publishes" Those words conjunctively connote "to make public." It is settled proposition that there is no publication if the libeller merely communicates his libel to the person defamed."*
>
> (emphasis supplied)

55. Similar questions arose before the Madras High Court in the case of ***Smt. Dr. Nagarathinam vs. M. Kalirajan, 2001 SCC Online Mad 355: 2001 Cri LJ 3007*** wherein by drawing strength from the observation of the Hon'ble Supreme Court in ***Bilal Ahmed Kaloo vs. State of Andhra Pradesh, (1997) 7 SCC 431***, albeit in the context of offence under Section 500 IPC, to the effect that the words "makes or publishes any imputation" should be interpreted as "words supplementing to each other", and that a maker of imputation without publication is not liable to be punished under that section", it was held that "the publication

with intention of harming the reputation of the person concerned to make others to know the imputation is the most important ingredient to make out an offence under S. 500 IPC" and further that "there will be no publication, if the complainant alone is informed of the defamatory words", and also that "a communication to the defamed himself will not be a publication."

55. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it is noticed that the prosecution of accused Deepak Kapoor is based upon the complaint filed by the complainant on the allegation that he had wrongfully and maliciously defamed him. However, on a bare perusal of the contents of the complaint (Annexure P-7) and the allegations levelled therein, it is clear that there is no whisper of any allegation, of the accused Deepak Kapoor having 'published', the contents of the termination letter to any person other than the complainant himself. There is also not a whisper of averment/allegation either as to how the imputation had come to the notice of his daughter, it not being the case of the complainant that the publication of the defamatory material was made at large at the instance of the accused. The mere fact that the daughter of the complainant was aware of termination of his employment, does not *per se* constitute defamation without the complainant specifically alleging that the accused, without being required to make any other person aware, had with an intent to malign and defame, published details of the reasons for which his services had been terminated. No such plea exists either in the complaint or in the statements of the complainant and his daughter

recorded during course of producing preliminary evidence. As such, in the considered opinion of this Court, since it is not proved that there was any publication of the termination letter which is necessary to issue process/ convict the accused under Section 500 of IPC and as there is no evidence whatsoever on record to show that any person other than the complainant had come to know about the contents of the termination letter, it is not proved as to how the complainant was defamed.

56. This Court on going through the material placed on record, is of the considered opinion that the complaint presented by the complainant before the Court of Magistrate on which, he sought criminal action against the accused for the offence of defamation was deficient to the effect that there was no allegation made as to the publication of the insinuating material. Even the evidence produced on record by the complainant could not be stated to be *prima facie* sufficient to prove that there was communication of the contents of the termination letter issued by the accused to the complainant to some third party. The statement of daughter of the complainant also does not serve any purpose in this regard as the contents of the termination letter were not communicated by the accused to her. The fact that she came to know about the same through father does not amount to publication of communication of defamation on the part of the accused. Consequently, the petition filed by the complainant could not have been even treated as 'complaint' within the meaning of the expression used in Cr.P.C. or such as on which cognizance could have been taken by the Magistrate in exercise of the jurisdiction vested in him. The jurisdiction so exercised was an abuse of process warranting intervention by this Court and therefore, it can be

stated that the trial Magistrate did not invoke the jurisdiction vested in him in a proper manner and erred in issuing process as against the accused Deepak Kapoor for commission of offence punishable under Section 500 of IPC.

57. As already observed, the existence of remedy of revision is not a bar to invoke the jurisdiction of this Court in exercise of powers under Section 482 of Cr.P.C. which can be exercised for judicial review in criminal matters to prevent the abuse of process of law by the Magistrate. In view of the discussion so made, it is held that the order passed by the learned Magistrate thereby issuing process against the accused Deepak Kapoor for commission of offence under Section 500 of IPC is not sustainable and is liable to be set aside not only as per the discussion as made above but also due to the reasons that even otherwise the learned Magistrate could not take cognizance of the matter and issue process under Section 500 of IPC against the accused as the relief as claimed by the complainant to this effect had become barred by time under Section 468 of IPC as per which, no court is competent to take cognizance to take an offence on expiry of period of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. The offence under Section 500 of IPC is punishable for imprisonment for a period of two years. The termination letter containing the alleged defamatory contents was issued as on 27.02.2012, whereas the complaint was filed by the complainant as on 30.05.2017 i.e. after a period of five years. Therefore, apparently the learned trial Magistrate was not even competent to take cognizance of the

matter as on the date of filing of the complaint for issuing of process under Section 500 of IPC and on this ground also the complaint along with the proceedings initiated thereunder have become liable to be quashed.

58. As per the discussion as made above, the petition filed by the accused Deepak Kapoor is allowed and the complaint filed by the complainant as well as summoning order dated 09.10.2019 issuing process against accused Deepak Kapoor are hereby quashed whereas the petition filed by the complainant-Sarvesh Mathur is dismissed.

59. Since the main petitions have been disposed of, pending application, if any, is rendered infructuous.

60. Photocopy of this order be placed on the file of connected case.

[MANISHA BATRA]
JUDGE

22nd August, 2024
Parveen Sharma

1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes