HC-KAR

NC: 2026:KHC:59436
CRL.P No. 1573 of 2019
C/W CRL.P No. 852 of 2019

CNR: KAHC010058372019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 1573 OF 2019

C/W

CRIMINAL PETITION NO. 852 OF 2019

IN CRL.P.No.1573/2019:

BETWEEN:

1 . STATE BANK OF INDIA
REP BY ITS CHAIRMAN AND
MANAGING DIRECTOR,
SRI RAJNISH KUMAR,
S/O RADHEYLAL,
AGED ABOUT 61 YEARS,
STATE BANK BHAVAN, 14TH FLOOR,
MADAME CAMA ROAD,
NARIMAN POINT, MUMBAI,
MAHARASHTRA - 400 021.

2 . SRI RAJNISH KUMAR
S/O RADHEYLAL,
AGED ABOUT 61 YEARS,
STATE BANK BHAVAN, 14TH FLOOR,
MADAME CAMA ROAD,
NARIMAN POINT, MUMBAI,
MAHARASHTRA - 400 021.

3 . SRI R PRABHU
S/O RAJAGOPALAN B T,
AGED ABOUT 56 YEARS,
DEPUTY GENERAL MANAGER,
STATE BANK OF INDIA,
STRESS ASSETS MANAGEMENT BRANCH,
II FLOOR,
OFFICE COMPLEX BUILDING,

Digitally signed by ANUSHA V
Location: High Court of Karnataka

LOCAL HEAD OFFICE COMPOUND,
NO.65, ST. MARK'S ROAD,
BENGALURU - 560 001.

…PETITIONERS

[BY SRI G.KRISHNA MURTHY, SR. COUNSEL FOR
SRI VEERENDRA PATIL, ADVOCATE]

AND:

MR BHARATH DAYANANDA
S/O DAYANANDA,
AGED ABOUT 25 YEARS,
NO.39/2, A.S.V.N.V BHAVAN,
IV FLOOR,
KEMPE GOWDA ROAD,
BENGALURU - 560 009.

…RESPONDENT

[BY SRI SHEKAR G. DEVARA SR. COUNSEL (VC) FOR
SRI K. NAGABHUSHANA REDDY, ADVOCATE]

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO (a) SET ASIDE THE IMPUGNED ORDER DATED 16.01.2019 PASS ED BY THE V ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BANGALORE IN PCR NO.16121/2018 (VIDE ANNEXURE A). (b) QUASH THE PROCEEDINGS IN C.C.NO.1863/2019 (VIDE ANNEXURE B) PENDING BEFORE THE COURT OF V ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BANGALORE FOR THE ALLEGED OFFENCE P/U/S.499 AND 500 OF IPC.

IN CRL.P.No.852/2019:

BETWEEN:

MR.B.NARASIMHAM
S/O MR.B.SUBRAMANYAM
AGED ABOUT 58 YEARS
PRESENTLY WORKING AS

ASSISTANG GENERAL MANAGER
STATE BANK OF INDIA,
STRESS ASSETS MANAGEMENT BRANCH,
II FLOOR, OFFICE COMPLEX BUILDING,
LOCAL HEAD OFFICE COMPOUND,
NO.65, ST MARK ROAD,
BENGALURU - 560 001.

…PETITIONER

[BY SRI G.KRISHNA MURTHY, SR. COUNSEL FOR
SRI RAVI SHANKAR C.S., ADVOCATE]

AND:

MR BHARATH DAYANANDA
S/O DAYANANDA
AGED ABOUT 25 YEARS
NO.39/2, A.S.V.N.V. BHAVAN,
IV FLOOR, KEMPE GOWDA ROAD,
BENGALURU - 560 009.

…RESPONDENT

[BY SMT.PRAMILA NESARGI (P/L) SR. COUNSEL FOR
SRI K.N.NAGABHUSHAN REDDY, ADVOCATE]

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO A. QUASH THE PRIVATE COMPLAINT DATED 13.12.2018 (VIDE ANNEXURE-A) FILED BY THE FIRST RESPONDENT AND THE PROCEEDINGS PENDING BEFORE THE V A.C.M.M., BANGALORE FOR THE ALLEGED OFFENCES P/U/S 499, 500 OF IPC BY ALLOWING THE PETITION. B. SET ASIDE IMPUGNED ORDER PASSED IN C.C.NO.1863/2019, DATED 16.01.2019, BY THE V A.C.M.M., AT BANGALORE.

THESE PETITIONS ARE HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.08.2026, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging order dated 16.01.2019 and entire proceedings in CC no.1863/2019 on file of V ACMM, Bangalore for offences punishable under Sections 499 and 500 of Indian Penal Code, 1860 (**IPC**), Crl.P.no.1573/2019 is filed by accused no.1 to 3, while Crl.P.no.852/2019 is by accused no.4.

2. Sri G Krishnamurthy, learned Senior Counsel appearing for Sri Veerendra Patil and Sri Ravi Shankar CS, counsel for petitioners submitted that petitioners were accused (**petitioners**) in PCR no.1121/2018 filed by respondent (**complainant**) stating that on 01.08.2011, he was appointed as Director of Bharath Infra Exports and Imports Ltd. (**Company**). Due to his business proficiency, he was designated whole time Director on 01.04.2012. Further he had invested Rs.3.66 Crores in its shares. And utilizing his

acquaintances from United Kingdom, he ensured growth of Company from Rs.206 Crores to Rs.838 Crores within 5 years.

3. It was stated that Company maintained current account no.CA 31279270707 with State Bank of India – accused no.1 (**SBI**). That on 22.06.2015, with intention of wrongful gain from commission, SBI illegally transferred Rs.2.03 Crores from Company's account to SBI Life Insurance Co. Ltd. (**SBIL**), causing loss, damage and injury to complainant and Company. Besides, SBI also debited OD penal interest from Company's account no.30770234121 from 31.1.2016 to 31.05.2016, without any default. Therefore, complaint was filed. Same was registered as Crime no.185/2018 by Wilson Garden Police against five Bank officials including Sri Rajinish Kumar - accused no.2 and Sri Narasimham - accused no.4, for offences punishable under Sections 403, 406, 420, 464 read with Section 34 of IPC.

4. It was alleged that when Company demanded refund of Rs.2.03 Crores, SBI wrote letter to **SBIL** to direct Company substitute complainant as a guarantor in place of Late

BN Thimma Reddy who had died lately. At same time, SBI increased LC margin from 10% to 15% and withdrew Company's Export Packing Credit (**EPC**). Aggrieved by same, Company requested SBI for golden handshake under letter dated 06.10.2016. It paid Rs.45 Crores and cleared entire fund based working capital facilities and under letter dated 07.10.2016 discontinued banking with SBI and requested for transfer of accounts/facilities to South Indian Bank, but SBI did neither.

5. It was stated, due to withdrawal of LC facilities, Company could not fulfil commitment to customers, compelling complainant to resign from Directorship on 17.10.2016 after intimating SBI as well as Registrar of Companies (**RoC**). Despite same, SBI continued to describe him as Director. Therefore, under letter dated 14.12.2016 complainant informed SBI about his resignation from directorship and sought deletion of his name from Bank's records. Though under letter dated 27.03.2017, SBI informed him that he was personal guarantor for Company's loan from SBI, when he demanded proof of guarantee, it failed to furnish same. In later demand dated

30.05.2017 by accused no.3 – Prabhu, Deputy General Manager, SBI name of complainant was omitted.

6. Suddenly on 04.11.2018, accused no.4 – Narasimham, Asst. General Manager, SBI got published in New Indian Express/Sunday Express and Samyuktha Karnataka newspapers, a '*Possession Notice*' under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI**) naming complainant as defaulter. After above publication, complainant's friends, relatives, business associates and financial institutions began contacting him for clarification causing him mental agony and affecting his business/personal life as well as directorship in other companies etc. destroying his reputation. It was further alleged that despite legal notice got issued by complainant on 22.11.2018 demanding withdrawal of publication, accused failed. Alleging that despite knowing that complainant had resigned as Director and was not guarantor, accused no.1 to 4 with common intention, deliberately and falsely named him as defaulter to maliciously damage his reputation, business interests, creditworthiness, social image etc. and thereby

committed offences leading to filing of private complaint against accused along with list of documents such as ROC records, banking correspondence, police complaint, FIR, legal notice, newspaper publications etc. It was submitted that on 16.01.2019, learned Magistrate directed for registering criminal case and issued process against accused no.1 to 4. Based on same, CC no.1863/2019 was registered against accused no.1 to 4 for offences punishable under Sections 499 and 500 of IPC. Aggrieved, these petitions were filed.

7. At outset it was submitted, allegations in complaint disclose complainant's grievances were purely civil in nature with provision for redress under SARFAESI and there was deliberate attempt to add criminal flavor to dispute and hence abuse of process. It was submitted, complainant unsuccessfully approached State Consumer Commission ('**KSCDRC**') and later National Commission ('**NCDRC**'). Resort to criminal proceedings later would be abuse of process.

8. It was submitted that for recovery of its dues, SBI had filed OA no.725/2018 before Debt Recovery Tribunal

(**DRT**). It was submitted, Hon'ble Supreme Court in **K Virupaksha and Anr. v. State of Karnataka and Anr.**, reported in **(2020) 4 SCC 440** held, SARFAESI was complete code contemplating remedies to borrowers/guarantors against Bank and instead of availing same, filing of criminal complaint would be abuse of process and quashed criminal proceedings especially when matter is pending before DRT.

9. Further, SBI had branches spread all over nation and role of accused no.2 as Chairman of SBI was overall supervision from his office in Mumbai, which was shown in cause title of complaint and outside territorial jurisdiction of Court. Besides, incidents alleged occurred within Bengaluru. Under above circumstances, order taking cognizance and issuance of process would be in violation of procedural protection under Section 202 of CrPC. It was submitted, Hon'ble Supreme Court in **Jaideep Bose v. Bid and Hammer Auctioneers (P) Ltd.**, reported in **2025 SCC OnLine SC 348**, and this Court in **Rahul Gandhi v. Bharatiya Janata Party**, reported in **2026 SCC OnLine Kar 779**, held, where accused resided beyond area of jurisdiction of Magistrate, it was

mandatory to conduct enquiry or investigation before issuing process, a serious judicial act, requiring application of judicial mind.

10. It was submitted, accused no.3 and 4 were officials of Bank entitled for protection under Section 32 of SARFAESI as their actions were in good faith for recovery of dues to SBI. It was submitted, Hon'ble Supreme Court in **Anil Khandelwal v. Phoenix India**, reported in **2025 SCC OnLine SC 1883**, held that high-ranking bank officials cannot be held automatically or vicariously liable for criminal offenses under IPC based solely on their official designation or status. It was also submitted that there was no explanation about role of accused no.3 and 4 in offence of defamation and sought quashing of proceedings against accused no.3 and 4.

11. Further High Court of Bombay in **DJ Exim India Pvt. Ltd. v. SBI**, reported in **(2015) 1 Comp LJ 138 (Bom)** held Banks had authority to publish photographs of wilful defaulters and guarantors in newspapers and same was neither *ultra vires* their powers nor would violate borrower's right to privacy when weighed against larger public interest.

12. It was submitted, complaint was counterblast to SBI filing OA no.725/2018 before DRT on 22.03.2018, to harass Bank officials. Relying on decision of Hon'ble Supreme Court in **Punjab National Bank v. Surendra Prasad Sinha**, reported in **1993 Supp (1) SCC 499**, it was submitted that judicial process should not be permitted to be used as instrument of oppression, harassment or means to wreak personal vengeance. Relying on decision of Hon'ble Supreme Court in **MN Ojha v. Alok Kumar Srivastav**, reported in **(2009) 9 SCC 682**, it was submitted, filing of complaint as counterblast against bank officials involved in lawful recovery duties would be abuse of judicial process.

13. It was submitted, Hon'ble Supreme Court in **Maksud Saiyed v. State of Gujarat**, reported in **(2008) 5 SCC 668** and **GHCL Employees Stock Option Trust v. India Infoline Ltd.**, reported in **(2013) 4 SCC 505**, held that Magistrate must apply his mind while entertaining complaint under Section 156 (3) of CrPC or under Section 200 of CrPC, evaluate allegations alongside conduct of parties and examine if

commission of any offence is *prima facie* indicated against accused before taking cognizance or issuing process. And arraignment of officials purely on official position without mentioning specific role was held to be abuse of process.

14. It was submitted, Hon'ble Supreme Court in **Priyanka Srivastava v. State of UP**, reported in **(2015) 6 SCC 287** held Magistrates were required to apply their judicial mind objectively before ordering criminal investigations against bank officials conducting lawful financial recoveries and avoid issuing directions mechanically for investigation by police under Section 156 (3) of CrPC.

15. And relying on decision of Hon'ble Supreme Court in **Kishore Balkrishna Nand v. State of Maharashtra**, reported in **(2023) 8 SCC 358**, held accusations made in good faith would under Exception 8 to Section 499 of IPC and not constitute criminal defamation. And relying on decision of **Rajiv Thapar v. Madan Lal Kapoor**, reported in **(2013) 3 SCC 330**, it was submitted that in a petition under Section 482 of CrPC, it could permit accused to rely on unrefutable material of

sterling and impeccable quality to disprove accusation. And if defence material was indubitable and rules out possibility of conviction, Court would be justified in relying on same and quash proceedings to prevent abuse of process, instead of subjecting parties to trial which would be waste of precious judicial time.

16. It was submitted that in a defamation case, it was mandatory for alleged defamatory statement made or published to be reproduced in complaint and as per decision of High Court of Kerala in **Ramakrishnan and Anr. v. State of Kerala and Anr.** [**2025:KER:50841**], failure was fatal for offence under Section 500 of IPC. On above grounds prayed for allowing petitions.

17. On other hand, Smt.Pramila Nesargi and Sri Shekar G. Devasa, learned Senior Counsel appearing for Sri K. Nagabhushana Reddy, advocate for respondents opposed petitions. They submitted that complainant was neither a mortgager nor a personal guarantor to SBI as evident from Document no.R-13 produced by SBI before CBI and from

Documents no.R-9 and R10 as well as letter dated 30.05.2017 addressed by DGM of SBI to personnel guarantors omitting name of complainant. Hence, newspaper publication including name of complainant as defaulter was defamatory as petitioners knowingly and deliberately described complainant as guarantor/mortgager and defaulter. Insofar as naming stranger as defaulter, petitioners cannot claim protection under Section 32 of SARFAESI and decisions relied by petitioners are misplaced. Besides, complainant had filed OS no.280/2024 before Principal Civil Judge and JMFC Anekal, seeking for relief of declaration that alleged Deed of Guarantee dated 21.05.2009 and 25.03.2015 as fraudulent, null and void. It was submitted, documents sought to be relied on by petitioners herein were said documents. It was submitted in said suit had granted order of temporary injunction restraining SBI from relying on enforcing or using said alleged Deeds/documents. It was submitted by deliberately suppressing above material facts and relying on forged and fabricated Deeds present petition is filed. Hence no interference was warranted.

18. It was alleged that said deeds were created by SBI and its officials by conspiring with each other and with sole intention of wrongful monetary gain and cause corresponding wrongful loss to complainant. Same was highlighted in order of temporary injunction passed in civil suit. After passing of order of injunction, SBI filed I.A no.227 dated 10.03.2026 in Company Petition (IB) no.42/2024 pending before National Company Law Tribunal (NCLT), Bengaluru, in which it expressly stated that complainant had not signed Deed of Guarantee dated 21.05.2009. Thereafter, SBI sought permission of NCLT to delete and remove Deed of Guarantee dated 21.05.2009 from records of Petition. Said conduct demonstrates suppressed material facts from this Hon'ble Court. But petitioners stand herein is wholly inconsistent and directly contradictory to admissions, which would by itself amount to abuse of process of law, disentitling petitioners from relief.

19. It was further submitted, after Company's letter dated 07.10.2016, SBI was required to cease further transactions on account of Company. Despite same, there were unauthorized debit transactions aggregating to Rs.101.80

Crores during period from 20.10.2016 to 26.12.2016, purportedly on forged, fabricated and ante-dated Board Resolution dated 01.09.2009, which is seriously disputed and forms subject matter of independent civil proceedings. Above facts also reveal that there was active participation of petitioners in alleged conspiracy and siphoning off huge amounts from account of Company. While petitioners have failed to substantiate their claims before DRT since year 2018, complainant filed suit and obtained order of temporary injunction that transactions carried out by SBI and its officials are fraudulent.

20. It is forlorn that description of complainant as "personnel guarantor/mortgager" and "defaulter" portray complainant in negative light in public view and affects his reputation. And averments in complaint, sworn statement of complainant, witnesses and documents disclosed essential ingredients of offences under Sections 499 and 500 of IPC, constituting prima facie case. Further, grounds urged for quashing are based on disputed questions of fact, including genuineness of documents sought to be relied on by petitioners

which can be done only after full-fledged trial. In view of bar against mini-trial for evaluation of prosecution material petition as per decision of Hon'ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.**, reported in **(2021) 19 SCC 401**, petition was liable for dismissal. It was submitted Hon'ble Supreme Court in case of **CBI v. Arvind Khanna**, reported in **(2019) 10 SCC 686**, **State of Telangana v. Habib Abdullah Jeelani and Ors.**, reported in **(2017) 2 SCC 779** and **Dineshbhai Chandubhai Patel v. State of Gujarat and Ors.**, reported in **(2018) 3 SCC 104**, held that in a petition under Section 482 of CrPC, there was bar against examination of defence of accused or reliance on documents produced by accused, which do not form part of prosecution record.

21. Rebutting challenge on ground of non-application of mind, it was submitted sworn statement of complainant was recorded on 26.12.2018 and 07.01.2019 and documents as Exs.P1 to P23 marked. Complainant also examined Chetan and Narayan (as PWs.2 and 3). As impugned order was passed after above cannot be stated to be without application of mind.

Therefore, impugned order dated 16.01.2019 was legal and valid. It was submitted, amendment of Section 202 of CrPC in 2006 was considered and Hon'ble Supreme Court in **Vijay Dhanuka and Ors. v. Najima Mamtaj & Ors.**, reported in **(2014) 14 SCC 638**, **Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, reported in **(2019) 16 SCC 610**, **Union of India Vs. Ashok Kumar Sharma**, reported in **(2021) 12 SCC 674** and High Court of Allahabad in **Saurav Gupta & Ors. v. State of U.P. & Anr.**, reported in **(2023) SCC OnLine All 2838**, holding that object of amendment was to ensure innocent persons residing beyond territorial jurisdiction were not harassed and Magistrate was required to examine Complainant on oath and where necessary, direct Complainant to examine his witnesses on oath and on scrutiny of material if *prima facie* satisfied (reasons to be recorded) about need of inquiry issue process. It was submitted that learned Magistrate in instant case had complied with prescribed procedure and passed order after application of mind.

22. It was submitted that Hon'ble Supreme Court in **State of Harayana v. Bhajan Lal**, reported in **1992 Supp.**

(1) SCC 335 and **Neeharika**'s cases (supra), **State of West Bengal and Ors. v. Swapan Kumar Guha and Ors.**, reported in **(1982) 1 SCC 561**, held that power of quashing must be exercised with extreme circumspection and only in rarest of rare cases. At threshold stage, Court must confine its scrutiny strictly to whether allegations in FIR/complaint prima facie disclose a cognizable offence. Once any cognizable offence was disclosed, statutory right and duty of police to investigate cannot be delayed. It was submitted, averments in Complaint, sworn statements of complainant and witnesses and documents on record, disclosed a *prima facie* 'case of defamation against petitioners'. It was submitted, Complaint, sworn statements, documents and other material on record disclose *prima facie* case against petitioners for offences under Sections 499 and 500 of IPC. On above grounds sought for dismissing petitions.

23. Heard learned counsel and perused material on record.

24. These petitions are by accused no.1 to 4 challenging order taking cognizance as well as seeking for

quashing of entire proceedings for offences under Sections 499 and 500 of IPC.

25. Main grounds of challenge are dispute being purely civil given criminal flavor; complaint as counterblast to harass petitioners; complaint lacking essential ingredients of offences alleged, order passed without application of mind on ground of failure to notice protection of petitioners as Bank employees under Section 32 of SARFAESI as well as non-compliance with Section 202 of CrPC and lastly protection under Eighth Exception to Section 499 of IPC.

26. Insofar as contention about civil dispute sought to be given criminal flavour, distillate of legal position in view of decisions in **Anukul Singh v. State of U.P.**, reported in **2025 SCC OnLine SC 2060**, **Neeharika**'s case (supra) and **CS Prasad v. C Satyakumar & Ors.**, reported in **2026 SCC OnLine SC 50** would be that there is no prohibition against initiation/continuation of civil as well as criminal proceedings, if act complained of gives rise to cause of action for both and if essential ingredients of offences are disclosed in complaint.

Petitioners herein seek to rely on deeds of guarantee dated 21.05.2009 and 23.05.2015 to contend complainant was defaulter and resort to criminal proceedings was abuse of process to pressurise officials of Bank. But, very foundation of complainant's allegations against SBI/its officials is denying being mortgager/guarantor and alleging that naming complainant as mortgager/guarantor and defaulter in public notice and getting it published in Newspapers was with intention to harm his reputation and cause financial loss.

27. It is settled law that where prayer for quashing based on documents/records not part of prosecution material would be available only on unrefutable material of sterling and impeccable quality to totally disprove accusation and rendering conviction impossible. While complainant is denying being mortgager or guarantor of SBI, petitioners are seeking to rely on deeds of guarantee dated 21.05.2009 and 23.05.2015 to rebut said claim to reinforce their challenge of criminal proceedings on ground of abuse of process. But in OS no.280/2024 filed by complainant herein for declaring very same deeds as fabricated and *void ab initio* and for permanent

injunction restraining defendants (including SBI) from relying on them, trial Court on 17.11.2025 granted order of temporary injunction restraining SBI and its officials from using/enforcing alleged deeds of guarantee in any manner before tribunals/authorities for purpose of enforcement of any of contents of said deeds, during pendency of suit, which is still in force. Thus, direct consequence of legality of deeds being under challenge and order of temporary injunction restraining SBI being in force would be that said documents would not be unrefutable material of sterling/impeccable quality as would disprove accusation or remove possibility of conviction. Question of reliability of documents would be matter for investigation/trial. For aforesaid reasons, challenge on ground of civil dispute being given criminal flavour, complaint filed as counterblast to harass officials of SBI would not hold water.

28. Further, essential ingredients for offences under Sections 499 and 500 of IPC, are comprehensively dealt with by Hon'ble Supreme Court in **Subramanian Swamy v. Union of India**, reported in **(2016) 7 SCC 221**. Referring to **Jeffrey J. Diermeier v. State of West Bengal**, reported in **(2010) 6**

SCC 243, it was held that imputation must be made with intention of harming or knowledge that it would harm reputation of person concerned. Though Section 499 of IPC has ten exceptions, First Exception, deals with imputations made for public good, is held to be question of fact in **Subramanian Swamy**'s case (supra) and would require trial. Second Exception, relates to public conduct of public servants, would not apply to present case. Third Exception is in relation to conduct of any person touching any public question, may apply to present case only if it is established that complainant was mortgagor or guarantor and defaulter and would also require trial. Fourth and Fifth Exceptions are about publication of Court proceedings and conduct of witnesses, would not apply to present case. Sixth Exception protects criticism of author/publication, would not apply to present case. Seventh Exception deals with censure passed in good faith by person in authority over him, would also not apply to present case.

29. Eighth Exception, deals with accusation made in good faith to person having lawful authority over person against whom it is made. But challenge on ground of

publication being protected under Eighth Exception to Section 499 of IPC would be covered by ratio laid down in **Kanwal Lal v. State of Punjab**, reported in **AIR 1963 SC 1317, MC Verghese v. TJ Poonan**, reported in **(1969) 1 SCC 37**, **Chaman Lal v. State of Punjab**, reported in **(1970) 1 SCC 590**, **Rajendra Kumar Sitaram Pande v. Uttam**, reported in **(1999) 3 SCC 134**, wherein Hon'ble Supreme Court while dealing with said defence opined that same would be available only if accused prove that person to whom communication was made had lawful authority over person complained against, in respect of subject-matter of accusation. There is no proper basis laid for said contention and therefore requires to be rejected.

30. Ninth Exception, protects imputation made in good faith by person for protection of interest of any person or for public good. And held to be casting burden on person claiming said exception, in **Subramanian Swamy**'s case (supra). Tenth Exception deals with caution conveyed to a person for his own or for public good in good faith, would not apply to present case. In light of above principles, allegation in complaint herein

about intentionally naming complainant as mortgager and guarantor and publication of his name as a bank defaulter to affect his reputation when taken on face value would constitute prima facie material. *Consequently, it has to be held that petitioners fail to establish total absence of ingredients for offence under Sections 499 and 500 of IPC, at this stage*.

31. Next contention about impugned order suffering from vice of non-application of mind is based on ratio in **Jaideep Bose** and **Rahul Gandhi** cases etc. wherein taking note of serious consequences flowing from an order taking cognizance and issuance of process, procedural protection of application of mind is mandated. Said requirement in law is not disputed.

32. While passing impugned order, learned Magistrate stated about contents of complaint, sworn statement of complainant, evidence of CW-2 and CW-3 and documents marked as Ex.P1 to Ex.P23 in brief and arrived at conclusion that complainant had placed sufficient material to prima facie establish despite cessation of directorship and absence of

material showing complainant as guarantor, his name was published as a defaulter which would prima facie constitute imputation affecting his reputation attracting offences under Sections 499 and 500 of IPC. Thus, impugned order prima facie indicates application of mind.

33. But there are two ancillary grounds, namely failure by learned Magistrate to notice address of accused no.2 being beyond territorial jurisdiction mandating enquiry under Section 202 of CrPC and acts of accused no.3 and 4 complained of being in performance of official duty being protected under Section 32 of SARFAESI. Said provision reads as follows:

> ***"32.*** *No suit, prosecution or other legal proceedings shall lie against the Reserve Bank or the Central Registry or any secured creditor or any of its officers for anything done or omitted to be done in good faith under this Act."*

34. Same will clarify that protection available under said provision is only in respect of anything done in good faith. Petitioners rely on decision in **DJ Exim**'s case (supra), to contend that publication of names of defaulters was held to be in good faith. But complainant's case against petitioners herein is about inclusion of his name as guarantor and publishing his

name as defaulter was with malafide intention to spoil his reputation and cause loss to him. Same can be noted in specific allegation against accused no.4 that he deliberately and with malicious intention included name of complainant in publication as defaulter, despite intimation by accused no.3 about complainant ceasing to be director and not being guarantor. There is also specific allegation about failure to have publication withdrawn even after letter/legal notice by complainant.

35. Though such communication was made only to Authorised Officer, Stressed Assets Management Branch and not against all petitioners, question whether for omission to withdraw publication action for criminal defamation could be filed is answered by Hon'ble Supreme Court in **Google India Private Limited v. Visaka Industries**, reported in **(2020) 4 SCC 162**, holding failure to remove or disable access to defamatory content within reasonable time after receipt of notice can be cause of action for criminal defamation. And whether all petitioners had knowledge of defamatory content and/or request for removal and failed to take action would be speculative at this stage and would require investigation/trial.

36. Indeed, compliance with Section 202 of CrPC is held mandatory in **Jaideep Bose**'s cases (supra). But in **National Bank of Oman v. Barakara Abdul Aziz and Anr.**, reported in **(2013) 2 SCC 488**, non-compliance is held to be non-fatal and entail remand for compliance. In **Vijay Dhanuka**'s case (supra), however, it is held requirement of Section 202 of CrPC would be met if witnesses are examined for purpose of deciding whether there was sufficient ground for proceeding against accused. As noted above impugned order is passed after examination of complainant and two others and arriving at conclusion that there was sufficient material to proceed against petitioners. Therefore, said contention too would fail.

37. Instance case gives rise to yet another aspect, whether criminal liability can be attributed to individual officers of SBI. It was held in **Maksud Saiyed**'s case (supra) and reiterated in **Anil Khandelwal**'s case (supra) that complaint must contain specific allegations about role and participation of individual officer in commission of alleged offence and vicarious

criminal liability cannot be presumed based on designation as Chairman, Director or officer.

38. Perusal of complaint reveals, SBI is arraigned as accused no.1. Though most of allegations are against it, prosecution of accused no.1 would sustain so long as prosecution against any of its officials sustain. Insofar as accused no.2, reference in complaint is only as Chairman of SBI without any specific allegation about his personal participation in or authorisation of alleged newspaper publication. Even against accused no.3, allegation is about issuance of demand notice leading to alleged publication dated 04.11.2018. It is also noted that name of complainant was not included in demand notice. And in fact, there is assertion about accused no.3 issuing communication to accused no.4 about complainant not being guarantor and ceasing to be director of Company. Consequently, continuation of proceedings against accused no.2 and 3 would be impermissible. *It would however be open to prosecution to arraign them as accused at later stage, in case of any material being unearthed to show their active role in commission of offence.*

39. However, insofar as accused no.4 there is specific allegation that being authorised officer of SBI, he caused inclusion of name of complainant in publication as a defaulter and Bank is also arraigned as accused no.1. Therefore, at this stage, this Court cannot hold that complaint against accused no.1 and 4 is devoid of essential ingredients of Section 499 of IPC. Thus, petition fails insofar as accused no.1 and 4 but succeeds insofar as accused no.2 and 3 are concerned petition.

40. Consequently, Crl.P.no.1573/2019 is ***allowed in part***, proceedings in CC no.1863/2019 on file of V ACMM, Bangalore for offences punishable under Sections 499 and 500 of IPC is quashed only insofar as accused no.2 and 3, while Crl.P.no.852/2019 by accused no.4 is ***dismissed***, but with observations as above.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL,AV,GRD
List No.: 1 Sl No.: 70