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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17.02.2021

Pronounced on: 01.03.2021

(1) + **CRL.M.C. 621/2017 & Crl.M.As.2665/2017 & 7817/2019**

BUSINESS STANDARD PVT LTD & ANR. .... Petitioners
Through: Mr. N.B.Joshi, Mr. Neeraj K. Gupta & Mr. Ranjeet Kumar Singh, Advocates

Versus

LOHITAKSHA SHUKLA & ANR. .... Respondents
Through: Mr. Mukesh Sharma, Advocate for respondent No.1

(2) + **CRL.M.C. 2120/2017 & CRL.M.As. 8715/2017 & 7838/2019**

MITALI SARAN ..... Petitioner
Through: Mr. Trideep Pais, Advocate with Ms.Sanya Kumar, Advocates

Versus

LOHITAKSHA SHUKLA & ORS. .... Respondents
Through: Mr. Mukesh Sharma, Advocate for respondent No.1

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Petitioners in the above captioned two petitions are seeking quashing of order dated 08.08.2016 as well as Complaint Case No. 631499/2016 (CC

No.2614/2016), titled as *Lohitaksha Shukla Vs. Business Standard Private Limited & Ors.,* pending before the court of Metropolitan Magistrate, Saket Court, New Delhi.

2. The basis of the complaint is an article titled as *"The Long and Short of it"* which was published on 18.03.2016 in the newspaper of petitioner- *Business Standard* and was also available on the website, under the authorship of *Mitali Saran.*

3. In the first captioned petition [Crl.M.C. 621/2017], petitioner No.1 is *Business Standard Private Limited,* who is running a newspaper under the name and style of *"Business Standard"* and petitioner No.2- *A.K. Bhattacharya* is the Editorial Director. In the said petition, respondent No.1- *Lohitaksha Shukla* is the complainant and respondent No.2- *Mitali Saran* is the author of the article.

4. The above captioned second petition [Crl.M.C.2120/2017] is preferred by the author *Mitali Saran* and respondents therein are the complainant- *Lohitaksha Shukla, Business Standard Private Limited* and Editorial Director- *A.K. Bhattacharya.*

5. Since both the petitions pertain to one common complaint and parties to both the petitions are similar, therefore, with the consent of both the sides,

these petitions were heard together and are being disposed of by this common judgment.

6. Complainant- *Lohitaksha Shukla*, who is an Advocate by profession, has averred that he was informed about the factum of publication of the article by his friends. In the complaint, he has alleged that the article is not based on facts and contains some defamatory insinuations against RSS and its members, as it accused members of RSS being oppressive to Indians, mentally disturbed and disrespectful to Indian National Symbols ridden with psycho sexual complexes, practitioners of discrimination based on caste and physically unfit. Complainant has averred that being a member of RSS, his reputation has been adversely affected.

7. The learned Metropolitan Magistrate, after examining the complainant in the pre-summoning evidence and considering the provisions of Sections 203/204 Cr.P.C. as well as Section 499 IPC, held as under:-

> *"In view of the same, I find that there is sufficient material for summoning the accused no.1, 2 and 3 u/s 500 IPC. Hence, accused above said are summoned on filing of PF/RC within a week from today along with supply of copy of complaint and documents for as many as accused are summoned for 21.11.2016."*

8. Quashing of the aforesaid summoning order as well as complaint, is sought by petitioners- *Business Standard Private Limited* and Editorial

Director- *A.K. Bhattacharya* [in Crl.M.C. 621/2017] on the ground that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. To seek quashing of the complaint, it is submitted that it is absolute abuse of process of law and it has been filed to harass the petitioners. In particular, petitioner No.2 has averred that the allegation of complainant that he was 'Editor in Chief' of petitioner No.1 at the time of publication of article is baseless, as he has never been 'Editor in Chief' of petitioner No.1.

9. It is averred that the complainant is not "person aggrieved" within the meaning of Section 199(1) Cr.P.C. and hence, is not competent to institute a private complaint and even if the complaint is taken on the face value, the same does not disclose any offence whatsoever which falls within the ambit of Sections 499 and 500 IPC.

10. In support of aforesaid submissions, learned counsel appearing for Business Standard Private Limited and Editorial Director- *A.K. Bhattacharya*, relied upon Hon'ble Supreme Court's decisions in ***S. Khushboo Vs. Kanniammal & Anr. (2010) 5 SCC 600***; decision of this Court dated 03.07.2018 in ***Crl.M.C. 4514/2015,*** titled as ***S.T.P.Singh Vs.***

Tarsem Singh & Ors.; decision of High Court of Bombay dated ***04.09.2018 in Crl. Application No. 2004/2018***, titled as ***Ashok Vs. The State of Maharashtra*** and decision of High Court of Punjab & Haryana in ***N.Ram Editor-in-Chief and Publisher of the Hindu and Others Vs. Rashtriya Swayamsewak Sangh, Haryana Prant 2012 (3) RCR (Crl) 161.***

11. The stand of petitioner/Author- *Mitali Saran* [Crl.M.C. 2120/2021] while seeking quashing of the impugned order, is that in the pre-summoning evidence, no evidence has been led by the complainant in support of his complaint and the learned trial court has erred in not appreciating that the complainant was not a member of RSS, which is essential to establish as an "aggrieved person" for the purpose of Section 199 Cr.P.C. and had thus, no locus to file the complaint.

12. The author- *Mitali Saran* has claimed that she is a columnist of long standing repute and has been writing weekly for the newspaper *Business Standard* and her literary style involves using satire, irony and humour to comment on the latest political and social developments. It is submitted on her behalf that the so called defamatory averment in the complaint that *"After reading the above said article on the website many of my friends called up and expressed their displeasure over my association with RSS and*

asked me to quit" does not amount to defamation either to him or to RSS. The reason for complainant's friends to ask him to quit RSS could not be this article alone but might be because of previous poor opinion about RSS.

13. It is also submitted on her behalf that since complainant has not established that he was authorised by the RSS to file the complaint on its behalf or if he holds any post in the RSS, therefore, it was incumbent upon him to obtain leave of the Court for instituting the complaint in a representative capacity and in absence thereof, the learned trial court should have dismissed the complaint at the first instance.

14. In support of her submissions, learned counsel placed reliance upon decision of Hon'ble Supreme Court in ***Abhijit Pawar Vs. Hemant Madhukar Nimbalkar & Anr. (2017) 3 SCC 528***; ***Mehmood UL Rehman Vs. Khazir Mohammad Tunda & Ors. (2015) 12 SCC 420***; ***S. Khushboo Vs. Kanniammal & Anr. (2010) 5 SCC 600*** and ***Shah Rukh Khan Vs. State of Rajasthan & Ors. (2007) SCC OnLine Raj 733.***

15. Reliance is also placed upon decision of Allahabad High Court in ***Tek Chand Gupta Vs. R.K. Karanja and Others 1967 SCC OnLine All 282*** and of Madras High Court in ***G. Narasimhan, G. Kaswturi & K.Gopalan Vs. T.V. Chokkappa (1972) 2 SCC 680.***

16. On the other hand, learned counsel for respondent/complainant - *Lohitaksha Shukla* submitted that the impugned summoning order suffers from no illegality or infirmity and these petitions deserve to be dismissed. In support of his case, learned counsel placed reliance upon decision of this Court in ***Abhishek Agrawalla Vs. Boortmalt NV & Anr. 2011 (122) DRJ 421***; decision of Madras High Court in ***G. Narasimhan, G. Kaswturi & K.Gopalan Vs. T.V. Chokkappa (1972) 2 SCC 680*** and decision of Allahabad High Court in ***Tek Chand Gupta Vs. R.K. Karanja and Others 1967 SCC OnLine All 282.***

17. The arguments advanced by counsel representing both the sides were heard at length and I have gone through the complaint, impugned order, material placed on record as well as decisions relied upon by the parties.

18. The complainant has instituted the complaint under Sections 190/200 Cr.P.C. seeking punishment of respondents therein for the offence under Section 500 IPC. The complainant claims himself to be a *Swayamsewak o*f RSS and that the article in question has adversely affected his reputation being member of RSS. He has averred in his pre-summoning evidence, that *"After reading the above said article on the website many of my friends called up and expressed their displeasure over my association with RSS and*

asked me to quit".

19. The learned trial court while relying upon copy of the impugned article along with certificate under Section 65 B of Evidence Act, has observed that *"the same is not covered under any of the exceptions is laid down in Section 499 IPC (this opinion concerns only on the point of summoning)".*

20. The explanation 4 of Section 499 IPC reads as under:-

> *"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 cases hereinafter expected, to defame that person.*
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> *XXXX*
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> ***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 disgrace-ful."

21. While dealing with a somewhat similar case, a Bench of Punjab & Haryana High Court in ***N. Ram, Editor-In-Chief and Publisher of 'The Hindu' (Supra),*** with regard to application of provisions pertaining to Section 499 IPC, has made the following observations:-

> *"(27) As is evident from the record that the complainant has filed the complaint (Annexure P-1) against the petitioners-accused, inter alia, on the ground that they have printed, published and circulated the statement (Annexure P-7) delivered by their co-accused and former Central Cabinet Minister and Senior Congress Leader Mr. Arjun Singh (since deceased), intentionally, just to harm the goodwill, reputation of RSS and its followers, knowing fully well it to be false. In this way, they were stated to have committed the offences punishable under Sections 499 to 501 IPC.*
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> *(28) As is apparent that, Section 499 IPC postulates that "whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that*

person." The words "knowing or having reason to believe" intending to harm the reputation, are very important and carry significant meaning in this regard.

(29) Not only that, Explanation 4 further posits that "no imputation is said to have 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 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." In this manner, Explanation 4 to Sec. 499, IPC places a curb on the general description of definition contained in the section. It makes only such imputations punishable as might lower a person's reputation in respect of some aspects of his personality and makes an imputation defamatory only if it lowers a person in the estimation of others. It implies a fall in reputation. The reputation has been used to denote the estimation in which a person is held by others, the character imputed to him in the community or the society to which he belongs."

22. The explanation 4 of Section 499 IPC mandates that imputation can be said to harm a person's reputation only if it directly or indirectly lowers the moral and intellectual character of that person or of his calling or the

credit of that person in the estimation of others. This requirement has not been satisfied in the present case.

23. In the present case, the complainant has not led any evidence to establish how his reputation was harmed or his moral or intellectual character was lowered as a result of the said article. However, he has claimed that he has been asked by his friends to leave RSS as a result of this article but he has not brought anyone in the witness box in support of this assertion and thereby, has failed to prove that article brought any kind of defamation to him or that it has lowered the reputation of RSS in the eyes of his friends or RSS. So, trial court has erred in not applying its mind on this aspect.

24. The complainant claims himself to be *Swayamsewak* of RSS and its member. But again, he hasn't got any witness examined from RSS or brought any material on record to prove that he is a member of RSS.

25. On this aspect, during the course of arguments, learned counsel for respondent/complainant relied upon a decision of Allahabad High Court in ***Tek Chand Gupta (Supra).*** In the said case, the Bench while dealing with the case of complainant (*Tek Chand*), who had filed a complaint under Section 500 I.P.C. against Chief Editor, printer and publisher of "Blitz",

Hindi weekly of Bombay for publication of imputations on pp. 3 and 15 in the said paper on 28.03.1964, which allegedly had harmed the reputation of *Rashtriya Swayamsevak Sangh (RSS)* and of which complainant was a member, had reversed the order of the Special Magistrate as well as Additional District Magistrate (Judicial) Dehradun and restored the complaints and remitted back to the Magistrate to be proceeded with in accordance with the law while observing that defamation of a class or body of persons is also defamation of individual members of that class or body and a complaint by an individual member of that class or body cannot be said to be not maintainable.

26. Learned counsel for complainant/respondent No.1 also submitted that the decision in ***Tek Chand Gupta (Supra)*** has been cited by the Hon'ble Supreme Court in ***G. Narasimhan, G. Kasturi and K.Gopalan (Supra),*** to hold that the High Court had misdirected itself in missing the real issue raised in the petitions as to whether the conference was a determinate and an identifiable body, so that defamatory words passed in the resolution, would be defamation to the individuals who composed it.

27. The decisions in ***Tek Chand Gupta (Supra)*** and ***G. Narasimhan (Supra)*** were also relied by learned counsel appearing for petitioners to

submit that the complainant herein does not fall within the category of "aggrieved person".

28. Learned counsel for petitioners submitted that in ***Tek Chand Gupta (Supra)*****,** the complainant was a member of a body of large size, scope of which was too wide and therefore, the court held that defamation of a class or body of persons is also defamation of individual members of that class or body and a complaint by an individual member of that class or body cannot be said to be not maintainable. However, in the instant case complainant has failed to prove that he is a member of RSS nor he has placed anything on record to prove it and, therefore, he does not fall within the category of "aggrieved person".

29. Similarly, it was contended on behalf of petitioners that decision in ***G. Narasimhan (Supra*****),** the Hon'ble Court had opined that under the provisions of Section 198 Cr.P.C., the complaint was unsustainable as the news item in question did not mention the name of accused nor did it contain any defamatory imputation against him individually. The Hon'ble Supreme Court had further held that Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation

concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the Section makes defamation in respect of an individual an offence. While observing so, the Hon'ble Supreme Court held that *"the conference clearly was not an identifiable or a definitive body so that all those who attended it could be said to be its constituents who, if the conference was defamed, would, in their turn, be said to be defamed."*

30. Hence, reliance placed upon decision in ***Tek Chand (supra)*** **and** ***G. Narsimhan (Supra)***, is of no use as in these cases, complainants were members of the said bodies and were thus covered under the domain of "aggrieved party".

31. In another case, in ***S. Khushboo (Supra)***, the Hon'ble Supreme Court while dealing with the case of appellant- a well known actress, who had reached the Hon'ble Supreme Court seeking quashing of criminal proceedings pending against her for some remarks made by her in an interview in leading news magazine and later the same issue was reported in a news periodical, while relying upon observations in ***G. Narasimhan (Supra*)**, quashed the criminal complaints while observing as under:-

> *"39. We can also approvingly refer to an earlier decision of this Court in G. Narasimhan v. T.V. Chokkappa. In that*

case a controversy had arisen after The Hindu, a leading newspaper had published a report about a resolution passed by Dravida Kazhagham, a political party, in its conference held on 23-1-1971 to 24-1-1971. Among other issues, the resolution also included the following words:

> *"It should not be made an offence for a person's wife to desire another man."*

The Hindu, in its report, gave publicity to this resolution by using the following words:

> *"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under the Penal Code, 1860."*

40. A complaint under Sections 499, 500 and 501 IPC was filed in response to this report. Like the present case, the Court in G. Narasimhan case had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine Section 198 of the Code of Criminal Procedure, 1898 (analogous to Section 199 CrPC, 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm insofar as the provision permits only an "aggrieved person" to move the Court in case of

defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

41. This Court in G. Narasimhan case further noted that the news item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a "person aggrieved" within the meaning of Section 198 CrPC, 1898. The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of "a company or an association or any collection of persons as such". Undoubtedly, the Explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain

the composition of such a class, the criminal prosecution cannot proceed.

42. While deciding the case, this Court in G. Narasimhan placed reliance on the judgment of the House of Lords in Knupffer v. London Express Newspaper Ltd. [1944 AC 116], wherein it had been held that it is an essential element of the cause of action for defamation that the words complained of should be published "of the complainant/plaintiff". Where he is not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. In fact, it is the reputation of an individual person which must be in question and only such a person can claim to have "a legal peg for a justifiable claim to hang on".

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54. In conclusion, we find that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the appeals are allowed and the impugned judgment and order of the High Court dated 30-4-2008 is set aside. The impugned criminal proceedings are hereby quashed."

32. In the aforesaid view of the matter, it is pertinent to mention provisions of Section 199(1) Cr.P.C., which read as under:-

> *"199. **Prosecution for defamation**.*
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> *(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court make a complaint on his or her behalf."*

33. The afore-noted provisions of Section 199 (1) Cr.P.C. mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. The purpose and intent of this provision is to limit the power of Magistrate to take cognizance of offences pertaining to defamation in order to prevent and discourage the filing of frivolous complaints.

34. Further, a Bench of High Court of Rajasthan in ***Shah Rukh Khan (Supra)***, has held as under:-

"38. *In the case of Asha Parekh v. The State of Bihar, the Hon'ble Patna High Court dealt with a case where a group of lawyers had filed a defamation case against the actors, the actress, the director, the producer, the scriptwriter, etc., of the movie Nadan. The case before this Court is, in fact, much similar to that one. In that case, the complainant alleged that one of the characters had played the role of an advocate and that there were defamatory statements made against the lawyers as a class. The Hon'ble Patna High Court observed as under:*

> *The essence of the offence of defamation consists in calling that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiment is exposed. The words or visible representation, therefore, complained of must contain an imputation concerning some particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie.*

Further, although the word 'person' in Section 499 of the Code includes a company or an association or a collection of persons as well as provided in explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. Advocates as a class are incapable of being defamed. If any publication can be shown to refer specifically to particular individuals then alone an action for defamation may lie, not otherwise.

39. *Thus, the law requires that the defamatory statement, in order to be actionable, be made against a definite and an identifiable group. However, lawyers taken as a class cannot be identified with any particular individual--indeterminate, indefinite, and unidentifiable as the members are: Firstly, the members of this class are too varied to be reduced to a few traits. Their is not a homogenous class, but a heterogeneous one, made up of wonderfully different individuals. Secondly, they are spread over the length and the breadth of the land. Thirdly, the class is always in flux, ever changing, as new lawyers enter and old ones depart the profession. The entire members of the class are clearly unidentifiable and indeterminable. Moreover, it is not the case of the respondent No. 2 to 7, that the Petitioner said anything specific about the lawyers of Kota, who arguably*

would form a definite collection of persons. The remark made by the petitioner was applicable to the lawyers as a community. Thus, a group of lawyers could not file a complaint against the petitioner for offence under Sections 499 and 500 IPC. Therefore, the complaint is not even maintainable. This aspect, too, has escaped the notice of the learned Magistrate in passing the impugned order.

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42. *According to sub-section (1), in case of ordinary persons the complaint should be made by the person aggrieved, but not necessarily the person defamed. According to sub-section (6) the person who has been defamed can also file a complaint. But in either case, the complainant has to show that the defamatory statement aggrieves him. As stated above, a person belonging to a class that is ill defined and indeterminate cannot file a complaint for defamation. In the present case, the complainants belong to a community of lawyers-a class, in itself, ill defined and indeterminate. Hence, the complaint is not maintainable under the provision of Section 199 of the Code, either. Hence, the Magistrate could not have taken the cognizance. Even if the Petitioner before the learned Magistrate did not argue it, the learned Magistrate could*

have considered the twin aspects of the maintainability of the complaint and the power to take cognizance in light of Section 199 of the Code. However, the learned Magistrate chose to ignore these two requirements of the law in dealing with the application under Section 245(2) of the Code. The impugned order in the view of this Court is clearly untenable."

35. In the present case, the complainant has not been able to show as to how he is the "person aggrieved" within the definition of Section 199(1) Cr.P.C. and thus, the contents of complaint suffers from vices of illegality or infirmity. Even complainant is not a part of "identifiable class" or definite "association or collection of persons" as enumerated in Explanation (2) to Section 499 of IPC.

36. In the aforesaid view of the matter, I find that while taking cognizance of the complaint, the trial court has not taken into consideration the afore-noted provisions of law.

37. However, reliance placed upon decision in ***Abhijit Pawar (Supra)*****,** is of no help to the case of petitioners as in the said case question with regard to procedure adopted by the Magistrate for issuing notice, being the accused persons outside his jurisdiction, had been raised. Similarly, in ***Abhishek (Supra),*** a Bench of this Court had dealt with the case of summoning of an

accused residing at far off place and the procedure adopted in that respect and so, this case also does not touch the points raised in the petitions in hand.

38. The Hon'ble Supreme Court in ***Mehmood Ul Rehman (Supra),*** while deciding the scope of "opinion of Magistrate" on sufficient ground for proceeding to issue process to the accused, has held as under:-

> ***10.*** *In taking recourse to such a serious process, this Court has consistently held that the Magistrate must apply his mind on the allegations on commission of the offence. In Darshan Singh Ram Kishan v. State of Maharashtra, it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and thereafter takes judicial notice of the offence. To quote: (SCC p. 656, para 8)*
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> > *"8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but*

occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

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. to set in motion the process of criminal law against a person is a serious matter.*

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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."

39. On perusal of complaint in question, impugned order, various provisions of law discussed above and pertinent observations of the Hon'ble Supreme Court in ***Mehmood Ul Rehman (Supra),*** I have no hesitation to hold that the complaint in question is not maintainable and is liable to be dismissed. It is ordered accordingly. Consequentially, proceedings emanating there-from are also quashed.

40. In view of above, these petitions and pending applications are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

MARCH 01, 2021
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