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

\+ CRL.M.C. 2972/2013, CRL.M.A. Nos. 11255/2013 & 33687/2018

SWARARAJ @ RAJ SHRIKANT THAKERAY & ANR.

..... Petitioners

Through: Mr Arunabh Chowdhary, Sr. Adv. with Mr Ashutosh Dubey, Mr SayajiNangre, Mr Abhishek Chauhan, Mr Vaibhav Tomar, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ANR. ..... Respondent

Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: <u>JASMEET SINGH, J (*ORAL*)</u>

1. This is a petition seeking quashing of proceedings in Complaint Case No. 12/2A/13 (C.A. NO. 946 of 2008) pending before learned ACMM (Special Acts), Tis Hazari Courts, Delhi as well as quashing the summoning order dated 04.12.2008 and 03.01.2009 passed by learned Magistrate, Patna City in C.A. 946 of 2008 summoning the petitioners under Sections 124A/153A/153B/295A/506/114 IPC.

2. The petitioner also seeks setting aside/quashing of the Order dated 26.07.2013passed by the Ld. Additional Chief Metropolitan Magistrate (Special Acts) in Criminal Complaint No. 12/2A/13 (arising out of C.A. No. 946 of 2008).

3. Though the complaint in the present case was filed in Patna city, the Hon'ble Supreme Court vide order dated 08.01.2010 transferred the proceedings to the competent Criminal Court, Tis Hazari, Delhi. Since the

complainant/respondent No.2 neither appeared before the trial Court nor has heappeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex parte, by this court.

4. As per the complaint it is stated that the petitioner had made some comments with regard to a particular festival. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of the respective state have been hurt. It is further stated that the alleged speech was shown across news channels. It is stated that the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint that the speechof the petitioner was against the basic structure of the constitution which amounted to sedition as it has affected the unity and integrity of India and as a result of the speech of the petitioner, one PawanKumarwas killed while he was going to Mumbai to appear in a competitive exam.

5. At the outset, learned senior counsel for the petitioner on petitioner's instructions and for and on his behalf has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if it has caused any inadvertent and unintentional hurt to any religious sentiments of any person orcommunity, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioneris taken on record.

6. Without prejudice to the above, Mr. Chowdhary, learned senior counsel has challenged the summoning order in two parts. Regarding the part of summoning order u/s 506/114, it is stated that the sameis in violation of section 202 Cr.P.C and as regards part of the summoning order u/s124A/153A/153B/295A it is stated that the same is in violation of section

196Cr.P.C.

Summoning Under section 506/114 IPC being in violation of section 202 Cr.P.C.

7. Mr Chowdhary, learned senior counsel has submitted that as regards summoning the petitioner under Section 506/114 IPC is concerned, the same is in violation of section 202 Cr.P.C. He states that admittedly the petitioner was outside the territorial jurisdiction of the Magistrate. The Magistrate was exercising jurisdiction within Patna city while the Petitioner is a resident of Mumbai. Hence the summoning order u/s 506/114 IPC is in violation of section 202 Cr.P.C.

8. Section 202 Cr.P.C reads as under: Postponement of issue of Process

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [**and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,**] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he

thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

(emphasis supplied)

9. Mr Chowdhary has drawn my attention to the judgment of Hon'ble Supreme Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar,(2017) 3 SCC 528:*

***25.** For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)*

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements

recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

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22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. 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 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section

202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

26. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanukacase [Vijay Dhanuka v. NajimaMamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)*

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

'2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'

It is evident from the aforesaid provision, every inquiry other

than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

27. *When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc. the operative portion reads as under:*

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

28. *Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 Cr.PC."*

10. In the present case there has been no inquiry conducted by the learned Magistrate before proceeding to issue summons. As held by the Hon'ble Supreme Court conducting inquiry is not an empty formality but the same is a

mandate of law.The purpose of an inquiry as contemplated under Section 202 Cr.P.C. has also been highlighted by the Hon'ble Supreme Court in *Abhijit Pawar(supra)*

> *23..There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.*

11. Hence in the absence of inquiry, the summoning of the petitioner u/s 506/ 114 IPC, cannot be sustained.

Summoning u/s 124-A 153A, 153B, and 295A in violation of Section 196 Cr.P.C.

12. It is argued by Mr Chowdhary, learned senior counsel appearing for the petitioner that in the present case there is also non-compliance of Section 196 Cr.P.C. The learned senior counsel for the petitioner argues that there is no previous sanction by the Central Government/State Government as contemplated under Section 196 Cr.P.C.

13. Section 196 Cr,P.C reads as under:

> *196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—*
>
> *(1) No Court shall take cognizance of— (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A*

of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of— (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

14. In the present case, since prior sanction is required of the Centre or a State Government for initiating proceedingsunder Section 124-A, 153-A/153-

B/295A IPC and admittedly no such sanction has been taken, the summoning order,according to me is liable to be quashed. Reliance has correctly been placed on the judgment passed by a Coordinate Bench of this Court in *RAGHURAJ SINGH &ORS.v. STATE OF NCT OF DELHI & ANR*., CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

> *"10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) Cr.P.C. mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned."*

15. Similar view has been taken in the case of *Swaraj v. State, 2015 SCC OnLine Del 11986* decided on 10.09.2015 by a Coordinate Bench of this Court.

16. Hence the part of the summoningorder,summoning the petitioner under Sections 124-A 153A, 153B, and295A cannot be sustained. In view of my findings hereinabove, the impugned orders dated 4.12.2008 and03.01.2009 against the petitioner are quashed.

17. As regards the prayer for quashing of the complaint is concerned, the law has been settled by the Hon'ble Supreme court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article*

226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

18. Hence,as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumeratedby Bhajan Lal (supra).The reliance of the ld counsel on the judgment titled *Salman Kurshid v. State of U.P. &Anr. (2023) SCC Online 7452* is misconceived. The petitioner in that case had made certain remarks against an individual whereas in present case the remarks have been made against a certain community as well as a State.In addition, the alleged impugned statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is

rejected.

19. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which co exist with side by side. Its unity lies in this coexistence.Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of / instigation by,an individual.

20. In this view of the matter, the petition is partly allowed with regard to summoning order dated 04.12.2008 passed by learned Magistrate, Patna City in C.A. 946 of 2008 summoning the petitioners under Sections 124A/153A/153B/295A/506/114 IPC. Consequently, the issuance of bailable warrants vide order 03.01.2009 and NBWs vide order dated the order dated 26.07.2013 passed by the Ld. Additional Chief Metropolitan Magistrate (Special Acts) in Criminal Complaint No. 12/2A/13 (arising out of C.A. No. 946 of 2008) are also hereby quashed. The prayer for quashing of the criminal complaint is rejected.

21. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023
sr

Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ **W.P.(CRL) 159/2013, CRL.M.A. 1127/2013, CRL.M.A. 17468/2013, CRL.M.A. 33751/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner
Through: Mr Anupam Lal Das, Sr. Adv. with Mr SayajiNangre, Mr Ashutosh Dubey, Mr Vaibhav Tomar, Mr Abhishek Chauhan, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE &ANR. ..... Respondents
Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.
Mr Anup Kumar Sinha, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition seeking quashing of the Complaint Case No. 94/1 (C.C. No. 382 of 2007) pending before ACMM-1 Tis Hazari Courts, Delhi titled Sudhir Kumar Vs. Raj Thakre and all consequent proceedings arising therefrom.

2. The petition also seeks quashing/setting aside the Order dated

11.04.2007 passed by the Ld. Judicial Magistrate-1st Class, Jamshedpur. In CC No.382 of 2007 and Orders dated 28.9.2012 and 22.12.2012 passed by the Court ACMM-1 Tis HazariCourts, Delhi.

3. Though the complaint was filed in Jamshedpur, the Hon'ble Supreme Court vide order dated 30.09.2011 transferred the proceedings to the competent criminal court, Tis Hazari Courts, Delhi.

4. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex parte by this court.

5. Vide 28.09.2012 and 22.12.2012, the Ld. Trial Court at Delhi issued non-bailable warrants against the Petitioner.

6. As per the complaint it is stated that the petitioner had made some comments with regard to a particular festival. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of the respective state have been hurt. It is further stated that the alleged speech was broadcasted on TV channels and published in newspapers. It is stated that the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint that the speech of the petitioner was against the basic structure of the constitution and has affected the unity and integrity of India.

7. At the outset, learned senior counsel for the petitioner on instructions and for and on behalf of the petitioner has stated that the petitioner has not

made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

8. Mr Sinha, learned counsel for respondent No.2 very fairly states that since the petitioner expresses regret, he will not press his complaint. The petitioner through his counsel has tendered an apology and since the same is acceptable to respondent No.2,respondent No.2 does not press his complaint.

9. In this view of the matter criminal complaint No. 94/1 (C.C.No. 382 of 2007)is dismissed as withdrawn and summoning Order dated 11.04.2007 passed by the Ld. Judicial Magistrate- 1st Class, Jamshedpur is hereby quashed.

10. Since the complaint dismissed as withdrawn and the summoning order dated 11.04.2007 is quashed and orders dated 28.09.2012 and 22.12.2022 issuing Non-Bailable Warrants passed by learned ACMM-1, Tis Hazari Courts, Delhi are also quashed.

11. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023/sr

Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ **CRL.M.C. 2146/2013, CRL M.A. 8344/2013, CRL.M.A. 33688/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner

Through: Mr Arunabh Chowdhary, Sr. Adv. with Mr Ashutosh Dubey, Mr SayajiNangre, Mr Abhishek Chauhan, Mr Vaibhav Tomar, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ORS. ..... Respondents

Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (*ORAL*)**

1. This is a petition seeking quashing of proceedings in Complaint Case No.75/1/2011 (earlier CC No.429/C/2008) under Sections 153A/295A/298 IPC pending before the Court of the Ld. ACMM-1 (Central), Tis Hazari Courts, Delhi and all consequential proceedings arising therefrom and setting aside/quashing of the summoning order dated 9.7.2008 passed by the Ld. Judicial Magistrate-1st Class Begusarai, in CC No.429/C/2008 (now C.C.No.75/1/2011) summoning the Petitioner under Sections 153A/295A/298 IPC.

2. Though the complaint, in the present case was filed in Begusarai, the Hon'ble Supreme Court vide order dated 30.09.2011 transferred the

proceedings to the Competent court, Tis Hazari Courts, Delhi. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex parte by this court.

3. As per the complaint it is stated that the petitioner had made some comments with regard to a particular festival. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of the respective state have been hurt. It is further stated that the alleged speech was published in magazine. It is stated that the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint that the speech of the petitioner was against the basic structure of the constitution which amounted to sedition as it has affected the unity and integrity of India. Even though the complaint has been filed alleging offences u/s 500/504/505/506/501/502/215A/298A/143AB-C IPC, the ld Judicial Magistrate 1st class took cognizance and summoned the Petitioner u/s 153A, 295 A and 298 IPC.

4. At the outset, learned senior counsel for the petitioner on petitioner's instructions and for and on his behalf of the petitioner has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

5. Without prejudice to the above, Mr. Chowdhary, learned senior counsel has challenged the summoning order in two parts. Regarding the part of

summoning order under section 298 IPC, he states that the same is in violation of 202 Cr.P.C. and as regards the part of summoning order u/s 153A/295A, it is stated that the same is in violation of 196 Cr.P.C.

Summoning under section 298 IPC being in violation u/s 202 Cr.P.C.

6. Mr Chowdhary, learned senior counsel has submitted that as regards the part of the summoning order u/s 298 IPC is concerned, the procedure as laid down u/s 202 Cr.P.C had to be followed. The same has not been done so. The Magistrate was exercising jurisdiction within Begusarai while the Petitioner is a resident of Mumbai. Thus the petitioner was outside the territorial jurisdiction of the Magistrate. Hence, the summoning order under Section 298 IPC is in violation of Section 202 Cr.P.C.

7. Section 202 Cr.P.C reads as under: Postponement of issue of Process

> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,* ***[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,]*** *postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made,--*
>
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
>
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

(emphasis supplied)

8. Mr Chowdhary has drawn my attention to the judgment of Hon'ble Supreme Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar,(2017) 3 SCC 528:*

25. *For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)*

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so

as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

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22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. 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 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for

proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

26. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. NajimaMamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)*

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

'2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the

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

27. *When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc. the operative portion reads as under:*

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

28. *Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 Cr.PC."*

9. In the present case there has been no inquiry conducted by the learned Magistrate before proceeding to issue summons. As held by the Hon'ble Supreme Court conducting inquiry is not an empty formality but the same is a mandate of law. The purpose of an inquiry as contemplated under Section 202 Cr.P.C. has also been highlighted by the Hon'ble Supreme Court in Abhijit Pawar (supra).

23. *There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing*

at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.

10. Hence in the absence of inquiry, the summoning of the petitioner u/s 298 IPC cannot be sustained.

Summoning under Section153A and 295A IPC in violation of section 196 Cr.P.C.

11. As far as section 153A/295A IPC are concerned, the ld counsel for petitioner argues that there is no previous sanction by the central or the state government as contemplated under Section 196 Cr.P.C for 153-A/295-A IPC.

12.Section 196 Cr,P.C reads as under:

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—

(1) No Court shall take cognizance of— (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government. [(1A) No Court shall take cognizance of— (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

13. In the present case, since prior sanction was required of the Centre or a State Government for initiating proceedings under Sections 153-A/295A IPC and admittedly no such sanction has been taken, the summoning order is liable to be quashed. Reliance has correctly been placed on the judgment passed by a Coordinate Bench of this Court in *RAGHURAJ SINGH &ORS.v. STATE OF NCT OF DELHI & ANR.*, CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

"10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for

interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) Cr.P.C. mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned."

14. Similar view has been taken in the case of *Swaraj v. State, 2015 SCC OnLine Del 11986* decided on 10.09.2015 decided by a Coordinate Bench of this Court.

15. Hence, the part of the summoning order summoning the petitioner under Sections 153 A and 295A IPC cannot be sustained. Hence, in view of my findings hereinabove, the impugned summoning order against the petitioner is quashed.

16. As regards the prayer for quashing of the complaint is concerned, the law has been settled by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335:*

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

should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala

fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

17. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra). The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual person whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the alleged statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is rejected.

18. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which coexist side by side. Its unity lies in this "coexistence." Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of/ instigation by an individual.

19. In this view of the matter, the petition is partly allowed with regard to

quashing of the summoning order dated 9.7.2008 passed by the Ld. Judicial Magistrate Begusarai-1st class, in CC No.429/C/2008(now C.C.No.75/1/2011) summoning the Petitioner under Sections 153A/295A/298 IPC. The prayer for quashing of the criminal complaint is rejected.

20. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023
sr

Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ W.P.(CRL) 202/2013, CRL.M.A. 1529/2013, CRL.M.A. 33749/2018

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner

Through: Mr Arunabh Chowdhary, Sr. Adv. WithMr Sayaji Nangre, Mr Ashutosh Dubey, Mr Abhishek Chauhan, Mr Vaibhav Tomar, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ANR. ..... Respondents

Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.
Mr Anup Kumar Sinha, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition seeking quashing of Complaint Case No.2/2A (CC No.381 of 2008) pending before ACMM-1 Tis Hazari Courts, Delhi titled Kafilur Rahman Vs. Raj Thakre and all consequent proceedings arising therefrom as well as quashing the summoning order dated 16.01.2009 passed by the Ld. Judicial Magistrate 1st Class-Ranchi in CC 381 of 2008 summoning the petitioners under Sections 153-A/295A/298/505(1)(b)/506/153-A IPC

2. Though the complaint in the present case was filed in Ranchi, the Hon'ble Supreme Court vide order dated 08.01.2010 transferred the proceedings to the competent Court, Tis Hazari Courts, Delhi. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the

complainant/respondent No.2 was proceeded ex parte by this court.

3. As per the complaint it is stated that the petitioner had made some comments with regard to a particular festival. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of respective State have been hurt. It is further stated that alleged speech was highlighted across news channels, press and media. It is stated that the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint that the speech of the petitioner was against the basic structure of the constitution which amounted to sedition as it affected the unity and integrity of India.

4. At the outset, Mr Chowdhary, learned senior counsel for the petitioner on petitioner's instructions and for and on his behalf has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

5. Without prejudice to the above, Mr. Chowdhary, learned senior counsel has challenged the summoning order in two parts. As regards the part of the summoning order u/s /505(1)(b)/506IPC is concerned, it is stated that the same is in violation of 202 Cr.P.C. and as regards the part of summoning order u/s295A/298/153-AIPC the same is stated to be in violation 196 Cr.P.C.

Summoning order u/s 505(1)(b)/506 being in violation of 202 Cr.P.C.

6. Mr. Chowdhary, learned senior counsel has submitted that that as regards summoning the petitioner under Section 505 (1) (b) and 506 IPC is concerned, the procedure laid down under Section 202 Cr.P.C had to be followed. He states

that admittedly the petitioner was outside the territorial jurisdiction of the Magistrate. The Magistrate was exercising jurisdiction within Ranchi while the Petitioner is a resident of Mumbai. Hence the summoning order u/s 505 (1)(b)/506 IPC is in violation of section 202 Cr.P.C.

7. Section 202 Cr.P.C reads as under:

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, ***[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,]*** *postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police

station except the power to arrest without warrant.

(emphasis supplied)

8. Mr Chowdhary has drawn my attention to the judgment of Hon'ble Supreme Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528:*

> *25. For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)*
>
> *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*
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22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. 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 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent

abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

26. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)

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

'2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section

202 of the Code."

27. When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

28. Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 Cr.PC."

9. In the present case there has been no inquiry conducted by the learned Magistrate before proceeding to issue summons. As held by the Hon'ble Supreme Court conducting inquiry is not an empty formality but the same is a mandate of law. The purpose of an inquiry as contemplated under Section 202 Cr.P.C. has also been highlighted by the Hon'ble Supreme Court in Abhijit Pawar (supra).

"There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints

are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment."

10. Hence in the absence of inquiry, the summoning of the petitioner u/s/505(1)(b)/506, IPC cannot be sustained.

Summon under Sections 153-A/295A/298 IPC being in violation of 196 Cr.P.C

11. As far as Sections 153-A/295-A/298 IPC are concerned, Mr Chowdhary, learned senior counsel for the petitioner argues that there is no previous sanction from Central Government/State Government as contemplated under Section 196 Cr.P.C.

12. Section 196 Cr,P.C reads as under:

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—

(1) No Court shall take cognizance of— (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government. [(1A) No Court shall take cognizance of— (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal

Code (45 of 1860), other than a criminal conspiracy to commit 4 [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction 5 [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

13. In the present case prior sanction was required of the Centre or a State Government for initiating action under Section 153-A/295A/298 IPC and admittedly no such sanction has been taken. Hence, the summoning order is liable to be quashed. Reliance has correctly been placed on the judgment passed by a Coordinate Bench of this Court in *RAGHURAJ SINGH & ORS.v. STATE OF NCT OF DELHI & ANR.*, CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

"10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) Cr.P.C. mandates the prior sanction of the Central Government for

proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned."

14. Similar view has been taken in the case of *Swaraj v. State, 2015 SCC OnLine Del 11986* decided on 10.09.2015 by a Coordinate Bench of this Court.

15. In view of the above, there is non compliance of section 196 Cr.P.C. Hence, the part of the summoning order summoning the petitioner under Sections 153-A/295-A/298 IPC cannot be sustained. In view of my findings herein above, the impugned summoning order against the petitioner is quashed.

16. As regards the prayer for quashing of the complaint is concerned the law has been settled by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335:*

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

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any

offence or make out a case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

17. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra).The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the alleged impugned statements of the petitioner are also not before this court. Hence the prayer for quashing of the Criminal Complaint is rejected

18. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which coexist side by side. Its unity lies in this "coexistence." Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of / instigation by an individual.

19. In this view of the matter, the petition is partly allowed with regard to quashing the summoning order dated 16.01.2009 passed by Judicial Magistrate-Ranchi in CC 381 of 2008 summoning the petitioners under Sections 153-

A/295A/298/505(1)(b)/506/ IPC. The prayer for quashing of the Criminal Complaint is rejected.

20. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023

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Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ **W.P.(CRL) 158/2013, CRL.M.A. Nos. 1117/2013 & 33750/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner

Through: Mr Anupam Lal Das, Sr. Adv. with Mr Sayaji Nangre, Mr Ashutosh Dubey, Mr Vaibhav Tomar, Mr Abhishek Chauhan, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ANR. ..... Respondents

Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition seeking quashing of the Complaint Case No. 83/1/2011 (C.C. No. 282 of 2008) pending before , ACMM-1 Tis Hazari Courts, Delhi titled Sudhir Kumar Oza Vs. Raj Thakre and all consequential proceedings arising therefrom.

2. The petition also seeks quashing/setting aside the Order dated 15.12.2008 passed by-the Ld. Judicial Magistrate-1st class, Muzaffarpur, in Complaint Case No.83/1/2011 (CC No.282 of 2008) where the petitioner is summoned under Section 504 IPC and orders dated 28.9.2012 and 22.12.2012; passed by the Court ACMM-1 Tis Hazari Courts, Delhi.

3. Though the complaint in the present case was filed in Muzaffarpur, the Hon'ble Supreme Court vide order dated 30.09.2011 transferred the proceedings to the Competent court, Tis Hazari Courts, Delhi.

4. Vide 28.09.2012 and 22.12.2012, the Ld. ACMM, Tis Hazari Court, issued Non Bailable warrants against the Petitioner.

5. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022, the complainant/respondent No.2 was proceeded ex parte by this court.

6. As per the complaint it is stated that the petitioner had made some comments with regard to a particular festival. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of the respective State have been hurt. It is further stated that the alleged speech was shown across news channels. It is stated that the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint that the speech of the petitioner was against the basic structure of the Constitution as it has affected the unity and integrity of India.

7. At the outset, learned senior counsel for the petitioner on petitioner's instructions and for and on his behalf has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

8. Without prejudice to the above, Mr Lal Das, learned senior counsel has challenged the summoning order under Section 504 IPC as it is stated that the same is in violation of Section 202 Cr.P.C.

Summoning under Section 504 IPC being in violation of Section 202 Cr.P.C

9. It is argued that as regards summoning of petitioner under Section 504 IPC is concerned, the same is in violation of Section 202 Cr.P.C. Mr Lal Das, learned senior counsel states that admittedly the petitioner was outside the jurisdiction of the Magistrate. The Magistrate was exercising jurisdiction within Muzzappur while the petitioner is a resident of Mumbai. Hence, the summoning order under Section 504 IPC is in violation of Section 202 Cr.P.C.

10. Section 202:Postponement of issue of Process

> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,* ***[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,]*** *postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made,--*
>
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
>
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*
>
> *Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

(emphasis supplied)

11. Mr Lal Das has drawn my attention to the judgment of Hon'ble Supreme Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528*

"25. For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person

is a serious matter.

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22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. 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 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482

Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

26. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)*

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

'2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

27. *When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc. the operative portion reads as under:*

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

28. *Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 Cr.PC."*

12. In the present case there has been no inquiry conducted by the learned Magistrate before proceeding to issue summons. As held by the Hon'ble Supreme Court conducting inquiry is not an empty formality but the same is a mandate of law. The purpose of an inquiry as contemplated under Section 202 Cr.P.C. has also been highlighted by the Hon'ble Supreme Court in Abhijit Pawar (supra)

There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing

the said amendment.

13. Hence in the absence of inquiry, the summoning of the petitioner under Section 504 IPC cannot be sustained.

14. As regards the prayer for quashing of the complaint is concerned the law has been settled by Hon'ble Supreme Court in*State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335:*

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or*

complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

15. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra).The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the alleged impugned statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is rejected.

16. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which co-exist side by side. Its unity lies in this coexistence. Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of/ instigation by an individual.

17. In this view of the matter, the petition is partly allowed with regard to quashing of summoning order dated 15.12.2008 passed by the Ld. Judicial Magistrate, Muzaffarpur, in CC No.282 of 2008 summoning the petitioner under Section 504 IPC.

18. Since summoning order is quashed, the orders issuing NBWs dated 28.09.2012 and 22.12.2012 are also quashed. The prayer for quashing of the criminal complaint is rejected.

19. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023/sr

Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ **CRL.M.C. 2144/2013 & CRL.M.A. Nos. 8337/2013, 33690/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner
Through: Mr Arunabh Chowdhary, Sr. Adv. with Mr Ashutosh Dubey, Mr Sayaji Nangre, Mr Abhishek Chauhan, Mr Vaibhav Tomar, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ORS. ..... Respondents
Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. The present petition has been filed by the petitioner seeking the quashing of summoning order dated 11.7.2008 passed by the Ld. Judicial Magistrate-1st class Bokaro, in C.P. No.82 of 2008 (now numbered as C.C.No.76/1/2011. In addition the petitioner also seeks quashing of the Complaint Case No.76/1/2011(C.P.No.82 of 2008) under Sections 153A/153B IPC pending before the Court of the Ld. ACMM-1,(Central), Tis Hazari Courts, Delhi and all consequential proceedings arising therefrom;

2. Though the complaint in the present case was filed in Bokaro, the

Hon'ble Supreme Court vide order dated 30.09.2011 transferred the proceedings to the appropriate criminal court, Tis Hazari Courts, Delhi.

3. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex-parte by this court.

4. The facts of the case are that petitioner had made some comments on a religious festival of a particular State. (I have intentionally refrained from naming the festival and the State). It is stated in the complaint that because of the comments made by the petitioner the religious sentiments of the complainant and the people of respective State have been hurt. It is further stated that the alleged speech was shown across news channels. It is alleged stated the speech was provocative in nature and caused hurt to religious feelings. It is also stated in the complaint case that the speech of the petitioner was against the basic structure of the constitution and it has affected the unity and integrity of India.

5. At the outset, learned senior counsel for the petitioner on instructions and for and on behalf of the petitioner has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaint. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

6. Without prejudice to the above, Mr. Chowdhary, ld senior counsel has challenged the summoning order for the non-compliance of Section 196 of the Cr.P.C. as there is no previous sanction of the State Government/Central Government as contemplated under Section 196 Cr.P.C.

7. Section 196 Cr,P.C reads as under:

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—

(1) No Court shall take cognizance of— (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of— (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit [an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards,

unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."

8. In the present case, since prior sanction was required of the Centre or the State Government for initiating action under Section 153-A/153-B IPC and admittedly no such sanction has been taken, the summoning order according to me is liable to be quashed. Reliance has been placed on the judgment passed by a Coordinate Bench of this Court in *RAGHURAJ SINGH & ORS.v. STATE OF NCT OF DELHI & ANR*., CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

"10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for

interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) CrPC mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned."

9. Similar view has been taken in the case of *Swaraj v. State, 2015 SCC OnLine Del 11986* decided on 10.09.2015, a Coordinate Bench of this Court. Hence, the summoning order summoning the petitioner under Sections 153-A/153-B IPC cannot be sustained. In view of my findings hereinabove, the impugned summoning order against the petitioner is quashed.

10. As regards the prayer for quashing of the complaint is concerned, the law has been settled by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335:*

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

sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra). The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the

alleged impugned statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is rejected.

12. Having observed the above, I am of the view that India is a country which is unique due to various religions, faiths and languages which coexist side by side. Its unity lies in this "coexistence." Religious feelings and religious sentiments cannot be so fragile as to be hurt or provoked by a speech of an individual. Religion and faith are not as fragile as human beings. They have survived for centuries and will survive for many more. Faith and religion are more resilient and cannot be hurt or provoked by views of / instigation by, an individual.

13. In this view of the matter, the petition is partly allowed with regards to the quashing of the summoning order dated 11.07.2008 passed by learned Judicial Magistrate-1st Class, Bokaro in C.P. No. 82 of 2008 (now numbered as C.C.No.76/1/2011) summoning the petitioner under Sections 153-A/153-B IPC. The prayer for quashing of the criminal complaint is rejected.

14. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023
sr

Click here to check corrigendum, if any

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

Date of decision: 13.03.2023

\+ **CRL.M.C. 2145/2013, CRL.M.A. Nos. 8342/2013 & 33689/2018**

SWARARAJ @ RAJ SHRIKANT THACKERAY ..... Petitioner

Through: Mr Arunabh Chowdhary, Sr. Adv. with Mr Ashutosh Dubey, Mr SayajiNangre, Mr Abhishek Chauhan, Mr Vaibhav Tomar, Mr Amit P Shahi and Mr Karma Dorjee, Advs.

versus

STATE & ORS. ..... Respondents

Through: Ms Rupali Bandhopadhya, ASC for State with Mr Akshay Kumar and Mr Abhijeet Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition seeking quashing of Complaint Case No. 72/1/2011 (C.C. NO. 2064 of 2008), under Sections 147/148/149/153A/341/302/109/506/342/364 IPC pending before Ld. Additional Chief Metropolitan Magistrate-1 (Central), Tis Hazari Courts,Delhi. In addition, the petitioner also prays for quashing of summoning orders dated 01.11.2008 and 09.01.2009 passed by learned Judicial Magistrate-1st Class, Dhanbad in CC No. 2064 of 2008 (now numbered as Complaint Case No. 72/1/2011) summoning the petitioner u/s Sec. 147, 148, 149, 153A. 341, 302/109, 506, 342, 364 IPC.

2. Though the complaint was filed in Dhanbad, the Hon'ble Supreme Court vide order dated 30.09.2011 transferred the proceedings to the

Competentcriminal court, Tis Hazari Courts, Delhi.

3. Since the complainant/respondent No.2 neither appeared before the trial Court nor has he appeared in the present proceedings, vide order dated 22.09.2022 the complainant/respondent No.2 was proceeded ex parte by this court.

4. In the complaint, it is stated that on 19.10.2008 at around 12:30 a.m. the train Howrah Bombay Mail stopped at Khandwa Railway station wherein 10 to 15 persons with rods and sticks in their hands, entered into compartment forcibly and started raising slogans (I have intentionally refrained from usingthe slogans raised). The complainant left the train, however, as per the complaint his associates namely SakaldeoRajakand Bijay Singh were captured. Later he got to know that Sakaldeo Rajak was found dead on railway tracks on 20.10.2008. The complainant also states that the killing was a result of the speech made by the petitioner. Hence, the FIR.

5. At the outset, learned senior counsel for the petitioner on instructions and for and on behalf of the petitioner has stated that the petitioner has not made any inflammatory provocative speech as alleged in the complaints. It is further stated that the alleged speech seems to have been distorted. Assuming without admitting that the speech was made and if the speech has caused any inadvertent and unintentional hurt to any religious sentiments of any person or community, the petitioner tenders his unconditional apology and expresses regret and sadness for the same. The statement of the counsel for the petitioner made for and on behalf of the petitioner is taken on record.

6. Without prejudice to the above, Mr. Chowdhary, ld senior counsel has challenged the summoning order in two parts. Regarding the part of summoning order under section 109/147/148/149/153A/341/342 IPC, it is stated that the same is in violation of section 196 Cr.P.C while the part of summoning order u/s 302/364/506, it is stated to be violation 200, 201 and 202 Cr.P.C.

Summoning order u/s 506 IPC being in Violation of section 202Cr.P.C.

7. Mr Chowdhary, learned senior counsel has submitted that for summoning the petitioner u/s 506 IPC, the procedure as laid down u/s 202 Cr.P.C had to be followed. However, the same has not been done since admittedly the petitioner was outside the territorial jurisdiction of the Magistrate. The Magistrate was exercising jurisdiction within Dhanbad while the Petitioner is a resident of Mumbai.

Section 202: Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, ***[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,]*** *postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a

police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

(emphasis supplied)

8. Mr Chowdhary has drawn my attention to the judgment of Hon'ble Supreme Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528*

> ***25.*** *For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasised by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] in the following words: (SCC pp. 429-30, paras 20 & 22)*
>
> *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*

***

22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P.C. followed by Section 204 Cr.P.C. 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 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter

affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

26. *The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of "enquiry" is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. NajimaMamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , which is reproduced hereunder: (SCC p. 645, para 14)*

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

'2. (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

27. *When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the*

copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc. the operative portion reads as under:

"On considering facts on record, it appears that complainant has made out prima facie case against the accused for, the offences punishable under Sections 500, 501, 502 read with Section 34 of the Penal Code. Hence, issue process against the accused for the above offences returnable on 23-12-2009. Case be registered as summary case."

***28.** Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 Cr.PC."*

9. In the present case there has been no inquiry conducted by the learned Magistrate before proceeding to issue summons. As held by the Hon'ble Supreme Court conducting of inquiry is not an empty formality but the same is a mandate of law. The purpose of an inquiry as contemplated under Section 202 Cr.P.C. has also been highlighted by the Hon'ble Supreme Court in Abhijit Pawar(supra).

23.. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.

10. Hence in the absence of inquiry, the summoning of the petitioner u/s 506 IPC cannot be sustained.

Summoning of Petitioner u/s 302/ 364 in violation of section 200, 201, 202Cr.P.C.

11. It is stated by Mr Chowdhary, learned senior counsel that the scheme of Cr.P.C envisages procedure to be followed with regard to *Chapter XV - Complaints To Magistrates*. He states that he relies on Section 200, 201 and 202 Cr.P.C which read as under:

> *Section 200: Examination of complainant.*
>
> *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*
>
> *Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses--*
>
> *(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or*
>
> *(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:*
>
> *Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.*
>
> *Section 201. Procedure by Magistrate not competent to take cognizance of the case.*
>
> *If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,--*
>
> *(a) if the complaint is in writing, return it for presentation to the*

proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

12. The Ld senior Counsel states that once a complaint is filed before a Magistrate, it is obligatory on the Magistrate to examine the complainant. Thereafter, after complying with the procedure under Section 200 Cr.P.C the Magistrate is required to conduct an inquiry under Section 202 Cr.P.C if the accused is residing outside the place where he exercises his jurisdiction or where he is of the view that the offence complained is triable exclusively by the learned Sessions Court. He states that in case he is of the view that the charges are exclusively triable by the learned Sessions Court, he cannot delegate the investigation to the police but has to conduct investigation himself.

13. In the present case on 01.11.2008, the learned CJM passed the following order:

"A Complaint Petition along with vakalatnama of learned lawyer Sri Srimohan Singh and others has been filed under Sec. 147, 148, 149, 153(A), 341, 302, 109, 506,364 IPC by the Complainant Raju Mallick against the accused persons named in the Complaint Petition. Office Clerk is directed to register the complaint case.

Perused the complaint Petition and heard the learned lawyer appearing on behalf of the Complainant. The Complaint Petition is sent to the officer in charge, Baliapur P.S., Dist.: Dhanbad (Jharkhand State) under Sec. 202 Cr.P.C. for enquiry and submitting report. Put up the record on 29.11.08 for submission of report."

14. The order dated 01.11.2008 shows that the learned Magistrate had referred the complaint to Baliapur Police Station for investigation under Section 202 Cr.P.C without complying with Section 200 Cr.P.C.

15. In the present case, admittedly, Sections 302/364 IPC are exclusively triable by the learned Sessions Court. The order dated 01.11.2008 shows that

the learned Magistrate has referred the complaint to Baliapur Police Station for investigation under Section 202 Cr.P.C without complying with Section 200 Cr.P.C.

16. I am of the view that the judgment of the Hon'ble Supreme Court in *Rosy v. State of Kerala,* (2000) 2 SCC 230 para 20 is clear as under:

> ***"20.*** *Hence, what emerges from the above discussion is:*
>
> *I. (a) Under Section 200 the Magistrate has the jurisdiction to take cognizance of an offence on the complaint after examining upon oath the complainant and the witnesses present.*
>
> *(b) When the complaint is made in writing by a public servant acting or purporting to act in discharge of his official duties, the Magistrate need not examine the complainant and the witnesses.*
>
> *(c) In such case the court may issue process or dismiss the complaint.*
>
> *II. (a) The Magistrate instead of following the procedure stated above may, if he thinks fit, postpone the issue of process and hold inquiry for the purpose of deciding whether or not there is sufficient ground for proceeding against the person accused. Such inquiry can be held by him or by the police officer or by any other person authorised by him.*
>
> *(b) However, where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, the direction of investigation by the police officer is not permissible and he is required to hold inquiry by himself. During that inquiry he may decide to examine the witnesses on oath. At that stage, the proviso further gives mandatory directions that he shall call upon the complainant to produce all his witnesses and examine them on oath. The reason obviously is that in a private complaint, which is required to be committed to the Sessions*

Court for trial, it would safeguard the interest of the accused and he would not be taken by surprise at the time of trial and it would reveal the version of the witnesses whose list is required to be filed by the complainant under Section 204(2) before issuance of the process.

(c) The irregularity or non-compliance therewith would not vitiate further proceedings in all cases. A person complaining of such irregularity should raise objection at the earliest stage and he should point out how prejudice is caused or is likely to be caused by not following the proviso. If he fails to raise such objection at the earliest stage, he is precluded from raising such objection later."

17. There is no examination of the complainant or witnesses. Since the offences are under Sections 302/364 IPC which are tried exclusively by the Court of Sessions, the CJM could not have directed for an investigation by the police but was required to conduct an investigation by himself. In this view of the matter, Section 200 Cr.P.C has been violated as well as section 202 (1(a)and 1(b)) is also violated.

18. The Petitioner after receipt of summons has challenged the process at the first given opportunity by filing this petition for quashing of summoning order. Moreover it is stated that serious prejudice is being caused to the petitioner as he is being harassed by false and frivolous complaint which is motivated. Since the Respondent no.2 has chosen not to appear before this court, this aspect has not been contradicted.

19. Further, the above stated contentions are jurisdictional errors which goes into the root of the matter and non-compliance of the same, in my opinion will render the summoning order as bad in law.

20. There is another aspect to the matter. The police after conducting a detailed inquiry under Section 174 Cr.P.C. has filed a report stating that the

deceased Sakaldeo Rajak fell down from train after losing his balance. The said report has been accepted by the learned SDM, Niphad, Nashik and the relatives of the deceased also have not challenged the same.

21. In this view of the matter, the summons u/s 302/364 against the petitioner cannot be sustained in law.

Summoning the petitioner u/s 109/147/148/149/153A/341/342 IPC being in violation of section 196 Cr. P.C.

22. The ld counsel for petitioner argues that there is no previous sanction by the central or the state government as contemplated under Section 196 Cr.P.C prior to issuance of summons u/s 147/148/153A/341/342IPC.

23. Section 196 Cr.P.C reads as under:

> *"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.—*
>
> *(1) No Court shall take cognizance of— (a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.*
>
> *[(1A) No Court shall take cognizance of— (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]*
>
> *(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit*

[an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155."

24. In the present case, since prior sanction is required of the Centre or a State Government for initiating proceedings under Sections 147/148/153A/341/342IPC and admittedly no such sanction has been taken, the summoning order is liable to be quashed. Reliance has correctly been placed on the judgment passed by a Coordinate Bench this Court in *RAGHURAJ SINGH & ORS.v. STATE OF NCT OF DELHI & ANR*., CRL. M.C. Nos. 4623 and CRL M.C.4859-71 of 2005, decided on 05.02.2008 and more particularly to para 10 which reads as under:

10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) Cr.P.C. mandates

the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned.

25. Similar view has been taken in the case of *Swaraj v. State, 2015 SCC OnLine Del 11986* decided on 10.09.2015 decided by a Coordinate Bench of this Court.

26. Hence, in view of my findings hereinabove, the impugned summoning order summoning petitioner u/s 147/148/153A/341/342 cannot be sustained against the petitioner and hence liable to quashed.

27. As far as part of summoning order u/s 109/149 IPC is concerned, same is to take color from the other sections. Since I have already held that summing order u/s 147/148/153A/341/342 are bad in law, the part of summoning order u/s 109/149 also cannot be sustained

28. For the aforesaid reasons, the impugned summoning order summoning the petitioner cannot be sustained and is hereby quashed.

29. As regards the prayer for quashing of the complaint is concerned, the law has been settled by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not

be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

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

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

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

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

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

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

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

30. Hence, as far as the quashing of the complaint is concerned, I am of the view that the same is not covered under any of the parameters enumerated by Bhajan Lal (supra). The reliance of the Ld. Counsel on the judgment titled *Salman Khurshid vs State of UP and Anr., 2023 SCC OnLine All 52* is misconceived. The petitioner in that case had made certain remarks against an individual person whereas in the present case the remarks have been made against a certain community as well as a State. In addition, the alleged statements of the petitioner are also not before this court. Hence the prayer for quashing of the criminal complaint is rejected.

31. In the view of the above, the petition is allowed in part and summoning orders dated 01.11.2008 and 09.01.2009 passed by learned Judicial Magistrate-1st Class, Dhanbad in CC No. 2064 of 2008 (now numbered as Complaint Case No. 72/1/2011) are quashed. The prayer for quashing of the criminal complaint

is rejected.

32. The petition, along with applications, if any, is disposed of.

JASMEET SINGH, J

MARCH 13, 2023
sr

Click here to check corrigendum, if any