ABHIJIT PAWAR

v.

HEMANT MADHUKAR NIMBALKAR & ANR.

(Criminal Appeal No. 1225 of 2016)

DECEMBER 14, 2016

[A.K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Code of Criminal Procedure, 1973: s.202 – Persons residing at a place beyond the area in which the Magistrate exercises his jurisdiction – Issuance of summons – Held: The procedure stipulated in s.202 is mandatory which imposes an obligation on the Magistrate to ensure that before summoning an accused, who resides beyond his jurisdiction, the Magistrate shall make necessary inquiries into the case himself or direct investigation – In the instant case, complainant was aggrieved with the news published in a newspaper and filed complaint against the accused persons who were described as Printer and Publisher, Managing Director, Chairman of the newspaper – A perusal of summoning order showed that no inquiry was conducted as contemplated in s.202 – Magistrate did not look into the matter in terms of the provisions of s.7 of the Press Act and applying his mind whether there is any declaration qua accused persons under the said Act and, if not, on what basis they were to be proceeded with along with the editors – Magistrate directed to take up the matter afresh – Press and Registration of Books Act, 1861.

Allowing the appeals, the Court

HELD:1. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. 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,

A **so that false complaints are filtered and rejected. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality.[Paras 22, 24][489-B-C; 492-C]**

Vijay Dhanuka v. Najima Mamtaj **2014 (4) SCR 171 :**
B **(2014) 14 SCC 638;** *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda* **(2016) 1 SCC (Cri) 124 – relied on.**

2. In the instant case, the summoning order did not reflected any such inquiry. No doubt, the order mentioned that the Magistrate had passed the same after reading the complaint,
C **verification statement of complainant and after perusing the copies of documents filed on record, however, there is no enquiry of the nature enumerated in Section 202, Cr.P.C. The Magistrate did not look into the matter keeping in view the provisions of Section 7 of the Press Act and applying his mind whether there is any declaration qua these two persons under the said Act and, if**
D **not, on what basis they are to be proceeded with along with the editors. Application of mind on this aspect was necessary. It is not suggested that these two accused persons cannot be proceeded with at all only because of absence of their names in the declaration under Press Act. What is emphasised is that there**
E **is no presumption against these persons under Section 7 of the Press Act and they being outside the territorial jurisdiction of the concerned Magistrate, the Magistrate was required to apply his mind on these aspects while passing summoning orders qua A-1 and A-2. [Paras 25, 26, 27][492-H; 493-A, C-E]**

F *National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad* **2012 (14) SCR 472 : (2011) 12 SCC 695 – relied on.**

3. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High
G **Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter. For the said reasons, the notice in respect of A-1**
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is quashed and the Magistrate is directed to take up the matter afresh qua A-1 and pass necessary orders. Insofar as appeal filed by the complainant discharging A-2 is concerned, the High Court has quashed the notice on the ground that he is only shown as Chairman and is not shown to be actually associated with the publication of the newspaper. Since, the matter insofar as A-1 is concerned is relegated, for the same reasons the complainant needs to be given an opportunity to show as to whether A-2 was actually associated with the publication or not. It is more so when the High Court has not given any cogent reasons on the basis of which it has said that Chairman is not shown to be associated with the impugned publication. Thus, the second appeal is allowed as well and the Magistrate is directed to hold the same inquiry as directed qua A-1 and apply his mind as to whether notice against A-1 and A-2 needs to be issued or not. [Paras 28, 30 and 31][493-F-G; 494-B-E]

Subramaniam Swamy v. *Union of India* **(2016) 1 SCC 221;** *National Bank of Oman* v. *Barakara Abdul Aziz* **2012 (11) SCR 500 : (2013) 2 SCC 488;** *Maharashtra State Electricity Distribution Co. Ltd.* v. *Datar Switchgear Ltd.* **(2010) (1) SCC 479;** *Ramesh Chand Aggarwal v. State of Haryana and Anr.* **Crl. Misc. No. 30154/2010; Dtd. 22.12.2011 by Punjab and Haryana High Court;** *K.M. Mathews v. K.A. Abraham* **2002 (1) Suppl. SCR 662 : (2002) 6 SCC 670;** *Rosy and Anr. v. State of Kerala* **2000 (1) SCR 107 : (2000) 2 SCC 230;** *Chandradev Singh v. Prakash Chandra Bose* **AIR 1963 SC 1430 : 1964 SCR 639 – referred to.**

Case Law Reference

(2016) 1 SCC 221	referred to	Para 11
2012 (11) SCR 500	referred to	Para 11
(2010) (1) SCC 479	referred to	Para 11
2002 (1) Suppl. SCR 662	referred to	Para 11
2000 (1) SCR 107	referred to	Para 15
1964 SCR 639	referred to	Para 16
2014 (4) SCR 171	relied on	Para 22

A | **(2016) 1 SCC (Cri) 124** | **relied on** | **Para 23**

2012 (14) SCR 472 | **relied on** | **Para 28**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1225 of 2016.

B From the Judgment and Order dated 06.11.2012 of the High Court of Judicature at Bombay in WP (Crl.) No. 1772 of 2010.

WITH

Crl. A. No. 1226 of 2016.

C Ashok Desai, Sidharth Luthra, V. Giri, R. P. Bhatt, Sr. Advs., Ms. Shyel Trehan, Hitesh Jain, Ms. Himanie Katoch, Ms. Akshita Sachdea, Ms. Liz Mathew, Makarand D. Adkar, Vijay Kumar, Shrikrishna R. Ganbawale, Vishwajit Singh, Dr. Bheem Pratap Singh, Nishant Ramakantrao Katneshwarkar, Makarand D. Adkar, Advs., for the appearing parties.

D The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted.

2. On 18th March, 2009, a police squad working under the Lokayukta of Karnataka State, raided certain places and house of certain E police officers including that of Hemant Madhukar Nimbalkar (hereinafter referred to as the 'complainant'). After the said raid, the Lokoyukta held a press conference in which he stated that the complainant, who was an IPS Officer and posted as Superintendent of Police with charge of anti-terrorist squad, had collected assets in the region of Rs. 250 crores. In the process, the Lokayukta discussed the details of the raid F on the properties belonging to the complainant situate in Mumbai, Kolhapur and Belgaum. The press statement issued by the Lokayukta was widely reported the very next day in a number of prominent national as well as local newspapers, like Indian Express, Hindu, Times of India etc.

G 3. Sakal Newspaper, which is a Marathi newspaper also carried and published this news item. Kolhapur edition of this newspaper dated 19th March, 2009 records the version of the Lokayukta. Likewise, statements given by the Lokayukta also appeared in Belgaum, Pune, Nasik and Aurangabad editions of Sakal newspaper.

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4. Kolhapur edition also carried out another separate news item under the caption 'Rich from Silver and Elephant Teeth Smuggling'. Under this news item, it was, inter alia, mentioned that the complainant had collected money from silver and elephant teeth smuggling which came to the knowledge of the newspaper from reliable sources. Description was also given about his modest background leading very ordinary life during his tenure as the student and amassing wealth over a period of time through the aforesaid smuggling activities which made him rich.

It was also stated that he had thrown a huge new year eve party, about three years ago, spending more than 25 laks of rupees.

Likewise, in Belgaum edition, after reproducing the statement given by the Lokayukta, details of various properties owned by the complainant were given.

On 19th March, 2009, the editorial was published in Sakal newspaper with the heading 'Police "Dog" Millionaire'. In this editorial, reference was made to the Oscar winning movie "Slum Dog Millionaire". It was stated that though there was no comparison between the story of 'Jamal', the leading character in the said film and the complainant insofar as acquisition of wealth by the complainant is concerned, but insofar as the complainant is concerned, it was mystifying story that one boy in the middle class family becomes IPS Officer and collects property worth Rs. 250 crores within eight to ten years. The particulars of the properties acquired by the complainant with their value were mentioned and the editorial also highlighted increase in crime in white collar high class persons with no limit of corruption.

To the similar effect were the news published in E-editorial of this newspaper. According to the complainant, the news was very offensive and contained libelous **satire** against him generally, and in particular in the following lines:

> "Much discussion was held on the word "Dog" in the name of movie but in police machinery there are many such "dogs" and they are likelihood of "dog" and such is situation. The one who should protect law they have become "eater" becoming violating and this is not new to this country. The roots of corruption and bribe are deep rooted from Delhi to all over in small lanes also. There is no fear of law. From

A this it is clear that corruption is becoming social mannerism."

5. The complainant, feeling agitated by the aforesaid publications in different editions of Sakal newspaper, filed the complaint before the Chief Judicial Magistrate, Kolhapur under Section 501, 502 and 504 read with Section 34 of the Indian Penal Code on 5th November, 2009. In this B complaint apart from the four editors of the four editions of the newspaper at Kolhapur, Belgaum, Pune and Nasik, Mr. Abhijit Pawar (hereinafter referred to as the 'A-1), Managing Director of Sakal Newspaper and Mr. Pratap Rao Govind Rao Pawar (hereinafter referred to as the 'A-2), Chairman of this group of Newspapers (who incidentally is father of Abhijit Pawar) were also arrayed as accused persons. In the complaint C A-1 Abhijit Pawar is described generally as "Managing Director Editor of Sakal Papers Ltd.". He is also described as Printer and Publisher of Pune edition. Under statutory declaration, he is described a Printer and Publisher of the Pune edition. A-2 is described as Chairman of Sakal Papers Ltd. A-3 to A-6 are described as editors of various editions. A-3, D Navneet Deshpande, is described as Executive Editor of Pune edition and Accused No. 5 Yamaji Malkar as editor for Pune edition.

6. Verification in respect of this complaint was carried out on 17th November, 2009 wherein A-1 is described as 'Managing Director and Editor' of Sakal. After recording of the aforesaid verification statement E of the complainant, the Chief Judicial Magistrate, Kolhapur, i.e, the trial court issued process against all the accused persons on 24th November, 2009. Being aggrieved by the said order of issuance of process, all the accused persons challenged that order by filing criminal revision before the Sessions Court. This was, however, dismissed by the Court of Sessions on 26th February, 2010.

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7. As A-1 did not appear before the trial court even after the dismissal of the criminal revision application, on 14th June, 2010 bailable warrants were issued against him. Not satisfied with the dismissal of the criminal revision petition and aggrieved by the issuance of the bailable warrants, both A-1 and his father, A-2 approached the High Court of G Bombay by way of their respective criminal writ petitions. These writ petitions were clubbed together for hearing and have been decided by the common judgment dated 6th November, 2012. Vide this judgment, whereas the writ petition of A-1 has been dismissed, that of A-2 was allowed.

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8. It is in this backdrop that A-1 has filed the Criminal Appeal arising out of Special Leave Petition (Criminal) No. 9318 of 2012. A

9. Against that part of the order of the High Court by which proceedings against A-2 have been quashed, it is the complainant who has come up to this Court by filing Criminal Appeal arising out of Special Leave Petition (Crl.) No. 9860 of 2012. B

10. Mr. Ashok Desai and Mr. Sidharth Luthra, learned senior counsel appearing for A-1 have made four-fold submissions while questioning the order of issuance of process passed by the trial court which is affirmed by the High Court. These are:

(i) Provisions of Section 202 of the Code of Criminal Procedure, 1973 (Cr.P.C.) are ignored and not complied with by the trial court while issuing the process. It is submitted that the procedure stipulated in the said provision is mandatory which imposes an obligation on the Magistrate to ensure that before summoning an accused, who resides beyond his jurisdiction, the Magistrate shall make necessary inquiries into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground to proceed against the accused. It was submitted that indisputably A-1 resides outside the jurisdiction of the trial court at Kolhapur as he is resident of Pune. C D E

11. It is also argued that the order does not contain even the minimum reasoning necessary for issuance of such process as required in law explained in ***Subramaniam Swamy*** vs. ***Union of India***[1].

The learned counsel laid great emphasis on the amendment in Section 202, Cr.P.C. in the year 2005 whereby special provision was made mandating due care to be taken by the Magistrate in respect of those persons residing at a place beyond the area in which the Magistrate exercises his jurisdiction, to ensure that innocent persons are not harassed by unscrupulous persons. It was pointed out that this was avowed objective behind this amendment specifically noted and explained by this Court in ***National Bank of Oman*** vs. ***Barakara Abdul Aziz***[2]. F G

Some more judgments in support of the aforesaid arguments were also referred to, which will be taken note of at the appropriate stage.

[1] (2016) 1 SCC 221

[2] (2013) 2 SCC 488 H

A (ii) Second argument of the appellant was that there is no vicarious liability in criminal defamation and a person can be held liable only for his own act where he has the necessary *mens rea,* i.e., criminal mind. It was submitted that A-1 was, in fact, placed in the same position as A-2 and, therefore, the High Court should have quashed the process against A-1 as well, on the parity of reasoning adopted in the case of A-2.
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To buttress this submission, the learned counsel took aid of the judgment of this Court in ***Maharashtra State Electricity Distribution Co. Ltd.*** Vs. ***Datar Switchgear Ltd.***[3] laying emphasis, in particular, on para 13 of the said judgment which reads as under:-

C "30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same it has to be specifically provided for in the statute concerned."

D (iii) Taking the aforesaid argument of vicarious liability further, by giving it another dimension, it was submitted that the provisions of the Press and Registration of Books Act, 1861 (hereinafter referred to as the 'Press Act') take care of such situations thrusting the responsibility on the person who is declared as 'editor' in the prescribed format under the said Act and making the said declared editor responsible for these
E acts. It was submitted that Section 2(l) of the Press Act defines 'Editor' and as per the provisions of the Section, such a declaration is *prima facie* evidence in any legal proceedings, whether civil or criminal, about the person on whom the responsibility for the wrongful civil or criminal can be foisted upon. It was argued that besides the editor, other persons
F like the printer or publisher of a newspaper cannot be held liable for the wrongful acts, more particularly, when it comes to criminal prosecution. Otherwise, it would create a chilling effect in the freedom of speech. In this hue, it was submitted that Section 7, which talks of declaration to be *prima facie* evidence in any legal proceedings, whether whatever civil or criminal, only refers to a presumption that the declaration is sufficient
G evidence about the person who is shown to have certain status as a printer and/or publisher to be regarded as a printer and/or editor or publisher. This is a rebuttable presumption and, in any case, it does not involve any automatic criminal liability. In fact the Courts have been meticulous and have even regarded that a title like Chief Editor or

H [3] (2010) (1) SCC 479

Executive Editor would not make that person liable as an editor. It is pointed out that in the present case, the description of A-1 is "Managing Director Editor". A

It was also submitted that the printer and publisher has no role in selection of the material to be published. Further in the present case there are successive reports in many newspapers all over India. So there is nothing special about this publication, to attract any vicarious liability. B

Referring to the judgment in the case of ***Ramesh Chand Aggarwal*** Vs. ***State of Haryana and Anr.***[4], it was argued that the court held that if a person is not shown to be as 'editor', no presumption can be drawn. It needs a positive assertion of knowledge of the objectionable character of the matter and that it is published with his consent. In the aforesaid case, the petition of printer and publisher had been allowed. The matter came to this Court and the Court held that there were no legal and valid grounds for interference. The learned counsel also placed reliance on ***K.M. Mathews Vs. K.A. Abraham***[5] C D

(iv) It was lastly submitted that such kind of prosecutions were totally untenable, misusing and abusing the process of law deterring persons from exercising their fundamental right to Freedom of Speech guaranteed under Article 19(1)(a) of the Constitution. It was emphasised that this freedom has to be jealously guarded and protected when it comes to freedom of Press. Submission was that in the present case, a statement made by Justice Hegde as the Lokayukta of Karnataka who called a Press Conference for the purpose and in that he gave information about the corruption has been made the foundation of the charge of defamation. It is submitted that it is the duty of the newspaper to publish an allegation about which a former Supreme Court Judge made a statement in public as a part of his duty. This was published by several national papers including The Hindu, Times of India, The Indian Express reporting the press conference. Although the complainant has sweepingly stated that the information disclosed by the Lokayukta Karnataka is wrong and false and is contemplating legal course of action to seek justice against the false statements made by Lokayukta, the Sakal publications as a matter of law, and also their public duty as journalists, E F G

[4] Crl. Misc. No. 30154/2010; Dtd. 22.12.2011 by Punjab and Haryana High Court at Chandigarh

[5] (2002) 6 SCC 670 H

A have a right and obligation to publish the statement and even comment on the same.

It was pointed out that the complainant had instituted a civil defamation case against Justice Hegde wherein he also impleaded the representatives of The Hindu, The Times of India, Deccan Herald, New
B Indian Express, Deccan Chronicle, Vijaya Karnataka, Kannad Prabha, Prajavani, Udayvani, Sanyukta Karnataka. That civil suit itself has been dismissed on 28th June, 2010 as frivolous, with costs, with the observations of the Court that it appeared that the plaintiff had filed the said suit in order to gain cheap publicity in an attempt to overcome the serious allegations made in criminal case against him. The learned counsel placed
C heavy reliance on a recent judgment of this Court in ***Subramanian Swamy's*** case wherein there is a copious discussion of the law relating to the Freedom of Speech and Expression enjoyed by the Press.

12. Mr. Bhatt, learned senior counsel appearing on behalf of complainant stoutly refuted the aforesaid submissions of the appellant.
D It was submitted that the appellants were trying to trivialize the issue by taking umbrage under the statement which was made by the Lokayukta. He argued that the complaint filed by the complainant did not relate to the publication of statement made by the Lokayukta. It was submitted that undoubtedly it was the right of the paper to publish the statements,
E as a news item, which were given by the Lokayukta in Press Conference. According to the learned senior counsel, however, this limit was crossed by the accused persons in publishing the story about the complainant in the newspaper wherein serious libelous and defamatory allegations were made about the integrity of the complainant which included the allegations that the complainant had amassed ill-gotten wealth and richness from
F silver and elephant teeth smuggling. According to the learned senior counsel, these stories published in the newspaper, which were independent and in addition to the statements made by the Lokayukta, damaged the reputation of the complainant thereby lowering his image in the society. The learned counsel further submitted that another offending act on the
G part of the accused persons which come within the mischief of libel wsa publication of the editorial under the caption 'Police "Dog" Millionaire'. It was argued that right to freedom of speech or freedom of Press for that matter, does not extend to defaming or maligning the reputation of a person by publishing mischievously damaging and frivolous material. If that is done with intent to tarnish the image of the targeted person, it
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becomes an actionable claim under civil law as well as criminal law. A

13. Adverting to contention of the complainant based on the process issued under Section 202 of the Code of Criminal Procedure, it was argued that the Magistrate had followed correct and legal process. Attention in this behalf was drawn to the following averments made in the complaint B

> "a) The private limited company Sakal Papers Ltd., is run by the Accused No. 1 and 2 and it publishes news paper Sakal from various places in Maharashtra and Karnataka and internet/online edition eSakal.
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> b) There is a coordinating office at Pune which collects, C selects and circulates important news to all the places where from the local editions are published. The local editors include the news circulated by Pune coordinating office, known as Sakal News Service, manned and controlled by the accused Nos. 1 and 2 and the important news, particularly the news D which invites the risk of legal proceedings, for such a publication are usually brought to the notice of the accused and thereafter they are circulated to different editors.
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> c) The accused have nurtured some grudge against the Respondent No. 1 and are interested in defaming the E Respondent No. 1.
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> d) The accused No. 2 rules the management of Sakal News Paper in the capacity of Chairman of Company and the Accused No. 1 being the son of Accused No. 2 are both interest in increasing the sale of the newspaper, the profits F of which, go to Sakal Papers Ltd.
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> e) On 19.3.2009 the Sakal News Service i.e. "Sakal Vrutta Seva" at its head office situated at Pune, transmitted to all the places for publication a news item at **page 49 of SLP Paper Book (Do we need to write page no. of SLP Paper Book?),** indicating that Respondent no. 1 had G amassed Rs. 250 crores illegally, clearly with an intention to defame the Respondent No. 1. Additional defamatory news were published by Sakal print editions and internet/ online edition 'eSakal", for which Respondent no. 1 filed

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A the complaint under Sections 500, 501 and 502 R/w 34 IPC."

14. Referring to the above, it was argued that the complainant had given a selective gist of newspaper reports and had also indicated a deliberate design on behalf of the accused persons to defame a senior IPS Officer. Submission was that the learned Magistrate had examined B the record, and had been so specific stating the order issuing the process and this record contained : (a) all the newspaper reports including internet publication and (b) responses of general public to such news reports. Therefore, it could not be said that the learned Magistrate had not applied his mind to the relevant material which was documentary in nature and, thus, there was no legal infirmity whatsoever. It was submitted that no C doubt amendment of Section 202 Cr.P.C. makes it obligatory for the Elarned Magistrate to hold an enquiry into the allegations in the complaint and other relevant materials. However, in the defamation matter, issuance of process after having examination of defamatory material with reaction of the public, would certainly be sufficient to satisfy the test of holding D the enquiry under Section 202, Cr.P.C.

15. The learned counsel accepted the object of amendment of Section 202 Cr.P.C. is stated to be to avoid harassment or unnecessary inconvenience to the innocent persons. However, according to him such alleged harassment is neither a hypothetical situation, nor it is mere legal E submission. If the accused person feels harassment by an order of issuance of process then it is expected that he would complain against such unjust harassment without any delay and in any case at the first opportunity. It was so held in ***Rosy and Anr.*** Vs. ***State of Kerala***[6]. Therefore, the High Court was fully justified in rejecting the contention as regards amendment of Section 202 Cr.P.C. being an afterthought.

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16. The learned counsel also referred to the judgment in the case of ***Chandradev Singh*** Vs. ***Prakash Chandra Bose***[7] wherein it was held that the object of inquiry as contemplated in Section 202, Cr.P.C. is to ascertain the truth or falsehood. The Magistrate making the inquiry has to do this only with reference to the intrinsic quality of the statements G made before him and the inquiry which would naturally mean the complaint itself, the statement on oath made by the complainant, and, the statements made before him by persons examined at the instance of the complaint. In the facts of the present case, all the defamatory news articles

[6] (2000) 2 SCC 230

H [7] AIR 1963 SC 1430

published in the print editions of Sakal and the internet edition eSakal were placed before the Learned Magistrate and based on this material process was issued. A

17. Various judgments were cited in support of the proposition that satisfaction of the Magistrate, while issuing the process, is to be confined to the issue as to whether *prima facie* case is made out against the accused and not sufficient ground for securing his conviction. The learned counsel also argued that A-1 and A-2 had not even raised any contention regarding amended provision of Section 202 of Cr.P.C. at any stage earlier and this argument was raised for the first time before the High Court. B C

18. Mr. Bhatt, further submitted that it was also misconceived on the part of the accused persons to argue that they were not responsible for the defamatory and libelous material published in the newspaper thereby refuting the argument predicated on the provisions of the Press Act. He contended that undoubtedly a person whose name is printed on the copy of the newspaper as an Editor, would be responsible since his name is given in the declaration form. However, that does not mean that action cannot be taken against others, more particularly, if they are also responsible for such acts. It was argued that there was specific averments in the complaint that A-1 and A-2 who are Chairman and Managing Director respectively of the newspaper, were not only aware of the impugned publications but the publication was with their active consent. According to the learned counsel the offence was committed when in Kolhapur edition the news were published by the local editor who is also impleaded as an accused in the proceedings and also in the internet edition 'eSakal'. Under Section 177 read with Section 178, the offence is triable where act is done or consequence ensues. In this case, not only the act is done at Kolhapur but the consequence also has followed at Kolhapur. The complainant is a permanent resident of Kolhapur. What is triable is the offence and not the accused. The accused suffers the sentence or punishment as a result of the trial wherever situated. D E F G

19. In the instant case even otherwise where there are six accused and four of them have not questioned the process after the criminal revision, the trial could not be segregated by the Chief Judicial Magistrate. In this behalf, it was emphatically argued that Sakal Papers Ltd., is a private limited company, owned and managed by said accused, runs a H

A Marathi Daily newspaper styled as ***"Sakal"***, and, an internet edition known as the ***'eSakal'***. The news to all these print editions and internet edition are collected and circulated by a centralised news agency known as the "Sakal News Service", and, important news inviting consequences are scrutinized and approved by both Mr. Prataprao Pawan and Mr. Abhijit Pawar, who handle and operate the said "Sakal News Service". B It is for this reason that, the internet/online edition 'eSakal' and all the print editions have a similar news content and editorials, as the actual Editors have virtually no control over the selection of matter and the said accused have in furtherance of their design to defame the complainant, have published the defamatory news through the newspaper controlled C by their company Sakal Papers Ltd. The defamatory news items have been published with concurrence of the accused in various editions for a period of over six months to gain profits by selling them and hence the ingredients of Sections 500, 501, 502 read with Section 34 of the IPC are satisfied.

D 20. We have considered the respective submissions of the counsel for the parties. In these proceedings, we are not concerned with the issue as to whether impugned publications make out a case for offence under the aforesaid provisions of the IPC? Since the learned Magistrate has issued the process *qua* four editors as well, apart from A-1 and A-2, we proceed with the assumption that *prima facie* case is made out E against the said editors. The question is as to whether the learned Magistrate adopted correct procedure while issuing notice to A-1 and A-2 as well.

21. Basic facts which need to be recapitulated for deciding this issue are that A-1 is the Managing Director of Sakal newspapers whereas F A-2 is the Chairman of the Company. Further, insofar as declaration under Section 7 of the Press Act is concerned, name of the other accused persons are mentioned except these two accused persons. Therefore, we have to examine the matter keeping in view non-existence of such a presumption against these two accused persons. It is also an admitted G fact that both the accused persons are not residents of Kolhapur and are outside his jurisdiction.

Having regard to these facts, we proceed to examine the matter in the light of the provisions of Section 202, Cr.P.C. as well as Section 7 of the Press Act.

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22. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. 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. The essence and purpose of this amendment has been captured by this Court in ***Vijay Dhanuka*** Vs. ***Najima Mamtaj***[8] in the following words:

> "11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.
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> **12.** The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:
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> "False complaints are filed against persons residing

[8] (2014) 14 SCC 638

A at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

C The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of D the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for E which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

F 23. 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 G emphasised by this Court in a recent judgment ***Mehmood Ul Rehman*** Vs. ***Khazir Mohammad Tunda***[9] in the following words:

"**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

H [9] (2016) 1 SCC (Cri) 124

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.* [*Pepsi Foods Ltd.* v. *Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(*a*) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of

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

24. 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***[8] case, which is reproduced hereunder:

"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."

25. When we peruse the summoning order, we find that it does not reflected any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint,

verification statement of complainant and after perusing the copies of documents filed on record, i.e., FIR translation of 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, 50 read with 34 of the Indian Penal Code. Hence issue process against the accused for the above offences returnable on 23.12.2009. case be registered as Summary Case."

26. Insofar as, these two accused persons are concerned there is no enquiry of the nature enumerated in Section 202, Cr.P.C.

27. The Learned Magistrate did not look into the matter keeping in view the provisions of Section 7 of the Press Act and applying his mind whether there is any declaration qua these two persons under the said Act and, if not, on what basis they are to be proceeded with along with the editors. Application of mind on this aspect was necessary. It is made clear that this Court is not suggesting that these two accused persons cannot be proceeded with at all only because of absence of their names in the declaration under Press Act. What is emphasised is that there is no presumption against these persons under Section 7 of the Press Act and they being outside the territorial jurisdiction of the concerned Magistrate, the Magistrate was required to apply his mind on these aspects while passing summoning orders qua A-1 and A-2.

28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (*See : **National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad; [(2011) 12 SCC 695]***.

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on Section 202 of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process,

A this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the ***National Bank of Oman***[2].

30. For the aforesaid reasons, Criminal Appeal arising out of SLP (Crl) No. 9318 of 2012 is allowed thereby quashing the notice dated 24th November, 2009 in respect of A-1 with direction to the learned Magistrate B to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.

31. Insofar as appeal filed by the complainant discharging A-2 is concerned, the High Court has quashed the notice on the ground that he C is only shown as Chairman and is not shown to be actually associated with the publication of the newspaper. Since, we are relegating the matter insofar as A-1 is concerned, for the same reasons the complainant needs to be given an opportunity to show as to whether A-2 was actually associated with the publication or not. It is more so when we find that High Court has not given any cogent reasons on the basis of which it has D said that Chairman is not shown to be associated with the impugned publication. Thus, we allow the second appeal as well and direct the learned Magistrate to hold the same inquiry as directed *qua* A-1 and apply his mind as to whether notice against A-1 and A-2 needs to be issued or not.

E 32. No orders as to costs.

Devika Gujral Appeals allowed.