IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD SITTING AT LUCKNOW

Neutral Citation No. - 2025:AHC-LKO:33090

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 4623 of 2025

Applicant :- Rahul Gandhi
Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Distt. Lko. And Another
Counsel for Applicant :- Mohd. Yasir Abbasi,Mohammed Samar Ansari,Pranshu Agrawal
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Shri Pranshu Agrawal and Sri. Mohd. Yasir Abbasi, the learned counsel for the applicant, Shri Vinod Kumar Shahi, the leared Additional Advocate General, Dr. V. K. Singh, the learned Government Advocate, Sri Anurag Verma, the learned AGA-I and Shri Shivendra Shivam Singh Rathore, the learned State Counsel appearing on behalf of the opposite party no. 1 – the State of U.P.

2. The instant Application under Section 482 Cr.P.C. has been filed challenging validity of an order dated 11.02.2025 passed by the learned Additional Chief Judicial Magistrate, Court No.27, Lucknow in Misc. Case No.109161 of 2023, Police Station Sushant Golf City, District Lucknow titled "Udai Shankar Srivastava v. Rahul Gandhi", summoning the applicant to face trial for the offence under Section 500 of the Penal Code. The applicant has also sought quashing of the entire proceedings of the aforesaid complaint case.

3. The opposite party No.2 has filed the aforesaid complaint against the applicant stating that the complainant is a senior citizen, who has retired from the post of Director in Border Roads Organization, which position is equivalent to the post of Colonel in Indian Army. The complainant has immense respect towards the courage and valor of the Indian Army and any disrespectful comment

against the Indian Army made with the object of demoralizing the Indian Army and portraying its achievements in a demeaning manner, amount to an insult of the Indian Army as well of as of the entire nation, which hurts the complainant. The applicant, who has held the office of a Member of the Indian Parliament several times, stated on 16.12.2022 during his 'Bharat Jodo Yatra' in presence of media persons and a large gathering of public regarding a face-off that took place between the Indian Army and the Chinese Army at the border of India in Arunachal Pradesh on 09.12.2022 that "*People will ask about Bharat Jodo Yatra, here and there, Ashok Gahlot and Sachin Pilot and whatnot. But they will not ask a single question about China capturing 2000 square kilometers of Indian territory, killing 20 Indian soldiers and thrashing our soldiers in Arunachal Pradesh. But the Indian press doesn't ask a question to them about this. Isn't it true? The nation is watching all this. Don't pretend that people don't know*."

4. A news item was published in this regard on a news portal - opindia.com under the heading "*Chinese troops are thrashing Indian Army soldiers in Arunachal Pradesh': Rahul Gandhi on Tawang clash*" wherein it is published that on 16th December 2022, Congress leader Rahul Gandhi said that Chinese troops are thrashing Indian army soldiers along the line of actual control (LAC).

5. The complainant stated that the aforesaid statement given by the applicant is false and baseless and it was given with an evil intention of demoralizing the Indian Army and to damage the faith of the Indian population on the Indian Army, whereas the truth is that in the scuffle that took place in Yangsi region Arunachal Pradesh on 09.12.2022, the Indian Army successfully restrained the Chinese Army from entering the territory protected by it and badly chased them away. The complainant further stated that in the official statement issued by the Indian Army on 12.12.2022, it was stated that: -

> *"On December 09, 2022, People's Liberation Army (PLA), troops contacted the LAC in Tawang Sector which was contested*

by Om troops in a firm and resolute manner. This face off lead to minor injuries to a few personnel from both sides."

6. The complaint states that the applicant repetitively stated in a very derogatory manner that the Chinese army is thrashing our soldiers in Arunachal Pradesh and the Indian Press will not ask any question in this regard and, thereafter, the applicant said with a very clever and mischievous smile that it is true. The complainant further stated that the aforesaid baseless and derogatory statement made by the applicant has hurt the complainant immensely. This statement has been made by the applicant knowingly and mischievously under a conspiracy to cause an adverse effect on national integrity and unity of the Indian Army and it has hurt the complainant. The aforesaid statement of the applicant was widely published by the newspapers.

7. In the statement recorded under Section 200 Cr.P.C., the complainant stated that the aforesaid statement given by the applicant is false and it has shocked the complainant. This statement was made as an attempt to demoralize the Indian Army. Some companions of the complainant from the military told him that they were also feeling hurt by the statement.

8. The statements of Arun Kumar Gupta, Shishir Beer Prasad and Mohd. Ashfaq Khan have been recorded under Section 202 Cr.P.C. and all of them have stated that the aforesaid statement of the applicant had caused immense mental agony to the witnesses as well as to several nationalists / patriots. The complainant was immensely hurt from this statement. The statement had an adverse impact on the morale of the complainant, the witnesses and all the citizens of India due to which certain persons have made fun of the complainant also as he is a former soldier (former Officer of the Border Roads Organization)

9. Keeping in view the aforesaid statement, the trial court passed an order dated 11.02.2025 stating that prima facie the statement of the applicant appears to be resulting in demoralizing the Indian Army and persons attached to it and their family members.

This statement was not given by the applicant in performance of his official duties and, therefore, it does not fall within the purview of Section 197 Cr.P.C. As the complainant has retired from the post of Director, Border Roads Organization, which is equivalent to the post of Colonel in Indian Army, and the statement of the applicant has caused defamation of the Indian Army and the persons attached to it, prima facie it appears that a case for trial of the applicant for the offence of defamation is made out. Accordingly, the trial Court summoned the applicant to face the trial for the offence punishable under Section 500 IPC.

10. Assailing the validity of the aforesaid order dated 11.04.2025, Shri Pranshu Agarwal, the learned counsel for the applicant has submitted that even as per the complaint, the applicant has made a defamatory statement against the Indian Army whereas the complainant is not an Officer of the Indian Army and the applicant has not given any statement defaming the complainant. Therefore, the complainant is not a person aggrieved and he has no locus standi to file the complaint as per the provisions contained under Section 199 Cr.P.C.

11. Section 199 Cr.P.C. provides as follow: -

> *"**199. Prosecution for defamation**.—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:*
>
> *Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.*
>
> *(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant*

employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

12. The learned Counsel for the applicant has relied upon the judgment in the case of **G. Narasimhan v. T.V. Chokkappa**: (1972) 2 SCC 680, wherein the principal question for determination was whether the respondent could be said to be an aggrieved person entitled to maintain the complaint within the meaning of Section 198 of the Code of Criminal Procedure, 1898, which provided as follows: -

"198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not

to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf:

Provided further that where the husband aggrieved by an offence under section 494 of the said code is serving in any of the armed forces of Bangladesh under conditions which are certified by the Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other persons authorized by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf."

13. There was no provision in Section 198 Cr.P.C., 1898 akin to the provision contained in Sub-Section (6) of Section 199 Cr.P.C., 1973, which provides that nothing in Section 199 shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence. This makes the intention of the legislature clear that the provisions of Section 199 govern the rights of the persons other than the person against whom the offence is alleged to have been committed. Section 199 Cr.P.C., 1973 was not in consideration of the Hon'ble Supreme Court in **G. Narasimhan** (Supra) and, therefore, the ration of that judgment is not relevant for decision of the present case.

14. The phrase "*some person aggrieved by the offence"* occurring in Section 199 (1) Cr.P.C. obviously refers to some person other than the person than against whom the offence is alleged to have been committed. The Section itself contemplates filing of complaints by some person aggrieved by the offence, although the offence has not been committed against him. The complainant has stated that the he is a senior citizen, who has retired from the post of Director in Border Roads Organization, which position is equivalent to the post of Colonel in Indian Army. The complainant has immense respect towards the Indian Army and the disrespectful comment against the Indian Army made with the object of demoralizing the Indian Army and portraying its achievements in a demeaning manner, amount to an insult of the Indian Army as well of as of the entire nation, which has

hurt the complainant. I am of the view that the aforesaid averments made in the complaint indicate that the applicant is a person aggrieved by the offence and he can file a complaint as per the provision contained in Section 199 Cr.P.C. Accordingly, the first objection of the learned Counsel for the applicant is turned down.

15. Sri. Pranshu Agarwal has next submitted that it has been stated in the complaint that the statement of the applicant had resulted into a serious shock to the complainant due to which his soft heart got broken, he suffered from depression due to which he had suicidal thoughts on several occasions. Sri. Agarwal has relied upon the decision in the case of **Patricia Mukhim v. State of Meghalaya and Ors.**: (2021) 15 SCC 35, wherein a press release was issued by the Assistant Inspector General of Police on 04.07.2020 in which there was a reference to an incident on the day prior. The incident had led to registration of a crime at Laban Police Station under Sections 326/307/506/34 I.P.C. It was mentioned in the press release that around 12.30 p.m., about 25 unidentified boys had assaulted youngsters playing basketball in Block 4, Lawsohtun with iron rods and sticks. Some persons had sustained injuries in the incident. The injured had been rushed to Woodland Hospital for medical assistance. It was stated in the press release that some suspects had already been arrested and that interrogation was in progress. An appeal was made to the public to assist the investigation team in identifying the perpetrators of the crime. A warning was given that nobody should breach communal peace and harmony. On the same day, the appellant uploaded a post on Facebook, which reads as follows:

> *"Conrad Sangma CM Meghalaya, what happened yesterday at Lawsohtun where some non-tribal youth playing Basketball were assaulted with lethal weapons and are now in hospital, is unacceptable in a State with a Government and a functional police force. The attackers allegedly tribal boys with masks on and should be immediately booked. This continued attack of non-tribals in Meghalaya whose ancestors have lived here for decades, some having come here since the British period is reprehensible to say the least. The fact that such attacker and trouble mongers since 1979 have never been arrested and if*

arrested never penalised according to law suggests that Meghalaya has been a failed State for a long time now.

We request your Government and the police force under the present DGP, R. Chandranathan, to take this matter with the seriousness it deserves. Show us the public that we have a police force we can look up to.

And what about the Dorbar Shnong of the area? Don't they have their eyes and ears to the ground? Don't they know the criminal elements in their jurisdiction? Should they not lead the charge and identify those murderous elements? This is the time to rise above community interests, caste and creed and call out for justice.

We hope that this will not be yet another case lost in the Police files. We want action. Criminal elements have no community. They must be dealt with as per the law of the land.

Why should our non-tribal brethren continue to live in perpetual fear in their own State? Those born and brought up here have as much right to call Meghalaya their State as the indigenous Tribal does. Period."

16. In the context of the aforesaid factual background, it was held that the effect of the words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man should be applied.

17. The learned Counsel for the applicant next submitted that the trial Court has not examined the entire facts and material to examine whether a case for trial of the applicant for the offence of defamation is made out and it has summoned the applicant to face the trial in a mechanical manner. He has relied upon the judgment in the case of **Delhi Race Club (1940) Ltd. versus State of U.P.** (2024) 10 SCC 690, in which it was held that: -

"12.** It is by now well-settled that **at the stage of issuing process it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused

***should be convicted or acquitted does not generally indicate that the case must necessarily fail**. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.*

***13.** If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.*

***14.** What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : D.N. Bhattacharjee v. State of W.B. (1972) 3 SCC 414]*

***15.** Further it is also well-settled that **at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction which is to be sparingly used. The scope of the inquiry under Section 202 CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have**.*

16.** In fact in proceedings under Section 202 CrPC, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. **The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised

his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused*.*

17. *These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 CrPC which culminates into an order under Section 204. [See : Nagawwa v. Veeranna Shivalingappa Konjalgi (1976) 3 SCC 736] It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of the Magistrate issuing process against the accused can be quashed or set aside. These illustrations are as under:*

> *"5. ... (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
>
> *(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> *(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."*

* * *

32. *The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.*

33. *In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482 CrPC. In the decisions in Bhushan Kumar v. State (NCT of Delhi) and Pepsi Foods, this Court held that a petition filed under Section 482 CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held that*

sine qua non for exercise of the power to issue summons is the subjective satisfaction "on the ground for proceeding further" while exercising the power to consider the legality of a summons issued by a Magistrate, certainly ***it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned****. In this context, we think it appropriate to state that one should understand that "taking cognizance", empowered under Section 190 CrPC, and "issuing process", empowered under Section 204 CrPC, are different and distinct. [See the decision in Sunil Bharti Mittal v. CBI (2015) 4 SCC 609].*

34. *In Sunil Bharti Mittal, this Court interpreted the expression "sufficient grounds for proceeding" and held that there should be sufficiency of materials against the accused concerned before proceeding under Section 204 CrPC. It was held thus:*

> *"53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.* ***The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect****."*

18. The learned Counsel for the applicant has also relied upon the judgments in the case of **Bhushan Kumar and another v. State (NCT of Delhi) and another** (2012) 5 SCC 424 and **Pepsi Foods Ltd. and another versus Special Judicial Magistrate and others** (1998) 5 SCC 749, but these judgments have been considered in **Delhi Race Club** (Supra) and, therefore, there was no need to cite these judgments for unnecessarily multiplying the number of judgments.

19. A perusal of the impugned summoning order dated 11.02.2025 passed by the trial Court shows that the trial Court has considered the averments made in the complaint, the statement of the complainant recorded under Section 200 Cr.P.C. and the statements of the witnesses recorded under Section 202 Cr.P.C. and after a judicious

application of mind, the trial Court has come to a conclusion that the statement of the applicant has caused defamation of the Indian Army and the persons attached to it and prima facie it appears that a case for trial of the applicant for the offence of defamation is made out. The trial Court has recorded this satisfaction in a proper manner and as per the law laid down by the Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd.** (Supra), this Court cannot interfere in the summoning order in absence of any illegality committed by the trial Court so as to substitute the opinion of the trial Court by its own opinion.

20. The learned Counsel for the applicant has relied upon the judgment in the case of **Imran Pratapgadhi v. State of Gujarat**: 2025 SCC OnLine SC 678, in which the issue arose out of the following poem recited in the background of a video clip which was posted by the appellant – a Member of Rajya Sabha, on his X account: -

"ए खून (blood) के प्यासों (thirsty) बात सुनो
ग़र हक़ (truth) की लड़ाई ज़ुल्म (excesses / injustice) सही
हम ज़ुल्म (excesses / injustice) से इश्क़ (love) निभा देंगे
ग़र शम-ए-गिरिया (melting of a candle which resembles tears) आतिश (flame) है
हर राह वो शम्मा (light) जला देंगे
ग़र लाश हमारे अपनों की
ख़तरा है तुम्हारी मसनद (throne) का
उस रब (god) की क़सम हसते हसते
कितनी लाशें दफ़ना देंगे
ए खून के प्यासों बात सुनो"

The appellant filed a petition for quashing of the criminal proceedings and he stated that the poem in question is attributed to either Faiz Ahmed Faiz or Habib Jalib, but he could not conclusively ascertain its authorship. He further stated that a plain reading of the poem indicates that it is a message of love and non-violence. After examining the facts of that case, The Hon'ble Supreme Court held that no offence was made out by posting of the video. In the aforesaid factual background, the Hon'ble Supreme Court further held that: -

> *"When an offence punishable under Section 196 of BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position."*

The aforesaid judgment was given keeping in view the peculiar factual background of the case and the statutory provision contained in Section 196 BNS. Section 500 I.P.C. or Section 199 Cr.P.C. were not discussed in this case and it would not apply to the facts of the present case.

21. In **Parasa Raja Manikyala Rao v. State of A.P.**, (2003) 12 SCC 306, the Hon'ble Supreme Court reiterated the well established principle of the law of precedents that: -

> ***"9.*** *Each case, more particularly a criminal case, depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. The vague and cryptic conclusion arrived at by the trial court to treat their case differently from the manner it dealt with that of A-1, despite its very observation that the evidence was as cogent against them too as it was against A-1 lacks a judicious approach and determination and, therefore, was rightly interfered with by the High Court after an objective appreciation of the evidence independently and in the light of the relevant and guiding principles of law governing such determination."*

22. Therefore, the numerous precedents cited by the learned Counsel for the applicant, which were decided in view of the peculiar factual background of those cases which is in no manner similar to the facts of the present case, are not relevant for decision of the present case.

23. The learned Counsel for the applicant has relied upon the judgment in the case of **Javed Ahmad Hajam v. State Of**

Maharashtra and Ors.: (2024) 4 SCC 156, wherein the appellant had posted on his WhatsApp status that "August 5 - a Black Day for Jammu & Kashmir". It is the day on which Article 370 of the Constitution of India was abrogated. Further, the appellant had posted that "Article 370 was abrogated, we are not happy". The Hon'ble Supreme Court held that: -

> ***"11.*** *... On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision.* ***The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State****."*

24. The learned Counsel for the applicant has also relied upon the judgment in the case of ***Kaushal Kishor v. State of U.P.****:* (2023) 4 SCC 1, wherein the Hon'ble Court held that: -

> ***"198.*** *Article 19(1)(a) serves as a vehicle through which dissent can be expressed. The right to dissent, disagree and adopt varying and individualistic points of view inheres in every citizen of this Country. In fact, the right to dissent is the essence of a vibrant democracy, for it is only when there is dissent that different ideas would emerge which may be of help or assist the Government to improve or innovate upon its policies so that its governance would have a positive effect on the people of the country which would ultimately lead to stability, peace and development which are concomitants of good governance."*

25. No doubt, Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression, this freedom is subject to the reasonable restrictions and it does not include the freedom to make statements which are defamatory to any person or defamatory to the Indian Army. Therefore, the ratio laid down in **Javed Ahmad Hajam** (Supra) and **Kaushal Kishore** (Supra) would not apply to the facts of the present case.

26. The learned Counsel for the applicant has relied upon the judgment in the case of **State of Haryana v. Bhajan Lal**: 1992 Supp (1) SCC 335, in which the Hon'ble Supreme had summarized the scope of interference under Section 482 Cr.P.C. in the following passage: -

> ***"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."

27. In my considered opinion, the trial Court has rightly arrived at the decision to summon the applicant to face trial for the offence under Section 500 I.P.C. after taking into consideration all the relevant facts and circumstances of the case and after satisfying himself that a prima facie case for trial of the applicant is made out. The present case does not fall in any of the categories mentioned in **Bhajan Lal** (Supra) and no case for quashing of the summoning order and the proceedings has been made out in the present case.

28. The learned Counsel for the applicant referred to the "Highlights of Press Briefing" issued by the All India Congress Committee on 16.12.2022, a copy whereof has been annexed as Annexure No. 8 to the application and he drew attention of the Court to the answer given by the applicant when his comments were sought on the point that his party was raising the issue between India and China in Parliament, the Government says that nobody can take even an Inch of Indian territory, but such incidents are happening. However, this material was not available before the trial Court while passing the impugned summoning order.

29. The learned Counsel for the applicant himself has cited the judgment in the case of **Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya**: (2024) 2 SCC 86, wherein the Hon'ble Supreme Court has laid down the following principles: -

"59. *Thus, when a Magistrate taking cognizance of an offence proceeds under Section 200 based on a prima facie satisfaction that a criminal offence is made out, he is required to satisfy himself by looking into the allegations levelled in the complaint, the statements made by the complainant in support of the*

complaint, the documentary evidence in support of the allegations, if any, produced by him as well as statements of any witness the complainant may choose to produce to stand by the allegations in the complaint. Although we are not concerned with Section 202 here, if an inquiry or an investigation is conducted thereunder, it goes without saying that the reports should also be looked into by the Magistrate before issuing process under Section 204. However, there can be no gainsaying that ***at the stage the Magistrate decides to pass an order summoning the accused, examination of the nature referred to above ought not to be intended for forming an opinion as to whether the materials are sufficient for a "conviction"; instead, he is required to form an opinion whether the materials are sufficient for "proceeding" as the title of the relevant Chapter would indicate. Since the accused does not enter the arena at that stage, question of the accused raising a defence to thwart issuance of process does not arise****. Nonetheless, the fact that the accused is not before the Magistrate does not mean that the Magistrate need not apply his judicial mind. Nothing in the applicable law prevents the Magistrate from applying his judicial mind to other provisions of law and to ascertain whether, prima facie, an "offence", as defined in Section 2(n) CrPC is made out. Without such an opinion being formed, question of "proceeding" as in Section 204 does not arise.*

60. *What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.*

61. Since initiation of prosecution is a serious matter, we are minded to say that it would be the duty of the Magistrate to prevent false and frivolous complaints eating up precious judicial time. If the complaint warrants dismissal, the Magistrate is statutorily mandated to record his brief reasons. On the contrary, if from such materials a prima facie satisfaction is reached upon application of judicial mind of an "offence" having been committed and there being sufficient ground for proceeding, the Magistrate is under no other fetter from issuing

process. Upon a prima facie case being made out and even though much can be said on both sides, the Magistrate would have no option but to commit an accused for trial, as held in Chandra Deo Singh 1963 SCC OnLine SC 4. The requirement of recording reasons at the stage of issuing process is not the statutory mandate; therefore, the Magistrate is not required to record reasons for issuing process. This is also the law declared by this Court in Jagdish Ram v. State of Rajasthan (2004) 4 SCC 432. Since it is not the statutory mandate that reasons should be recorded in support of formation of opinion that there is sufficient ground for proceeding whereas dismissal of a complaint has to be backed by brief reasons, the degree of satisfaction invariably must vary in both situations. While in the former it is a prima facie satisfaction based on probability of complicity, the latter would require a higher degree of satisfaction in that the Magistrate has to express his final and conclusive view of the complaint warranting dismissal because of absence of sufficient ground for proceeding.

62. *In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether "sufficient ground for proceeding" exists as distinguished from "sufficient ground for conviction", which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499 IPC is attracted, there is no bar either. After all, what is "excepted" cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499 IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it*

would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.

***63.** Adverting to the aspect of exercise of jurisdiction by the High Courts under Section 482 CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by Section 482 CrPC; such powers are always available to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in exercise of jurisdiction under Section 482 CrPC not being substantially different from the tests laid down for quashing of a process issued under Section 204 read with Section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible, if the justice of a given case does not overwhelmingly so demand."*

30. The "Highlights of Press Briefing" issued by the All India Congress Committee on 16.12.2022 were not before the trial Court at the passing of the impugned summoning order dated 11.02.2025 and the applicant would have the opportunity to place the same before the trial Court in his defence. However, this Court cannot take into consideration the applicant's defence while examining the correctness of the summoning order as per the law laid down in **Iveco Magirus Brandschutztechnik GMBH** (Supra).

31. The learned Counsel for the applicant has also relied upon the judgment rendered by a coordinate Bench of this Court in **Naval Kishor Sharma v. State of U.P.**: 2022 SCC OnLine All 677, wherein it was held that: -

***"20.** From the above judgments it is clear that newspaper report by itself does not constitute an evidence of the contents of it. The*

> *reports are only hearsay evidence. They have to be proved either by production of the reporter who heard the said statements and sent them for reporting or by production of report sent by such reporter and production of the Editor of the newspaper or it's publisher to prove the said report. It has been held by the Apex Court that newspaper reports are at best secondary evidence and not admissible in evidence without proper proof of its content under the Indian Evidence Act, 1872. It is thus clear that newspaper report is not a "legal evidence" which can be examined in support of the complainant.*
>
> ***21.** It is trite law that there has to be legal evidence in support of the allegations levelled against a person. In the present case the only evidence relied upon is the newspaper reporting and nothing else. For what has been stated above and as per the settled legal position, a newspaper report is not a "legal evidence".*

However, this Court further held that: -

> ***"23.** Conveying a press conference and/or giving an interview to the press is a totally different act than addressing a general public meeting in elections. **A person holding a press conference and a person giving an interview to the press has a clear intention and message to the persons present that his speech or lecture or answers be published in newspaper and magazines**. Addressing a general public meeting during elections for the purposes of canvasing in elections is a totally different act with a different intention and object. The same is to address the gathering present at the spot so as to imbibe a thought in them for supporting the said political party.*

32. In the present case, the allegedly offending statement was made by the applicant while addressing media correspondents. It was in response to some question asked by a media person, that the applicant is said to have stated that "*People will ask about Bharat Jodo Yatra, here and there, Ashok Gahlot and Sachin Pilot and whatnot. But they will not ask a single question about China capturing 2000 square kilometers of Indian territory, killing 20 Indian soldiers and thrashing our soldiers in Arunachal Pradesh. But the Indian press doesn't ask a question to them about this. Isn't it true? The nation is watching all this. Don't pretend that people don't know."* The applicant while talking to the media correspondents had a clear intention and message to the persons present that his statement be published in newspaper and magazines. Therefore, even as per the

law laid down in **Naval Kishor Sharma** (Supra), the facts of the case do not make out a case for quashing of the summoning order and the proceedings.

33. After closure of submissions of the learned Counsel for the applicant, the learned Additional Advocate General raised a preliminary objection against the maintainability of the Application under Section 482 Cr.P.C. on the ground that the applicant has got a statutory remedy under Section 397 Cr.P.C. against the summoning order dated 11.04.2025 and, therefore, the application under Section 482 Cr.P.C. is not maintainable. He has submitted that earlier, the applicant had filed an Application under Section 482 No.2860 of 2025 against another summoning order, which application was rejected by this Court by means of an order dated 04.04.2025 holding that as the petitioner has got a statutory remedy of filing a revision under Section 397/399 Cr.P.C., it is not a fit case warranting exercise of inherent powers in exercise of inherent powers of this Court under Section 482 Cr.P.C.

34. Replying to the aforesaid objection, the learned counsel for the applicant submitted that the petitioner has challenged the order dated 04.04.2025 passed by this Court in an Application under Section 482 Cr.P.C. No.2860 of 2025 by filing S.L.P. (Crl) No. 006196 of 2025 and the Hon'ble Supreme Court has passed the following interim order dated 25.04.2025: -

> *"1.Issue notice, returnable in eight weeks.*
>
> *2. Till the next date of hearing, there shall be stay of the proceedings in Complaint Case No.126818/2022 pending before the court of ACJM-III, Lucknow, Uttar Pradesh."*

35. On the point of maintainability of the petition under Section 482 Cr.P.C. the learned Counsel for the applicant has relied upon the judgments in the cases of The learned Counsel for the applicant has relied upon the judgment in the case of **Dhariwal Tobacco Products Ltd. v. State of Maharashtra**: (2009) 2 SCC 370, **Sanjay Kumar**

Rai v. State of U.P.: (2022) 15 SCC 720 and **Akanksha Arora v. Tanay Maben**, 2024 SCC OnLine SC 3688.

36. The learned AAG has relied upon a judgment of this Court in the case of **Kaisar Jaha v. S.P., Distt. Sultanpur**: 2024 SCC OnLine All 6758, wherein this Court held that: -

> ***"10.*** *The two Judge Bench of the Hon'ble Supreme Court which decided Vipin Sahni [Vipin Sahni v. CBI, 2024 SCC OnLine SC 511] after relying upon the earlier two Judge Bench decision in the case of Mohit [(2013) 7 SCC 789], did not take note of the three Judge Bench decision in the case of Prabhu Chawla [Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30], which will prevail over the two Judge Bench decision. Thus the law as it exists now is that there are no absolute restrictions on the inherent powers of this Court and availability of a remedy of filing a revision would not create an absolute bar against the inherent powers of this Court being invoked. However, the inherent power can be invoked only to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*
>
> ***11.*** *The learned Counsel for the petitioner agrees that the petitioner has the option to file a revision under Section 438 of BNSS, but he insists that when the petitioner has got two remedies available, he has the discretion to choose any one of the two remedies available to him.*
>
> ***12.*** *Although availability of a statutory remedy under Section 438 of BNSS may not be an absolute bar against exercise of the inherent powers of this Court, it is certainly a factor which has to be taken into consideration by this Court to ascertain as to whether it is necessary to exercise the inherent power of this Court. The inherent power can be invoked to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*
>
> ***13.*** *The order under challenge has been passed by a Sessions Court and, therefore, the revision would lie before this Court itself. The revision as well the application under Section 528 BNSS, both are assigned to Single Judge Benches of this Court. The scope of enquiry and interference in both the proceedings would also be the same. Therefore, the functionality of an application under Section 528 BNSS and a revision under Section 438 BNSS would be the same. The only difference in the two proceedings would be that the application under Section 528 BNSS has been placed today before Judge 'A' and the revision*

under Section 438 BNSS would be placed on some other day before Judge 'B'.

14. *In Union of India v. Cipla Ltd., (2017) 5 SCC 262, the Hon'ble Supreme Court held that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not. The facts stated above clearly establish that it is a typical example of forum shopping, which practice has always been deprecated by the Courts.*

15. *Having considered the aforesaid facts and circumstances of the case, this Court is of the considered view that when a statutory remedy of filing a revision before this Court itself is available to the applicant which revision will also be placed before an Hon'ble Single Judge Bench of this Court, although the application under Section 528 of BNSS would be maintainable, it would not be proper for this Court to exercise it discretion of invoking its inherent powers when the petitioner has got a statutory remedy available under Section 438 BNSS, which remedy lies before this Court itself. For the aforesaid reasons, this Court finds that although the application under Section 528 BNSS would be maintainable, it would not be entertainable in view of the peculiar facts and circumstances of the case.***"**

37. In **Kaiser Jaha** (Supra), this Court has held that the application filed invoking the inherent powers of this Court will be maintainable, but as the applicant had a statutory remedy of filing a revision before this Court itself, which revision will also be placed before another Hon'ble Single Judge Bench of this Court, it would not be proper for this Court to exercise it discretion of invoking its inherent powers when the petitioner has got a statutory remedy available under Section 438 BNSS, which remedy lies before this Court itself. Therefore, I turn down the preliminary objection against maintainability of the application under Section 482 Cr.P.C. and hold the same to be maintainable.

38. Learned AAG has pointed out that the proceedings that took place before the Hon'ble Supreme Court on 25.04.2025 have been reported on Live Law portal, which has published that even while

staying the proceedings, the Hon'ble Supreme Court orally warned the applicant that if he made any such comment in future, suo motu action will be taken against him. The Hon'ble Supreme Court took objection to the applicant's statement against Vinayak Damodar Savarkar that he was a servant of the British and the Court asked senior counsel representing the applicants that "Let him not make irresponsible statements about the freedom fighters. You have laid down a good point of law and entitled to stay. We know that. But this is not the way you treat our freedom fighters." The Hon'ble Supreme Court has stayed the proceedings against the applicant but has restrained him from making irresponsible statements. The Hon'ble Supreme Court observed that any further statement and the Hon'ble Supreme Court will take suo motu and no question of sanction. The Hon'ble Supreme Court will not allow the applicant to speak anything about the freedom fighters. The portal has reported that the learned Senior Advocate representing the applicant gave an oral undertaking that the applicant would not make such statements in future.

39. Replying to the aforesaid objection, the learned counsel for the applicant submitted that this observation was made by the Hon'ble Supreme court on 25.04.2025 whereas the statement in question had already been made in September, 2024.

40. The applicant has filed a supplementary affidavit disclosing his criminal history of 24 cases. In one of the cases, he has been convicted for the offences under Section 499, 500 I.P.C. and a stay order has been passed in his favour in SLP (Crl.) No. 8644 of 2023 on 04.08.2023. The Hon'ble Supreme Court has observed in the interim order dated 04.08.2023 passed in **SLP (Crl.) No.8644 of 2023** that: -

> *"8. No doubt that the alleged utterances by the appellant are not in good taste. A person in public life is expected to exercise a degree of restraint while making public speeches. However, as has been observed by this Court while accepting affidavit of the appellant herein in aforementioned contempt proceedings, the appellant herein ought to have been more careful while making the public speech. May be, had the judgment of the Apex Court in the contempt proceedings come prior to the speech made by the*

appellant, the appellant would have been more careful and exercised a degree of restraint while making the alleged remarks, which were found to be defamatory by the Trial Judge. "

41. At this stage, while examining the validity of the summoning order, this Court is not required to go into the merits of the rival claims and that exercise would have to be taken by the trial Court after the parties have availed the opportunity to lead evidence in support of their respective claim / defence.

42. In view of the foregoing discussion, I am of the considered view that the trial Court has rightly arrived at the decision to summon the applicant to face trial for the offence under Section 500 I.P.C. after taking into consideration all the relevant facts and circumstances of the case and after satisfying himself that a prima facie case for trial of the applicant is made out. The impugned summoning order dated 11.02.2025 passed by the trial Court does not suffer from any illegality warranting interference by this Court in exercise of its inherent powers.

43. The application under Section 482 Cr.P.C. lacks merits and the same is ***dismissed***.

(Subhash Vidyarthi, J.)

Order Date: 29.05.2025
-Amit K-