IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.450 OF 2022

Mohd. Nawaz Iqbal Shaikh .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

WITH

CRIMINAL APPLICATION NO.357 OF 2022

Salman Khan @ Abdul Rashid Salim Salman Khan .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

...

Mr.Vikram Sutaria with Mr.Parag Khandhar i/b DSK Legal for the Applicant in APL/450/22.

Mr.Abad Ponda, Senior Advocate with Mr.Parag Khandhar i/b DSK Legal for the Applicant in APL/357/22.

Ms.P.N.Dabholkar, A.P.P. for the State.

Mr.Fazil Hussein for the Respondent No.2.

...

CORAM: BHARATI DANGRE, J.

DATED : 30th MARCH, 2023

JUDGMENT:-

1. The two applications before me, invoke the power of this Court under Section 482 of the Criminal Procedure Code (for short, **"the Cr.P.C."**), seeking a relief of quashing of an order dated 22/03/2022, passed by the Metropolitan Magistrate, 10th Court at Andheri, Mumbai, issuing process against them,

for committing the offences punishable under Sections 504 and 506 of the Indian Penal Code (for short, **"the IPC"**).

Amongst the two, one of the Applicant-Salman is a well-known cine artist and is a part of the Indian film and entertainment industry, who claim to enjoy an excellent reputation, tremendous goodwill and extensive fan following in India and also on international platform.

The other Applicant, was working as a bodyguard of Salman Khan, at the relevant time, when the incident is alleged to have taken place.

2. The complainant is one Mr.Ashok Shyamlaal Pandey, a journalist and, according to him, had a tiff with the accused persons on the given date and which surfaced through his complaint, which is filed before the Metropolitan Magistrate against the two named persons and one unknown person on 25/06/2019.

The complainant narrate that he being a journalist, in routine course of his profession, was travelling in his car from Juhu to Kandivali, alongwith his cameraman, at around 4.40 p.m. on 24/04/2019. On his way, he noticed Accused No.1 riding a bicycle and Accused Nos.2 and 3 escorting him on bike. Being a journalist, he was tempted to ask Accused Nos.2 and 3, whether he can video shoot Accused No.1 and once consent was accorded, he started the recording. This, however, irked Accused No.1 and at his indication, Accused Nos.2 and 3 jumped on the car of the complainant and assaulted him. Even Accused No.1 participated in the assault

and forcibly removed the mobile phone of the complainant, without his consent. The version in the complaint is exactly worded to the following effect :-

> "3....the accused persons not only abused and misbehaved with the complainant but a also, assaulted, threatened to face the dire consequences.
>
> 4. The complainant further states that when the accused no.1 started snatching the mobile phone of the complainant, the complainant informed the accused o. 1 that he is a journalist by profession and he is recording his video with the previous consent of his bodyguards however, the accused no.1 stated that "Doesn't Matter" and not only abused and assaulted the complainant but as also, forcibly taken away away/snatched the mobile phone of the complainant and went away from the said place. The complainant states that after snatching, the accused no.1 tried to break the mobile phone but as also, deleted so many applications and important Data of the complainant from the said mobile phone of the complainant."

3. Worth it to mention that immediately on the incident taking place at around 4.40 p.m. on 24/04/2019, the complainant approached D.N.Nagar Police Station at 18.12 hours and informed about the alleged incident having taken place and the narration is to the effect that after the permission was granted to videograph, Accused No.1 looked back and signaled to his bodyguards, pursuant to which, both of them, who were riding on a motorcycle, rushed towards the complainant and his cameraman, who was sitting in the car, with an open window, was pushed. It is alleged that a verbal altercation ensued between the bodyguards and the occupants of the car and even Accused No.1 came back and he snatched the mobile from the car and moved ahead. While an attempt was being made to contact to the police on number 100, the two bodyguards came back and returned the mobile.

The complaint that was lodged with the police station, in short, was about the misbehavior of Accused No.1 and it was alleged that just because he is a celebrity, he cannot behave in an irresponsible fashion, as before videographying him, permission of his bodyguards was sought.

The complaint is received in D.N.Nagar Police Station on the very same day.

4. Another complaint was addressed to D.N.Nagar Poice Station on 27/04/2019 alleging that pursuant to the complaint recorded on 24/04/2019, the complainant had received calls from distinct numbers and he was pressurized to withdraw the complaint. He also expressed an apprehension of he being followed and a specific allegations is made that on returning home, when he checked the mobile, he noticed that certain videos were deleted.

A clarification is also offered that though the bodyguards have alleged that the complainant was following them for 20 minutes, this is a false statement and with the help of the CCTV cameras, it's truthfulness can be ascertained.

On 13/06/2019, the Police Inspector of D.N.Nagar Police Station intimated the complainant that the complaint filed by him has been classified as 'Non-Cognizable (NC)'

5. Subsequent to this, and to be precise, on 25/06/2019, a complaint was filed before the Metropolitan Magistrate, 10th Court at Andheri, Mumbai, seeking a direction under Section 156(3) of Cr.P.C., to hold a detailed inquiry into the incident

complained of and in the alternative, issue process against the accused persons under Section 324, 392, 426, 506(II) read with Section 34 of IPC and try and punish them in accordance with law.

The genesis of the complaint is already reproduced in the above paragraph.

6. On 04/09/2019, the Magistrate passed an order below Exh.1 and by relying upon the decision of the Bombay High Court in case of *Yogiraj Vasantrao Surve Vs. State of Maharashtra*, the Magistrate recorded as under :-

> "From combined perusal of complaint, documents filed on record, it is apparent that no case of robbery can be perceived from the entire complaint. Though there appears some elements about assault and mischief. In such circumstances, in purview of about judicial ratio, exercise of power under section 156(3) of Cr.P.C. is not necessary. Per contra, calling the report under section 202 of Cr.P.C. will be well justified as accused persons are residents of area beyond jurisdiction of this Court. Thus, considering the grievance of complainant, nature of offence and all above discussion, I am satisfied to refer the case for inquiry under section 202 of Cr.P.C. at D.N.Nagar Police Station."

7. The operative part of the order, passed by the Magistrate read as under :-

> "i The request of complainant for directions under section 156(3) of the Code of Criminal Procedure, stands rejected.
>
> ii The complainant shall furnish verification statement under section 200 of the Code of Criminal Procedure.
>
> iii The matter be referred for inquiry under section 202 of the Code of Criminal Procedure at D.N.Nagar Police Station and Sr.P.I. of D.N.Nagar Police Station is directed to carry out the inquiry and furnish his report on fixed date without fail.
>
> iv The matter be kept on 14/10/2019."

8. In compliance of the aforesaid direction, the complainant submitted a statement of verification on 06/01/2020, which is placed on record as Exh.C and suffice it to note that the said statement is signed by the complainant, but it is neither on affidavit nor it is a verification statement before the Magistrate.

In the meantime, the Sr.P.I., D.N.Nagar Police Station, forwarded his enquiry report to the Magistrate vide Outward Number 1925 of 2020 dated 24/12/2020 and the report conclusively recorded that the complainant started videography, without permission of Accused No.1, and the allegation of abuse being hurled by Accused no.1, is denied by the non-applicants. Conclusively it is held that, a quibble had taken place between the complainant and Accused No.1 and his bodyguards and, therefore offences under Sections 504 and 506 of IPC are made out.

9. Upon receipt of the said report, the Magistrate had recorded as under :-

> "4. I have perused complaint, statement on oath and investigation report under section 202 of Cr.P.C. filed by D.N.Nagar police station. I have heard Mr.Fazil Hussain Shaikh, the learned senior advocate for complainant at length.
>
> 5. .....Keeping in view the self speaking material on record, positive police report under section 202 of Cr.P.C. and other material on record, there are sufficient grounds to proceed against the accused persons for the offences under sections 504, 506 of Indian Penal Code. Hence I am satisfied to issue process against the accused persons through following order:
>
> **ORDER**
>
> i. Issue process against accused no.1)Mr.Salman Salim Khan R/o 3, Galaxy Apartment, B.J.Road, Band Stand, Bandra (W), Mumbai and no.2) Mr.Mohd. Nawaz Iqbal Shaikh,

bodyguard for the offences under section 504, 506 of Indian Penal Code.

ii. Summons returnable on 05/04/2022."

10. It is this order, which is assailed in the applications by the two Applicants.

The learned senior counsel Mr.Ponda would rest his case on two questions of law, which fall for consideration according to him, being the impugned order is bad, as it does not adhere to the procedure prescribed under Chapter XV of Cr.P.C. and the second ground being pressed into service, to the effect that by no stretch of imagination, the offences under Sections 504 and 506 are made out.

Apart from this, Mr.Ponda would also invite my attention to the mala fides in lodging the complaint, after gap of time, which is flavoured in a different manner than the immediate reporting of the incident to D.N.Nagar Police Station.

In support of his first contention, the learned senior counsel would submit that the procedure contemplated under Section 200 of Cr.P.C. is mandatory and the Magistrate is duty bound to examine the complaint on oath and only on it's perusal, if a prima facie case is revealed, then the process can be issued. This power cannot be abdicated by filing an affidavit in cases involved under IPC and by drawing an analogy with Section 145 of the Negotiable Instruments Act, 1881 (for short, "**the NI Act**"), it is submitted that filing of a verification statement cannot be done by merely tendering an affidavit, as is sought to be done by the complainant in the present case. It is submitted that the impugned order is in utter breach of the

procedure prescribed, as the Magistrate has not examined the complainant nor he has recorded the statement of witness on oath, under his signature and the verification, which is filed by the complainant is no compliance of Sections 200 and 202 of Cr.P.C.

In support of the above proposition, Mr.Ponda would rely upon the decision of the Apex Court in case of ***Shivjee Singh Vs. Nagendra Tiwary & Ors.***[1] as well as upon the decision of the Karnataka High Court in case of ***Sri Sathya Sai Central Trust & Ors. Vs. State of Karnataka***[2]. He has also placed reliance upon the series of judgments by the Bombay High Court as regards the procedure to be adopted under Section 200 of Cr.P.C., where it is categorically held that it is not an empty formality and when it contemplates verification, in order to ascertain as to what is pleaded by the complainant is true or not, then the Magistrate must record the said statement on oath and apply his judicial mind to the facts of the case before he take any further action.

Reliance is placed upon the decision of the learned single Judge of this Court in case of ***Harish Khushalchand Chandak Vs. The State of Maharashtra & Anr.***[3] , ***Amarnath Baijnath Gupta & Ant. Vs.Mohini Organics Pvt. Ltd. & Anr.***[4] and in case of ***M/s.Nova Electricals, Jalgaon Vs. State of Maharashtra & Anr.***[5]

11. While pressing into service his second point that Section

1 (2010) 7 SCC 578
2 Cri.P.No.1422/21 decided on 22/07/2021
3 Cri.W.P. No.2264/08 decided on 28/04/09
4 2008 SCC OnLine Bom. 1994
5 2006 SCC OnLine Bom 1310

504 of IPC is not attracted in the given case, he would submit that the complainant, who alleged that words, gestures made by the Accused were with an intention of insulting the complainant and this material can be gathered from the surrounding circumstances. He would place reliance upon the decision in case of ***Vasant Waman Pradhan Vs. Dattatraya Vithal Salvi & Anr.***[6].

12. Per contra the learned counsel Mr.Hussein representing the complainant would raise a preliminary objection about the maintainability of the Applications under Section 482 of Cr.P.C., as according to him, the remedy available would be filing of a Revision, under Section 397 of Cr.P.C.

Apart from this, the learned counsel would place reliance upon the decision of the Apex Court in case of ***Fiona Shrikhande Vs.State of Maharashtra & Ors.***[7] to buttress his submission that for invoking offence under Section 504, there should be an act or conduct amounting to an intentional insult and it is not the law that actual words or it's nature should figure in the complaint, but if on reading of the complaint, it depicts an intentional insult to provoke any person to break the public peace or to commit any other offence, then the alleged act would definitely fall within the ambit of Section 504 of IPC. As regards Section 202 of Cr.P.C., he would place reliance upon the decision in case of ***Mohd. Raza Hasan Vs. State of Maharashtra***[8]. Another decision on which reliance is placed is in case of ***Kangana Ranaut Vs. The State of Maharashtra & Anr.***[9]

6 2004(1) Mh.L.J. 487
7 Cri.Appeal No.1231/13 decided on 22/08/2013
8 Cri.W.P.No.572/10 decided on 17/06/2011
9 Cri.Application No.545/21 decided on 09/09/2021

13. I shall first deal with the preliminary objection of Mr.Hussein to the effect that when remedy of filing Revision Application under Section 397 of Cr.P.C. is available, the invocation of Section 482 cannot be justified.

The objection deserve a rejection in limine, in light of the decision of the Apex Court in case of **Prabhu Chawla Vs. State of Rajasthan & Anr.**[10], where it has been categorically held that nothing in the Code of Criminal Procedure, not even Section 397, can affect the amplitude of inherent power preserved in so many terms, in Section 482. The law which prevail is to the effect that only because a Revision Application is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 of Cr.P.C., as abuse of the process of the Court or any extra ordinary situation justify it's invocation and in the words of Justice Krishna Iyer, "the limitation is self restrained, nothing more".

The objection, therefore, deserve no consideration and I must proceed with the merits of the applications.

14. Section 482 of the Cr.P.C., which save the inherent power of the Court, contemplate it's exercise to advance the cause of justice. The exercise of the power can be justified in the following situations; (a) to give effect to an order under this Code; (b) to prevent the abuse of the process of the Court; and (c) to otherwise secure the ends of justice.

It is trite position of law, that the Court should be guarded in exercise of this extra ordinary jurisdiction to quash

10 2016(16) SCC 30

any criminal proceedings filed through an FIR, as it denies the prosecution an opportunity to establish it's case on production of evidence.

The position of law as regards the exercise of power have been eloquently spelt out in the case of ***State of Haryana Vs. Bhajan Lal*** [11], where the Apex Court permitted exercise of it's ordinary jurisdiction and set it out through distinct illustrations, where quashing of the criminal proceedings may be a proper exercise of the power and the quashing has been held to be appropriate, in the following contingencies :-

> "(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);
>
> ...
>
> (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."

15. In exercising the jurisdiction under Section 482, the Court would thus look into whether on the face of the FIR, the allegations constitute a cognizable offence and whether there exist sufficient material to proceed ahead and if the allegations do not constitute an offence, of which cognizance is to be taken, it is open to the High Court to quash the same in exercise of it's inherent power.

---

11 1992 Supp (1) SCC 335

16. At the outset, it must be seen whether the narration in the complaint make out offences under Sections 504 and 506 and whether the facts could have justified cognizance by the Magistrate and issuance of process against the accused persons.

Section 504, prescribes punishment for an act of intentional insult, with an intent to provoke breach of peace and it read thus :-

> "**504. Intentional insult with intent to provoke breach of the peace.**-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

17. Section 506 prescribes punishment for criminal intimidation and what is criminal intimidation is set out in Section 503 in the following words :-

> "**503. Criminal intimidation.**- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

18. Turning to the offence adumbrated in Section 504, it's essential ingredients are; (a) intentional insult, (b) provocation to any persons, intending or knowing it to be likely that it will cause him to break the public peace or to commit any other offence. In absentia of the above ingredients, an act committed would not constitute an offence under Section 504.

19. Reading of the complaint filed before the Magistrate, by no stretch of imagination, could have said to attract the above provision.

When the complaint filed under Sections 324, 392, 426, 506(II) read with Section 34 of IPC is carefully read, it allege that Accused No.1 was riding on his bicycle, while Accused Nos.2 and 3 were escorting him and the case of the complainant is, with due permission, the videography was done by him and this was noticed by Accused No.1. It is the case in the complaint that Accused No.3, who is described as unknown person, suddenly jumped on the car in which the complainant was travelling and the accusation against Accused No.1-Salman Khan is that, he assaulted and snatched the mobile phone of the complainant, without his consent. When an attempt was made on part of the complainant to confront him with his alleged unruly act, he is alleged to have uttered “Doesn’t Matter”.

The above narration, which is obviously in utter contrast to the complaint which was lodged with D.N.Nagar Police Station on the date of the incident is, lacking the accusation of insult, that too intentional, nor does it lead to any provocation, knowing well that as a consequence, the complainant will break the public peace or commit any other offence.

For an act to amount an offence under Section 504, there should be reference of some words, gestures, which should have amounted to intentional insult, coupled with the necessity of it amounting to provocation, of such a nature, that he would resort to breach of public peace or commit any other offence.

What is thus contemplated, is an act of an accused committed, with an intention to insult the person and to provoke him to commit breach of public peace or commit any other offence. The words uttered in despair or a gesture, howsoever frightful, by itself would not attract Section 504 unless it exhibit an intentional insult and provide a cause for provocation, to any person and which is of such a nature, that the other person would revolt in a manner, which would break the public peace or result in commission of any offence.

The aforesaid elements, being conspicuously absent in the complaint, no offence is said to have committed by the accused persons under Section 504.

20. Now coming to Section 506 which provides punishment for criminal intimidation, the term 'criminal intimidation' is assigned a specific meaning in Section 503, which contemplate a threat being administered causing injury to his person, reputation or property or to the person or reputation of any one in whom the said person is interested. But, this act must be committed with an intent to cause an alarm to that person or to cause that person to commit an act, which he is not legally bound to do or to omit commission of an act, which he is legally entitled to do, as the means of avoiding the execution of such threat.

The essential element of the offence of criminal intimidation, being threat given by a person to cause injury to his reputation or property or his person with an intention to create such an alarm that he would act in avoidance for execution of such a threat.

21. The emphasis of the Section, is on the "intention" to cause an alarm, but in the present case, no such intention is explicit. The allegations levelled against the accused persons in the complaint, apart from being an after thought, in no case met the necessary ingredients of Sections 504 and 506, which would have warranted the Magistrate to take cognizance upon a complaint. Hence, the impugned order, which issue process for committing offence under Sections 504 and 506 of IPC, deserve reversal.

22. Now coming to the procedural aspect, before the Magistrate could have concluded about the existence of sufficient grounds to proceed against the accused persons and had he followed the procedure under Section 200 of Cr.P.C., probably he would have arrived at a right conclusion.

On a complaint being filed by the complainant, seeking issuance of an order and direction under Section 156(3) of Cr.P.C., directing the senior Police Inspector of the police station to hold a detailed inquiry and alternative relief, to issue process against the accused persons under Sections 324, 392, 426, 506(II) read with Section 34 of IPC, the learned Magistrate turned down the request for issuance of directions under Section 156(3). Instead, he directed the complainant to furnish verification statement under Section 200 and further directed an inquiry to be conducted under Section 202 by D.N.Nagar Police Station and submit the report.

Now what was imperative for the Magistrate, was to follow the procedure set out in Section 200 of Cr.P.C, which

necessarily contemplate examination of the complainant and the witnesses present on oath, by reducing the substance of such examination in writing, to be signed by the complainant/ witnesses and also by himself. It is only upon crossing this stage, it was permissible for him to inquire into the case himself or direct an investigation to be made out by a police officer or by such other persons as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused persons. The proviso appended to Section 202, provides that the above direction for investigation shall not be made in case, where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200. In any such inquiry, the Magistrate, if he thinks fit, may record evidence of the witnesses on oath.

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, by briefly recording his reasons. But, if the Magistrate is of the opinion that there exist sufficient ground for proceeding, he shall issue summons for the attendance of the accused, if it is a summons-case and in case of a warrant-case, he may issue a warrant.

23. The procedure prescribed under Chapter XV of the Code of Criminal Procedure is clearly spelt out and there is no possibility of taking any other route than the one, which is directed to be followed by the Code. Chapter XVI of the Code,

which comprise of a provision in form of Section 204 for issuance of process is to be found under the Heading, "Commencement of Proceedings before the court". Chapters XV and XVI and the Sections therein are sequentially arranged, prescribing the procedure to be followed, when a complaint is made to a Magistrate, for taking cognizance of an offence.

Careful reading of the provisions would lead to a schematic procedure, upon a complaint being lodged and in such a case, the Magistrate shall first ascertain, whether there exists material sufficient to arrive at a conclusion that the offence has taken place, so that the presence of the accused can be secured before him. This conclusion has to be derived on perusal of the complaint and examination of the complainant and the witnesses, if any, the exception being carved out by clauses (a) and (b) of the proviso appended to Section 200 of Cr.P.C.

On being satisfied that the offence might have taken place, the Magistrate, if the accused is residing at a place beyond the area in which he exercise a jurisdiction, shall postpone the issuance of process against the accused or if he arrives at a conclusion that sufficient ground does exists for proceeding, he shall issue summons under Section 204.

Section 202 contained in Chapter XV gives two options to him i.e. he can either postpone the issuance of process or inquire into the case himself or direct an investigation to be made out by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there exist sufficient ground for proceeding against the accused.

On culmination of the inquiry or investigation, if it is found that there is no sufficient material to proceed against the accused, he may dismiss the complaint.

24. A conjoint reading of Sections 200 to 204 would give rise to an irresistible conclusion that on receipt of the complaint, the Magistrate must satisfy himself about commission of an offence and for deriving such a conclusion, he is expected to examine the complainant and the witnesses, if necessary, under Section 200 of Cr.P.C. and if he is satisfied that there are sufficient grounds to proceed further, he shall take cognizance of the offence and issue process. After following the procedure set out in Section 200, still if the Magistrate is not convinced about existence of material sufficient to take cognizance, he may hold an inquiry himself or direct an investigation as contemplated under Section 202, and if not find any prima facie material to proceed further, he shall dismiss the complaint in terms of Section 203.

25. The term 'cognizance' having been interpreted on numerous occasion to mean application of mind to the facts of the case i.e. 'to become aware of' and with reference to a Court or Judge, it means to 'take note judicially'. Once the cognizance is taken of an offence, the next step is to secure the presence of the offender before the Court, for which the Magistrate would issue the process. The issuance of process must be necessarily preceded by application of mind to the facts place before the Magistrate taking cognizance.

26. Section 200 of Cr.P.C. has thus carved out a procedure, manatory in nature, for the Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance merely because a complaint has been filed before him and if it do not disclose a cause of action.

In ***S.R.Sukumar Vs. S. Sunaad Raghuram***[12], Their Lordships of the Hon'ble Apex Court have rightly crystallised the process in the following words, which I must reproduce.

> "8. Section 200 Cr.P.C. provides for the procedure for Magistrate taking cognizance of an offence on complaint. The Magistrate is not bound to take cognizance of an offence merely because a complaint has been filed before him when in fact the complaint does not disclose a cause of action. The language in Section 200 Cr.P.C. "a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any ... " clearly suggests that for taking cognizance of an offence on complaint, the Court shall examine the complainant upon oath. The object of examination of the complainant is to find out whether the complaint is justifiable or is vexatious. Merely because the complainant was examined that does not mean that the Magistrate has taken cognizance of the offence. Taking cognizance of an offence means the Magistrate must have judicially applied the mind to the contents of the complaint and indicates that Magistrate takes judicial notice of an offence.
>
> 9. Mere presentation of the complaint and receipt of the same in the court does not mean that the Magistrate has taken cognizance of the offence....."

In paragraphs 10 and 11, it was further held as under :-

> "10. Section 200 Cr.P.C. contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 Cr.PC. or dismiss the complaint under Section 203 Cr.P.C.

12 2015(9) SCC 609

> Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.PC. Section 202 Cr.PC. contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence.
>
> 11. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case."

27. Section 200 as it stands, makes it obligatory on the part of the Magistrate to record the statement of the complainant or his witnesses on oath before taking cognizance of the matter. The use of the word “shall”, leave no scope for the

Magistrate to dispense with the said requirement. In a decision in the case of ***Tula Ram & Ors. Vs. Kishore Singh***[13], the Apex Court culled out the necessary procedure to be followed by the Magistrate before taking cognizance and in paragraph 15, it is held as under :-

> "Where a Magistrate choose to take cognizance, he can adopt any of the following alternatives; he can peruse the complaint and being satisfied that there are sufficient grounds for proceeding, he can straight way issue process, but before he does so, he comply with requirement of Section 200 and record the evidence of the complainant or his witnesses. In view of the mandatory provision, the Magistrate is duty bound to examine the complainant on oath before he reach the stage of Section 202 or Section 204."

28. Admittedly, in the present case, the Magistrate has failed to adhere to the said procedure, as there is no verification of the complainant and he was not examined on oath. The complaint which is filed, itself gave the list of the witnesses, as the complainant himself and any other witness with the permission of the Hon'ble Court.

The Magistrate, on 04/09/2019, rejected the request for issuance of direction under Section 156(3) and the complainant as directed to furnish verification statement under Section 200 of Cr.P.C.

In compliance, on 06/01/2020, a verification was submitted by the complainant, without any solemn affirmation and not only this, the Magistrate skipped the important stage of recording his statement on oath, though he indicated the said procedure to be followed. In the record and proceedings, there is one affidavit of the complainant dated 25/06/2019,

13 (1977) 4 SCC 459

which admittedly is prior to the issuance of direction by the Magistrate on 04/09/2019 and this affidavit is in support of the complaint, affirming that he has put the aforesaid facts on the record of the Court and has not filed any other complaint in any other Court.

The said affidavit, though projected to be a compliance of Section 200, in my opinion, is not. Unless examination of the complainant was made under Section 200 of Cr.P.C., the Magistrate cannot exercise the power under Sections 202, 203 or 204 and in this case, by surpassing the said procedure, the Magistrate has issued the process against the accused persons, which order cannot be sustained, being not in compliance of Section 200 of Cr.P.C. Hence, the order of the Magistrate suffers from serious infraction of procedure to be adopted by a Magistrate, upon a complaint being filed before him.

29. The impugned order passed by the Magistrate, suffer from two glaring discrepancies; firstly invocation of Sections 504 and 506 of IPC, in the wake of the complaint filed as an after thought and without the ingredients of the said sections being satisfied and, secondly, the Magistrate has failed to follow the procedural mandate, before taking cognizance of the complaint, as contemplated in chapter XV and XVI of the Criminal Procedure Code.

I would be justified in quashing the proceedings, since it's continuation would amount to abuse of process of Court and quashing of the same would otherwise serve the end of justice.

In ***State of Karnataka Vs. M. Devendrappa***[14], Their Lordships of the Apex Court have pertinently observed and I deem it appropriate to quote.

> "6. ....All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine qua res ipsae, esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. it would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

30. Reliance by the learned counsel Mr.Hussain on the decision of ***Fiona Shrikhande*** (supra) do not take his case further, as it came to be considered in case of ***Vikram Johar Vs. State of Uttar Pradesh & Anr.***[15]**,** when a question arose whether in the given case, the appellant was entitled for discharge, for the offences under Sections 504 and 506 of IPC

14 (2002) 3 SCC 89
15 (2019) 14 SCC 207

and whether the Courts below have committed error in rejecting the discharge application. While dealing with Section 504, the Two-Judge Bench, reproduced the observations in paras 11 and 13 of *Fiona* and in the facts of the case, recorded as under :-

> "24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in *Fiona Shrikhande."*

As regards Section 506 of IPC, the following observations are made :-

> "25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by *Fiona Shrikhande* has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution ? *Ratanlal & Dhirajlal on Law of Crimes, 27th Edn.* With regard to proof of offence states the following :
>
> "...The prosecution must prove :
>
> (i) That the accused threatened some person.
>
> (ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;
>
> (iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a

means of avoiding the execution of such threat. (emphasis supplied)

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above."

Applying the principle in ***Fiona Shrikhande*** (supra) and the decision in case of ***Manik Taneja Vs. State of Karnataka***[16], it was held that ingredients of Sections 504 and 506 are not made out and the complaint filed under Section 156(3) of Cr.P.C., in absence of ingredients of Sections 504 and 506, was held not justifying it's continuation and the appellant was held entitled for discharge for the offences under Sections 504 and 506.

31. The judicial process need not be a means for needless harassment merely because the Accused is a well-known celebrity and without adhering to the procedure of law, he shall not be subjected to unnecessary oppression at the hands of a complainant, who set in the machinery into motion to satisfy his vendetta and assumed that he was insulted by the cine star.

This Court, in exercise of power under Section 482 of Cr.P.C., can prevent the abuse of process and secure the ends of justice, not only for the complainant, but also to the accused persons and this is a fit case, where issuance of process against the Applicants and continuation of the proceedings is nothing, short of abuse the process and for doing substantial justice, I deem it appropriate to quash the impugned order, by exercising the wide power possessed by this Court under Section 482 of Cr.P.C.. Continuation of any action against the

16 (2015) 7 SCC 423

Applicants would result in grave injustice and the circumstances narrated above warrant it's quashment, by necessarily setting aside the order of issuance of process.

In the wake of the above, the impugned order dated 22/03/2022 and the proceedings before the Metropolitan Magistrate, 10th Court, Andheri, Mumbai in form of C.C.No.326/SW/2019 are quashed.

The application is made absolute in terms of prayer clauses (a) and (b).

(SMT. BHARATI DANGRE, J.)

M.M.Salgaonkar