IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2020

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

CRIMINAL PETITION NO.6258/2017
c/w
CRIMINAL PETITION NO.6263/2017 AND
CRIMINAL PETITION NO.6508/2017

**CRL.P.6258/2017**

BETWEEN

RATAN N. TATA
S/O LATE SH. NAVAL TATA
AGED ABOUT 79 YEARS,
HAVING RESIDENCE AT
"HALEKAI", 169B-171,
LOWER COLABA ROAD,
COLABA,
MUMBAI-400 005.

... PETITIONER

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE A/W
SRI PRATEEK RATH, SRI ANUJ BERRY AND
SRI SOURABH RATH, ADVOCATES.)

AND

1. STATE OF KARNATAKA
REPRESENTED BY
HALASUR POLICE STATION
BENGALURU DISTRICT-

REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU 560001.

2. LT. COLONEL DILIP K. HAVANOOR (RETD)
NO.C-12/71, BDA,
MIG FLATS, DOMLUR,
2ND STAGE, BENGALURU-560071.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1,
LT. COLONEL DILIP K. HAVANOOR – R2-PARTY IN PERSON)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 13.06.2017 (ANNEXURE-M) PASSED BY THE I ADDL.C.M.M., BANGALORE IN CR.NO.366/2013 AND THE IMPUGNED SUMMONS DATED 12.07.2017 (ANNEXURE-N) PASSED BY THE I ADDL.C.M.M., BANGALORE IN C.C.NO.16820/2017 AGAINST THE PETITIONER, AND QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.16820/2017 (ANNEXURE-M1) PENDING BEFORE THE I ADDL.C.M.M., BANGALORE.

**CRL.P.6263/2017**

BETWEEN

ASHUTOSH PANDEY
S/O LATE SH. SUDHAKAR PANDEY
AGED ABOUT 45 YEARS,
HAVING RESIDENCE AT
PLANET GODREJ, TOWER TERA,
FLAT NO.2501, SIMPLEX MILLS,
30 KESHAVARAO KAHDYE MARG,
MAHALAXMI, MUMBAI 400 013.

... PETITIONER

(BY SRI UDAYA HOLLA, SENIOR ADVOCATE A/W
SRI ANUJ BERRY, SRI PRATEEK RATH AND
SMT. ANUSHA RAMESH, ADVOCATES.)

AND

1. STATE OF KARNATAKA
REPRESENTED BY
HALASUR POLICE STATION
BENGALURU DISTRICT-
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU 560001.

2. LT. COLONEL DILIP KUMAR HAVANOOR
(RETD)
NO.C-12/71, BDA,
MIG FLATS, DOMLUR,
2ND STAGE,
BENGALURU-560071.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1,
LT. COLONEL DILIP K. HAVANOOR – R2-PARTY IN PERSON)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 13.6.2017 (ANNEXURE-P) PASSED BY I A.C.M.M., BENGALURU IN CR. NO.366/2013 AND THE IMPUGNED SUMMONS DATED 12.7.2017 (ANNEXURE-Q) PASSED BY THE I A.C.M.M., BENGALURU IN C.C.NO.16820/2017 AND QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.16820/2017 (ANNEXURE-P1) PENDING BEFORE THE I A.C.M.M., BENGALURU.

**CRL.P.6508/2017**
BETWEEN

SRI. CYRUS PALLONJI MISTRY
S/O. PALLONJI SHAPOORJI MISTRY,
AGED ABOUT 49 YEARS,
HAVING HIS OFFICE ADDRESS AT
SP CENTRE, MINOO DESAI MARG,
COLABA, MUMBAI-400 005.

... PETITIONER

(BY SRI C.V.NAGESH, SENIOR ADVOCATE FOR
SRI AJAY J.N, ADVS.)

AND

1. STATE OF KARNATAKA
REPRESENTED BY
HALASURU POLICE STATION,
BENGALURU DISTRICT,
BENGALURU
BY SPP,
HIGH COURT BUILDINGS,
BENGALURU - 560 001.

2. LT. COL. D. K. HAVANOOR (RETD),
SON OF LATE GURUNATH RAO
HAVANOOR, AGED ABOUT 62 YEARS,
RESIDING AT C-12/71, BDA MIG
FLATS, DOMLUR II STAGE,
BENGALURU-560 077.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1,
LT. COLONEL DILIP K. HAVANOOR – R2-PARTY IN PERSON)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE ORDER DATED 13.06.2017 PASSED BY THE I A.C.M.M., BENGALURU IN C.C.NO.16820/2017 (CRIME

NO.366/2013) VIDE ANNEXURE-D AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.16820/2017.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.10.2019, COMING ON FOR 'PRONOUNCEMENT OF ORDERS', THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard the learned Senior Counsel Sri. C.V. Nagesh along with Sri. Ajay J.N, learned counsel appearing on behalf of the petitioner in Crl.P.No.6508/2017, the learned Senior Counsel Sri.Udaya Holla along with Sri. Prateek Rath, Sri. Anuj Berry, Sri. Sourabh Rath and Smt. Amisha Ramesh, learned counsel appearing on behalf of the petitioner in Crl.P.No.6258/2017 and Crl.P.No.6263/2017.

2. All the three petitions are taken up together as they arise out of proceedings initiated by 2nd respondent – defacto complainant and involve common facts and questions of law.

3. The facts in a nutshell are that the second respondent, who was earlier in service as an Officer in the Indian Army had authored a Book titled 'March of a Foot Soldier'. That the narration in the book was based on his personal experiences while in service and facts that he had gleaned in the course of his meritorious service with the armed forces. That on 22.09.2013, the complainant upon learning that certain entities were attempting to commercially deal with his book proceeded to lodge a complaint against the following entities:-

1. www.krainaksiazek.pl
2. www.ebay.com
3. www.bookadda.com
4. www.rakuten.com
5. www.vicconsult.com
6. www.cdon.com

4. The complaint was registered by the first respondent police, who proceeded to investigate the alleged complaint. After investigation and on the strength of the written requisition of the complainant

that he had amicably settled the issue with the accused noted in the complaint and accordingly the 'B' report dated 27.04.2010 came to be filed into Court.

5. Upon receipt of the 'B' report or closure report, the trial court issued notice to the complainant. Upon receipt of the notice, the de-facto complainant submitted his objections to the 'B' report. In the objections the complainant in paragraph No.1 has pleaded that the 'B' report would put the complainant through grave hardship, injustice and prejudice on account of the accused being able to escape their criminal liability. In paragraph No.2 he states that the book was authored by him and he got it printed through one M/s Optim Graphics Institutes, Kothnur, Bangalore-77. That in paragraph No.3 he details the registration of the Copyright and asserts his exclusive claim over the intellectual property. In paragraph No.4 he narrates that he has been enjoying the benefits of

Copyright by sale and circulation and that the book has received the acclamation and acknowledgment throughout the nation on account of the uniqueness.

6. That in paragraph No.5 he states that on 24.05.2014 the complainant chanced upon the website of the accused namely the 'landmarkonthenet.com', and found that his book had been listed for sale and priced at Rs.1,076/-. In paragraph No.6 he asserts that he has not entered into any agreement or understanding with the accused to offer the book for sale or permitting them to sell the book and that the book has been listed for sale solely for the benefit of the accused. In paragraph No.7 it is asserted that the listing of the book amounts to infraction of the Copyright within the meaning of Section 51 of the Copyright Act, 1957. That the listing directly violates the proprietary rights of the complainant. In paragraph No.8 he recounts the causing of notice dated 18.06.2014 both by RPAD and

e-mail bringing to the notice of the accused the aforesaid infringement of the Copyright and calling upon to desist from selling, publishing, advertising, distributing and dealing with the subject book in any manner. He further called upon the noticee accused to pay Rs.25.00 Crores towards damages on account of infringement of the Copyright held by the de-facto complainant. In paragraph No.10 it is contended that very fact that the book has been listed on the website and the sale price is fixed would uncontrovertibly demonstrate the infringement of the Copyright. In paragraph No.11 it is stated as under:-

> "11. The fact that the Accused runs a well established bookstore having sufficient knowledge and experience in the process of sale and the requirements which are necessarily to be complied prior to offering a book for sale can be reasonably presumed and the Accused therefore cannot therefore plead ignorance."

7. In paragraph No.12 he would again reiterate the statement made in paragraph No.10 which reads as under:-

> "12. The very act of listing the subject Book without any authority or authorization alone amounts to an infringement of copyright. The further act of offering the subject Book for sale with the intention of making a profit also amounts to an infringement of copyrights rendering the Accused criminally liable under the law. Despite having committed infringement the Accused have sort to deny the accountability for the same as stated in the Accused said reply Email dated 03.07.2014."

In paragraph No.12 he would reiterate the statement made in paragraph No.10 and would contend that the denial on behalf of the accused requires to be rejected. In paragraph No.13 it is stated that the 'B' report fails to take into consideration these aspects of the matter and he would contend that the offences are non-compoundable and hence the 'B' report/closure report is to be rejected. In paragraph No.14 he would state that the accused have also resorted to employing illegal

means of threatening and inducing the complainant to withdraw the case by threatening the life and safety of the complainant.

8. Based on the said objections the complainant was examined and is evidenced by way of affidavit which is taken on record. It is interesting to note the deposition in paragraph No.13 to 16. Thus in the objection and by the affidavit, in-lieu of evidence, the de-facto complainant seeks to enlarge the scope of the inquiry by introducing a new accused and a new case of threat and coercion.

> "13. On 13 September 2014 around fivish in the evening, two bouncer looking young men came to my house and asked me to withdraw my complaint against the Landmark Company of Tata and sons lest I would face dire consequences. Although I am not scared of death being a soldier but I was worried of the fate of my little daughter and my not too worldly wise wife as then my wife name was still not endorsed in the family pension by the Principal Controller of Defence Accounts. Also like any parent with little daughter, I want to settle my daughter

in life before I bid adieu to this world. So I agreed to withdraw the complaint and wrote a petition for withdrawal of complaint on a plain paper in fear and Went gave it to the Halasuru Police Station. I took an acknowledgement from Inspector Nagte. My wife's name was endorsed by PCDA Pension on 19 September 2014 for family pension copy attached as **Annexure -4.**

14. I want to say that the young men/ bouncers may or may not have been sent by the accused; they could have been sent by anybody connected with the case or by well wisher of the accused.

15. After that inspector M.A. Nagte issued a B Report in the matter.

16. The B report was initiated by the Inspector because I gave a letter withdrawing the complaint against Landmarkonthenet.com. The withdrawal of complaint was under threat and fear as such the details given in the letter are incoherent which the Inspector did not analyze carefully before issuing the B Report. The Inspector has purposely suppressed the evidence or facts to facilitate acquittal of the accused. The details of incoherent facts are given below. The copy of the handwritten letter requesting withdrawal of complaint against Landmark company is attached as **Annexure-5.**

a. The letter asking for withdrawal of complaint mentions the date as 13 Sept without mentioning the year.
b. The text of the letter asks for withdrawal of complaint against Landmark Company where as the subject heading says Cancellation of 366/13 which pertains to several Companies.
c. The text of the withdrawal letter says the complaint was given against the landmark Company on 22/9/2013 but actually the complaint was given on 03 June 2014.
d. This amounts to issuing of false B report which is a crime as per Section 193, 195, 201, 202 and 203 of IPC (45 of 1860). The offences committed are dereliction of duty, issuing false report and suppressing facts given by me to screen the accused."

9. Though he categorically admits having given the requisition withdrawing the complaint, he requests the court to reject the 'B' report. The objections is filed on 01.04.2016 and the affidavit taken on 22.10.2016 and thereafter on 05.05.2017 he has filed a memo furnishing the name and addresses of the petitioners. Thereafter, by impugned order dated 13.06.2017 the

Magistrate proceeded to pass orders issuing summons to the petitioners who have been named in the memo dated 05.05.2017. Interestingly, none of the Companies, legal entities named in the complaint have been summoned or proceeded against and only the petitioners whose names have been introduced by the memo dated 05.05.2017 have been summoned by the trial court and processes issued.

10. Before this court proceeds to advert to the various contentions advanced by the learned Senior Counsels and the respondent party-in-person, the court deems it necessary to reproduce the complaint dated 22.09.2013 which reads as under:-

> "ಈ ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವೇನೆಂದರೆ, ಫಿರ್ಯಾದುದಾರರಾದ ಶ್ರೀ ಡಿ.ಕೆ.ಹಾವನೂರ್ ನಿವೃತ್ತ ಲೆಫ್ಟಿನಂಟ್ ಕರ್ನಲ್, ನಂ.ಸಿ-12/71 ಬಿ.ಡಿ.ಎ, ಎಂ.ಐ.ಜಿ.ಫ್ಲಾಟ್ಸ, ದೊಮ್ಮಲೂರು 2ನೇ ಹಂತ, ಬೆಂಗಳೂರು ರವರು ಠಾಣೆಗೆ ಹಾಜರಾಗಿ ಕೊಟ್ಟ ದೂರು ಏನೆಂದರೆ, ನಾನು ಕೇಂದ್ರ ಸರಕಾರದಿಂದ ISBN ಏಜನ್ಸಿ ಪಡೆದು ನಾನೇ ಬರೆದ ಪುಸ್ತಕಗಳನ್ನು ಬೆಂಗಳೂರಿನ ಗೆದ್ದಲಹಳ್ಳಿ ಕೊತ್ತನೂರು ಅಂಚೆ, ಇಲ್ಲಿ ಮುದ್ರಣ ಮಾಡಿಸಿ ಪ್ರಚಾರ ಮಾಡುತ್ತಿದ್ದು ನಾನು ಮುದ್ರಣ ಮಾಡಿ ಪ್ರಚಾರದ ಪುಸ್ತಕಗಳನ್ನು ನನ್ನ ಅನುಮತಿ ಇಲ್ಲದೆ ಕಂಪೆನಿಗಳಾದ 1)

www.krainaksiazek.pl 2) www.ebay.com 3) www.bookadda.com 4) www.rakuten.com 5) www.vicconsult.com 6) www.edon.com
ಈ ಕಂಪೆನಿಯವರು ನನ್ನ ಪುಸ್ತಕಗಳನ್ನು ಮುದ್ರಿಸಿ ಪ್ರಚಾರ ಮಾಡಿ ಕಾಪಿರೈಟ್ ಮತ್ತು ಐ.ಟಿ.ಆಕ್ಟ್ ಉಲ್ಲಂಘನೆ ಮಾಡಿರುತ್ತಾರೆ. ಈ ಕಂಪೆನಿಗಳ ಮೇಲೆ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೊಟ್ಟ ದೂರು ಇತ್ಯಾದಿ."

11. At this juncture itself it is relevant to place on record the submission of the respondent party-in-person that he does not intent to proceed against the petitioners and that he may be permitted to continue his complaint against the legal entitled/companies against whom he has lodged a complaint. The said submission was made at the fag end of the hearing. Hence, despite the said submissions this court deems it appropriate to proceed to dispose the matter on merits as considerable judicial time has been utilized for hearing this case.

12. The learned Senior Counsel Sri. C.V. Nagesh would contend that even factually no case is made out

and the mere cataloging of the book cannot be construed as an infringement of Sections 51 and 63 of the Copyright Act. The learned Senior Counsel would invite the attention of the court to the conduct of the complainant in requesting the Investigating Officer to permit him to withdraw the complaint and thereafter leveling allegations against the said officer. He would submit that though it is alleged as early as on 01.04.2016 that the accused are employing undesirable means and threatening, inducing the complainant to withdraw the above case, he would maintain a stoic silence about his written request to withdraw the complaint. He would further invite the attention of the court to paragraph 13 of the affidavit and point out the statement of the complainant that incident occurred on 13.09.2014 around 5.00 p.m. in the evening. He would contend that nothing prevented the complainant from detailing the same in the objection and that the elaboration is merely an afterthought and with an

intention of introducing a new case. He would also point out to the fact that the complainant has not made any effort to lodge a complaint with regard to the alleged offence of threat and inducement. He would contend that the said allegations are made only with the intention of prejudicing the mind of the court. Though it is alleged that the offence was committed on 13.09.2014 the complainant has maintained a stoic silence till October, 2016 and hence he would submit that the continuation of the proceedings before the learned Magistrate is an abuse of the process of the court.

13. Learned Senior Counsel would further contend that procedure of arraying the person as an accused on the basis of a memo is unheard of and unknown to criminal jurisprudence or the Code of Criminal Procedure. He would contend that neither in the complaint nor in the objection statement has de-facto

complainant even whispered about the instant petitioners. He would further contend that the complainant having ventured to withdraw the complaint against the company, the issuance of summons to the Directors or individuals associated, without the company being made as a party is impermissible and that the law in this regard is no more res-integra. He would submit that even as per the memo the petitioner is described as Chief Executive Officer of a Group of Companies and there is neither a statement nor an allegation detailing any act on the part of the petitioner or of his role in the accused company.

14. He would place reliance on the ruling of the Apex Court in the case of ***Sharad Kumar Sanghi Vs. Sangita Rane*** reported in ***(2015) 12 SCC 781***, wherein at paragraph Nos.11 and 13 held as under;

> *"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the*

*Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statues. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd., in the context of the Negotiable Instruments Act, 1881.*

*xxxxxxxxxxxxx*

*13. When the company has not been arraigned as an accused, such an order could not have been passed. We have said so for the sake of completeness. In the ultimate analysis, we are of the considered opinion that the High Court should have been well advised to quash the criminal proceedings initiated against the appellant and that having not been done, the order is sensitively vulnerable and accordingly we set aside the same and quash the criminal proceedings initiated by the respondent against the appellant.*

15. He would nextly contend that the issuance of process and registration of complaint in respect of persons residing outside the territorial jurisdiction of the Magistrates Court without conducting Inquiry is a serious infraction of the provisions of Section 202 of the Criminal Procedure Code and contends that, on these twin grounds alone the petitions require to be allowed and the order issuing summons be quashed.

16. Learned Senior Counsel would place reliance on the ruling of the Apex Court in the case of ***Udai Shankar Awasthi Vs. State of Uttar Pradesh and Another*** reported in ***(2013) 2 SCC 435***, wherein it is held as under;

> *"37. It is evident that in the said complaint, no reference was made by the complainant as regards the arbitration proceedings. There was also no disclosure of facts to show that earlier complaints in respect of the same subject-matter had been dismissed on merits by the same court.*

*38. A copy of the award made by the arbitrator was placed on record, wherein Issue 13 which dealt with the present controversy, i.e., some material and documents were placed in the premises of IFFCO and the return of the same was refused. The claim as regards the same has been rejected. There has been no mention of such claim and its rejection by the said concern in either of the writ petitions filed before the High Court earlier or even for that matter, in the application filed by the said concern before IFFCO, for the purpose of making appointment of an arbitrator, or in the application filed under Section 11 of the Act, 1996 before the High Court.*

*39. In the counter-affidavit filed by Respondent 2, it has been submitted that the contract was terminated by IFFCO fraudulently, to usurp the entire amount towards the work done by it and that IFFCO took illegal possession of all the goods and articles belonging to the firm lying within its premises, and as the amount had not been paid, the officers were guilty of criminal breach of trust and were therefore, liable to be punished. However, the fact that earlier complaints had been filed by the brother of Respondent 2 Sabha Kant Pandey has been admitted. It has further been admitted that arbitration proceedings are still pending, but it has also simultaneously been urged that criminal prosecution has nothing to do with the arbitral award.*

*40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 Cr.P.C., though the appellants were outside his territorial jurisdiction. The provisions of Section 202 Cr.P.C. were amended vide Amendment Act 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases.*

*xxxxxxxxxxxxxx*

*46. In Kishan Singh v. Gurpal Singh [AIR 2010 SC 3624], this court while dealing with a case of inordinate delay in launching a criminal prosecution has held as under:*

> *"22. In cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an*

*afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide: Chandrapal Singh v. Maharaj Singh [AIR 1982 SC 1238]; State of Haryana v. Bhajan Lal [AIR 1992 SC 604]; G. Sagar Suri v. State of U.P. [AIR 2000 SC 754]; and Gorige Pentaiah v. State of A.P. [(2008) 12 SCC 531].”*

> *47. The instant appeals are squarely covered by the observations made in Kishan Singh (Supra) and thus, the proceedings must be labeled as nothing more than an abuse of the process of the court, particularly in view of the fact that, with respect to enact the same subject-matter, various complaint cases had already been filed by Respondent 2 and his brother, which were all dismissed on merits, after the examination of witnesses. In such a fact situation, Complaint Case No. 628 of 2011, filed on 31.5.2001 was not maintainable. Thus, the Magistrate concerned committed a grave error by entertaining the said case, and wrongly took cognizance and issued summons to the appellants.*
>
> *48. In view of the above, the appeals are allowed. The impugned judgment dated 13.3.2012 is set aside and the proceedings in Complaint Case No.628 of 2011 pending before the Additional C.J.M., Allahabad, are hereby quashed."*

17. He would place reliance on the ruling of the Apex Court in the case of ***Vijay Dhanuka and Others vs. Najima Mamtaj and Others*** reported in ***(2014) 14 SCC 638***, wherein it is held as under;

*"10. However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:*

> *"**202. Postponement of issue of process.-***
> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made-*
>
> *(a)where it appears to the Magistrate that the offence*

*complained of is triable exclusively by the Court of Sessions; or*

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

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

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

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

*11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police*

*officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.*

*12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f., 23rd of June, 2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:*

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

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

18. The learned senior counsel appearing on behalf of the petitioners in the connected Crl. P Nos.6258/2017 and 6263/2017 would reiterate the contentions. The learned Senior Counsel would contend that the petitioner in the second writ petition and the third writ petition are all residents of Mumbai and order taking a cognizance and directing issuance of process is vitiated

by non application of mind as the order does not disclose as to what is the prima-facie material which demonstrate the commission of any offence by the petitioners. He would submit that even as per the de-facto complainant no details even prima-facie demonstrating the involvement of the petitioner in the Companies against whom the allegations of Copyright violations are set-out. With regard to the petitioner in the third petition, the learned Senior Counsel would contend that there is no complaint against the Company and without there being a complaint against the Company, the third petitioner is sought to be made culpable for the offences by entities against whom the de-facto complainant has omitted to level any allegations.

19. The learned Senior Counsel would further place reliance on the ruling in the case of ***B.C. Suresha vs.***

***Sumithra*** reported in ***ILR 2017 KAR 269***, wherein it is held as under;

> *"12. Law on the question, as to at what stage the Court takes cognizance in a private complaint is without any uncertainty. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed (CREF Finance Ltd. vs Shree Shanthi Homes (P) Ltd. and Another [(2005) 7 SCC 467].*
>
> *13. The concern of this Court is, the way the procedure of the Courts is abused which deserves nothing less than censure. Precious time of this Court so also that of the Court below is spent for nothing and every time the petitioner herein made is to rock from here to there and vice versa. Both parties are sufferers languished before the Court since 2009, but without a final solution."*

20. The learned Senior Counsel would further place reliance on the ruling in the case of ***Mallikarjuna and others vs. State of Karnataka and another*** reported in ***2017 (3) Kar. L.J. 275***, wherein it is held as under;

*"11. Section 190 of the Criminal Procedure Code, in fact, imposes a responsibility on the Magistrate before taking cognizance to comply with the said provision. Section 190 of the Code reads as under:*

> *"**190. Cognizance of offences by Magistrates.** - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence. -*
>
> *(a) upon receiving a complaint of facts which constitute such offence;*
>
> *(b) upon a police report of such facts;*
>
> *(c) upon information received from any person other than a Police Officer, or upon his own knowledge, that such offence has been committed.*
>
> *(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."*

*On a meticulous understanding of the above said provision, it makes it clear that the Magistrate has no jurisdiction to take cognizance even upon receiving a complaint or any police report on facts which does not*

*constitute any offence. Therefore, whenever a Magistrate has to take cognizance of any offence, he has to apply his judicious mind, meticulously read the contents of the police report or the contents of the private complaint filed by the parties, ascertain whether the facts narrated therein constitute any offence, and only thereafter specifically mentioning the said offences, the Magistrate has to take cognizance and proceed with the further proceedings. In the absence of any such facts, constituting any offence, the Magistrate has no jurisdiction to take cognizance and proceed further.*

*12. The Judicial Magistrates, who are empowered to summon the accused under Section 204 of the Code of Criminal Procedure, should always keep it in mind that summoning the accused is a serious matter and the criminal law cannot be set into motion as a matter of course. The summoning order must reflect that the Magistrate has applied his judicious mind to the facts of the case and the law applicable thereto. The order of summoning the accused need not be a speaking order and a detailed one. But, it should not suffer from any infirmity or illegality. Where reasons are not assigned, however short it may be, for coming to the conclusion that it is a fit case for issuance of summons, such summoning order would become bad in law. The Magistrates, while issuing process, are not required to meticulously examine and evaluate the materials on record. However, he is only required to record reasons, however short, or brief it may be, which indicate the application of mind by the Magistrate. That is all expected from him at that stage. The expression "opinion" and "sufficient ground" under Section 204 gives an indication that before issuing process, the Magistrate should show that on what material, at least, he has formed his opinion that it is a fit case to issue process. Without applying his judicious mind and without even looking to the facts of the case,*

*mechanically, issuing process only on the basis of the operative portion of the charge-sheet or the complaint does not amount to application of mind by a Magistrate."*

21. The learned Senior Counsel would further place reliance on the ruling in the case of ***Abhijit Pawar vs. Hemant Madhukar Nimbalkar and another*** reported in ***(2017) 3 SCC 528***, wherein it is held as under;

> *"25. For this reason, the amended provision casts an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would prima facie constitute the offence for which the complaint is filed. This requirement is emphasized by this Court in a recent judgment Mehmood Ul Rehman v. Khazir Mohammad Tunda, [(2015) 12 SCC 420] in the following words: (SCC pp. 429-30, paras 20 & 22)*
>
> > *"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered*

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

* * *

*22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons*

*need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."*

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

> *"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:*
>
> > *'**2(g). "inquiry"** means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;'*

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

22. As rightly contended by the learned Senior Counsels the order under challenge is vitiated by stark

non application of mind. A perusal of the complaint does not reveal any grievance of the de-facto complainant against the petitioners or the Company landmarkonthenet.com. The fact that the complaint was lodged on 22.09.2013 is not disputed and the statement in the objection states that he came to know about the last named only on 24.05.2014. If that be so, it is surprising as to how the learned Magistrate took cognizance against the petitioner in respect of a complaint lodged on 22.09.2013, that when the petitioner was not even named in the complaint lodged with the respondent Police.

The petitions are ***allowed.***

The order dated 13.06.2017 passed by the court of I Addl. Chief Metropolitan Magistrate, Bengaluru taking cognizance in CR No.366/2013 and issuing summons dated 12.07.2017 in C.C. No.16820/2017 is set aside in

so far it pertains to the petitioner in Crl. P No.6258/2017.

The order dated 13.06.2017 passed by the court of I Addl. Chief Metropolitan Magistrate, Bengaluru taking cognizance in CR No.366/2013 and issuing summons dated 12.07.2017 in C.C. No.16820/2017 is set aside in so far it pertains to the petitioner in Crl. P No.6263/2017.

The order dated 13.06.2017 passed by the court of I Addl. Chief Metropolitan Magistrate, Bengaluru taking cognizance in C.C. No.16820/2017 (Crime No.366/2013) is set aside in so far it pertains to the petitioner in Crl. P No.6508/2017.

Petitions stand ordered accordingly.

**Sd/-**
**JUDGE**

dn/Chs
CT-HR