IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CrMMO No.52 of 2017
alongwith CrMMO Nos. 103, 104
and 120 of 2017
Reserved On: 2.8.2017
Decided on: 29.8. 2017

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1. Cr.MMO No. 52 of 2017

M/s CNN-IBN7. ...Petitioner.

Versus

Maulana Mumtaz Ahmed Quasmi & Ors. ...Respondents.

2. CrMMO No. 103 of 2017

Ashutosh. ...Petitioner.

Versus

Maulana Mumtaz Ahmed Quasmi & Ors. ...Respondents.

3. CrMMO No. 104 of 2017

Rajdeep Sardesai ...Petitioner.

Versus

Maulana Mumtaz Ahmed Quasmi & Ors. ...Respondents.

4. CrMMO No. 120 of 2017

Anirudha Bahal. ...Petitioner.

Versus

Maulana Mumtaz Ahmed Quasmi & Ors. ...Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? [1] Yes

For the Petitioner(s): Mr. Bimal Gupta, Sr. Advocate with Mr. Satish Sharma, Advocate for the petitioners in CrMMO Nos.52, 103 and 104 of 2017.

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[1] Whether reporters of the local papers may be allowed to see the judgment? yes

Mr. Ankush Dass Sood, Sr. Advocate with Ms. Shweta Joolka, Advocate for the petitioner in CrMMO No.120 of 2017

For the respondent Mr. Arjun Lall and Mr. Naveen Awasthi Advocates for respondent No.1 in all the petitions..

Justice Tarlok Singh Chauhan, Judge:

Since common questions of law and facts are involved in all these petitions, therefore, the same were taken up together for hearing and are being disposed of by a common judgment.

2. The petitioners have invoked the provisions of section 482 of the Code of Criminal Procedure questioning the summoning order dated 1.4.2015 passed by the learned Chief Judicial Magistrate on the ground that the same has been passed without application of any judicial mind and in a highly mechanical manner and, therefore, the entire proceedings should be quashed.

3. The facts giving rise to the filing of these petitions are that respondent No.1/complainant filed a criminal complaint against the petitioners and respondents No. 5 to 7 for offences punishable under

Section 500 read with Sections 34 and 120-B of the Indian Penal Code to the effect that he is Convener of All India Muslim Personal Law and member of the Rabita Madaris Darul-Uloom Deoband, Uttar Pradesh and prior to 28.9.2006, he remained member of Himachal Waqf Board and Himachal Haj Committee and he had good name and fame in the public. On 27.12.2012, CNN-IBN-7 published a news item in order to defame him by way of sting operation in the name of "Cobra Post", while respondent No.4 edited news in connivance with all the accused, in which he was shown to be receiving a bribe of Rs.10,000/-. However, nothing of that sort had happened. According to the complainant, the accused intended to send their 15 persons to Haj, however, time for filing applications for their enrolment for going to Haj had already expired and the accused persons gave him Rs.10,000/- forcibly to go to Bombay for taking permission. He being Muslim intended to help those persons, but the petitioners and respondents No. 5 to 7 depicted him accepting bribe of Rs.10,000/- and it

was so published in the newspaper by fabricating pictures, thereby his reputation was tarnished. The Complainant also issued notices to the petitioners as well as respondents No. 5 to 7 through his counsel, but they did not respond to the same.

4. I have heard the learned counsel for the parties and have perused the material placed on record.

5. Section 482 of the Code empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court and to quash the proceedings instituted on the complaint but such power should be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the compliant do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent power under section 482 of the Code.

6. In ***State of Madhya Pradesh vs. Awadh Kishore Gupta, (2004) 1 SCC 691***, Hon'ble Supreme

Court culled out the following principles for exercise of power under Section 482 of the Code:-

"(i) To give effect to an order under the Code.

(2) To prevent abuse of the process of court.

(3) To otherwise secure the ends of justice.

(4) Court does not function as a court of appeal or revision.

(5) Inherent jurisdiction under Section 482 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.

(6) It would be an abuse of process of court to allow any action which would result in injustice.

(7) In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts t abuse of the process of court.

(8) When no offence is disclosed by the complaint, the court may examine the question of fact.

(9) When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it acquisition would not be sustained-That is the function of the trial Judge.

(10) Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

(11) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction

would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed.

(12) If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same.

(13) When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance-It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person-The allegations of mala fides against the informant are of no consequence and cannot be itself be the basis for quashing the proceedings."

7. In ***Amit Kapoor*** versus ***Ramesh Chander and another***, (2012) 9 SCC 460**,** the Hon'ble Supreme Court laid down the principles to be considered for proper exercise of jurisdiction, particularly with regard to quashing criminal proceedings, particularly, the charge either in exercise of jurisdiction under Section 397 or Section 482 and same are summarized as follows:-

"1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very

sparingly and with circumspection and that too in the rarest of rare cases.

2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7. The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8. Where the allegations made and as they appeared from the record and documents annexed therewith to

predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10. It is neither necessary nor is the court called upon to hold a fullfledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected

to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref. State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. [AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors. [AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [AIR 1988 SC 128]; State of U.P. v.O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v.s. Bangarappa & Ors. [(1995) 4 SCC 41]; Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors. [AIR 2005 SC 9]; M/s. Medchl Chemicals &Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors. [AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala & Anr. [(2009) 14 SCC 466]; V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors. [(2009) 7 SCC 234]; Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr. [(2009) 11 SCC 203]; Sheo Nandan Paswan v. State of Bihar & Ors. [AIR 1987 SC 877]; State of Bihar & Anr. v. P.P. Sharma & Anr. [AIR 1991 SC 1260]; Lalmuni Devi (Smt.) v. State of Bihar & Ors. [(2001) 2 SCC 17]; M. Krishnan v. Vijay Singh & Anr. [(2001) 8 SCC 645]; Savita v. State of Rajasthan [(2005) 12 SCC 338]; and S.M. Datta v. State of Gujarat & Anr. [(2001) 7 SCC 659]}.

16. These are the principles which individually and preferably cumulatively (one or more) be taken into

consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down ,the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance of the requirements of the offence."

8. In ***C.P. Subhash vs. Inspector of Police Chennai and others (2013) 11 SCC 599***, it was once again reiterated by the Hon'ble Supreme Court that where complaint prima facie makes out commission of offence, High Court in ordinary course should not invoke its powers to quash such proceedings, except in rare and compelling circumstances and it was observed as under:-

"[7] The legal position regarding the exercise of powers under Section 482 Cr.P.C. or under Article 226 of the Constitution of India by the High Court in relation to pending criminal proceedings including FIRs under investigation is fairly well settled by a long line of decisions of this Court. Suffice it to say that in cases where the complaint lodged by the complainant whether before a Court or before the jurisdictional police station makes out the commission of an offence, the High Court would not in the ordinary course invoke its powers to quash such proceedings except in rare and compelling

circumstances enumerated in the decision of this Court in State of Haryana and Ors. v Ch. Bhajan Lal and Others, 1992 Supp1 SCC 335.

8. Reference may also be made to the decision of this Court in Rajesh Bajaj v. State, NCT of Delhi, 1999 3 SCC 259where this Court observed:

> "...If factual foundation for the offence has been laid down in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence."

9. To the same effect is the decision of this Court in State of Madhya Pradesh v. Awadh Kishore Gupta, 2004 1 SCC 691where this Court said:

> "11...The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be

> seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code "
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> 10. Decisions of this Court in V.Y. Jose and Anr. v. State of Gujarat and Anr., 2009 3 SCC 78and Harshendra Kumar D. v. Rebatilata Koley etc., 2011 3 SCC 351reiterate the above legal position."

9. Thus, what can be considered to be settled on the basis of the exposition of law by the Hon'ble Supreme Court is that while exercising its

jurisdiction under Section 482 of the Code, High Court has to be both cautious as also circumspect. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any Court or otherwise to secure ends of justice. Whether a complaint/FIR/charge-sheet etc. discloses a criminal offence or not depends upon the nature of facts alleged therein.

10. Learned counsel for the petitioners have mainly raised the following five points:

i) the procedure contemplated in section 202 of the Code of Criminal Procedure not followed;

ii) the summoning order does not record any satisfaction;

iii) the complaint on the face of it not maintainable as it contains allegations of conspiracy, however, no specific role has been assigned to any individual;

iv) there is no vicarious liability under the criminal law, therefore, respondent No.4 could not have been impleaded as a party; and

v) CDRs exhibited in this case could not have been taken into consideration as the

same have not been exhibited as per section 65-B of the Indian Evidence Act.

Point No.1:

11. Before proceeding to deal with the contentions raised by the petitioner, it would be appropriate to proceed with the relevant provisions of the Code of Criminal Procedure (for short "Code"), i.e. 2 (g), 2 (h), 156, 200, 201, 202, 203 and 204, which read as under:

> "2 (g) "Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;
>
> 2 (h) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf,
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> **156. Police officer's power to investigate cognizable cases.**
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case.

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall, -

(a) If the complaint is in writing, return it for presentation to the proper court with to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [1][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 witness 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 Court on an offer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.

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 opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) A summons-case, he shall issue his summons for the attendance of the accused, or

(b) A warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

> (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
> (5) Nothing in this section shall be deemed to affect the provisions of section 87.

12. Under section 200 of the Code, the Magistrate taking cognizance of an offence is empowered to examine the complainant and the witnesses produced by the complainant before him. If the complaint in writing is made by the public servant, then examination of complainant or his witnesses is not required but under section 202 of the Code any Magistrate on receipt of a complainant of an offence/offences of which he is authorized to take cognizance shall hold an inquiry himself or direct the investigation by a Police Officer or such other person as he thinks fit or may thinks fit postpone the issue of process against the accused when the accused is residing at a place beyond the area in which he exercises the jurisdiction.

13. The object of the enquiry under section 202 (1) is to ascertain the truth or falsehood of the

complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

14. The scope of section 202 of the Code has been well explained by the Hon'ble Supreme Court in ***Vadilal Panchal Vs Dattatraya Dulaji Ghadigaonkar***, AIR 1960 SC 1113, ***Chandra Deo Singh V/S Prakash Chandra Boseair*** 1963 SC 1430, ***Nagawwa*** Vs ***Veeranna Shivalingappa Konjalgi*** (1976) 3 SCC 736, in which it has been held that the scope of inquiry under section 202 of the Code is limited to find out the truth or falsehood of the complaint in order to determine the question of issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint, i.e. for ascertaining whether there is evidence in

support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. However, the section does not lay down that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has been issued and he is put to trial.

15. Even otherwise section 202 (1) of the Code uses the expression "*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.*"

16. "***Inquiry***" has been defined in section 2 (g) and "***investigation***" has been defined in section 2 (h). From the perusal of definition of ***inquiry*** and ***investigation***, it is crystal clear that the inquiry is conducted by the Magistrate and the investigation is conducted by the Police Officer.

17. The inquiry contemplated under section 202 (1) of the Code has been explained in section 202

(2), which shows that recording of statements of witnesses on oath is also part of inquiry suggested in section 202 (1) of the Code.

18. The Magistrate has ample power to enlarge scope of inquiry for the purpose of coming to a prima facie conclusion that the case has been made out for issuance of process under the aforesaid provisions of law. He can undertake thorough inquiry as to the offence/offences of the complaint. Thereafter he can arrive at a conclusion that a prima facie case is made out for issuance of process or not.

19. In other words, whether or not there is sufficient ground for the Magistrate to proceed further on account of allegations mentioned in the complaint of the pre-summoning evidence of the complainant and his witnesses.

20. The examining of the witnesses on oath during the inquiry embarked upon by him under section 202 of the Code is akin to the examination of the witnesses as contemplated under section 202 of the Code.

21. Therefore, once the statements of the complainant and his witnesses have been recorded by the Magistrate at pre-summoning stage, this amounts to inquiry by the Magistrate himself and it is not at all necessary for him to send the case for investigation by the Police Officer when the accused like in the instant cases are residing outside his jurisdiction.

22. It is not in dispute that all the petitioners reside outside the jurisdiction of the learned Magistrate and, therefore the Magistrate is required to comply with the amended provisions of section 202 (1) of the Code whereby the learned Magistrate is required to postpone the issue of process against the accused and either inquiry into the case himself or direct an investigation to be made by a Police Officer or by any such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused.

23. In the case of ***National Bank of Oman*** vs. ***Barakara Abdul Aziz and another***, (2013) 2

SCC 488, the Hon'ble Supreme Court had the occasion to deal with the effect of amendment brought by sub-section (1) of section 202 by Act No. 25 of 2005 and it was held that in case where the accused resides beyond area over which Magistrate concerned exercises jurisdiction, then it is incumbent upon Magistrate to carry out an enquiry or order investigation under section 202 before issuing process.

24. In ***Udai Shankar Awasthi*** vs ***State of Uttar Pradesh and another***, (2013) 2 SCC 435, the Hon'ble Supreme Court in para 40 of the judgment observed that the provisions of section 202 as amended making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. It was further observed that the postponement of issuance of process was found necessary to protect innocent persons from being harassed by unscrupulous persons and, therefore, it is obligatory upon the Magistrate to enquiry into the

case himself or direct investigation to be made by the Police Officer, or by such other person as he thinks fit for the purpose of finding out whether or not there are sufficient grounds for proceeding against the accused before issuing summons in such cases.

25. Adverting to the facts, it would be noticed that the statement of the complainant was recorded on 16.7.2007 alongwith the statement of one of the witnesses Adarsh Kumar Sood and thereafter the statement of another witness Mansoor Alam was recorded on 18.2.2007, yet the process was not issued and came to be issued only on 1.4.2015, therefore, it can conveniently be held that the requirement of section 202 (1) of the Code has been substantially complied with by the Magistrate.

26. Once this had been done nothing further was required to be done as far as inquiry as contemplated under section 202 (1) of the Code is concerned. There is summoning note of issue of process by the Court, which is underlying object of the introduction of amended provisions.

27. In view of the aforesaid discussion I have no hesitation to conclude that the procedure as contemplated under section 202 of the Code has been duly followed by the learned Magistrate and, therefore, the complaint cannot be quashed on this ground alone.

Points No.2 to 5:

28. Indisputably, judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of a private complainant as vendetta to harass persons needlessly.

29. It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of the Code empowers

this court to exercise its inherent powers to prevent abuse of process of the court and to quash the proceedings instituted on complaint, but such powers can be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations as set out in the complaint do not constitute the offence for which cognizance is taken by the Magistrate, it is open to this court to quash the same in exercise of powers, under sections 482 of the Code.

30. As regards the contention of the petitioners that the summoning order does not record any satisfaction, the entire law on the subject has been lucidly set out by the Hon'ble Supreme Court in ***Mehmood Ul Rehman*** vs ***Khazir Mohammad Tunda and others*** and connected matter, (2015) 12 SCC 420 and after making a detailed reference to the exposition of law laid down in the judgments quoted therein, the legal position was summarized as under:

> [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 Limited , to set in motion the process of criminal law against a person is a serious matter.

[21] Under Section 190(1)(b) of Code of Criminal Procedure, the Magistrate has the advantage of a police report and Under Section 190(1)(c) of Code of Criminal Procedure, he has the information or knowledge of commission of an offence. But Under Section 190(1)(a) of Code of Criminal Procedure, he has only a complaint before him. The Code hence specifies that... "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance Under Section 190(1) (a) of Code of Criminal Procedure. The complaint is simply to be rejected.

[22] The steps taken by the Magistrate Under Section 190(1) (a) of Code of Criminal Procedure followed by Section 204 of Code of Criminal Procedure 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 of Code of Criminal Procedure 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 of Code of Criminal Procedure, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused Under Section 204 of Code of Criminal Procedure, by issuing process for appearance. 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 of Code of Criminal Procedure, the High Court Under Section 482 of Code of Criminal Procedure 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 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."

31. The petitioners admittedly have been ordered to be proceeded against under section 500 read with sections 34 and 120-B of the IPC.

However, the allegations of so called abatement or conspiracy have not been spelt out and only vague and general allegations, which in itself are not making out an offence of conspiracy, have been made. This would be clearly evident from para 2 of the complaint, which alone contains allegations of conspiracy in the following terms:

> "2. That the accused 1 to 7 hatched a criminal conspiracy with each other to publish an imputation against the complainant intending to harm, or knowing or having reasons to believe that such imputation will harm, the fair reputation of the complainant conspired with each other, in furtherance of their common intention to harm him and his reputation and social standing. Therefore, on the 27th of December, 2006, the accused Nos. 1 to 3, broadcast on the news channel, a news item, under the news heading of "Haj Ke Dalal". In this highly defamatory and derogatory news item, which was repeatedly published by the accused on several occasions, they repeatedly defamed the Complainant. The name of the complainant, was mentioned time and again in the news item in question. The said news item, which was very cleverly and selectively edited and doctored, in no uncertain terms falsely stated and claimed on television, that the complainant, had misused and abused his very responsible position and office of the Chairman of Himachal Pradesh State Haj Committee. The news item falsely imputed to the complainant, his alleged readiness/involvement and willingness, relating to the matter of approving/including the names of persons, in the list of Hajis, from the Himachal Pradesh State Quota of Hajis, without their being entitled to be so included in that list, the clear unequivocal suggestion in no uncertain terms, was that the complainant was willing to illegally and unauthorisedly

include such names, for unlawful and extraneous monetary consideration in the list and quota of Himachal Muslims, for the Haj Pilgrimage."

32. No doubt the complainant is not required to plead the evidence but there must be basic averments/allegations as to how one is involved in the alleged crime. Once there is lack of specific allegations of an offence after taking into consideration the entirety of allegations set out in the complaint, it is obvious duty of the Court to save the accused person(s) from unnecessarily facing the agony of trial. Not only that, it would be sheer wastage of public time and money to permit the proceedings to continue against the accused.

33. Therefore, the question at this stage is whether the Magistrate has applied his mind to the facts and statements and is satisfied that there is ground for proceeding further in the matter by asking the person against whom the allegations have been alleged to appear before him.

34. As per the complainant, the sting operation is alleged to have been carried out by

respondents No. 4 to 7, i.e. Anirudh Bahal, Founder and Editor-in-Chief, Cobra Post, Jamshed Khan, Sayeed Mansoor and Sushant Pathan, Reporter of Cobra Post, but there is no allegation to show that all the accused persons were in collusion or in conspiracy with the aforesaid persons in either preparing the false C.D. or were culpably responsible in publishing or broadcasting the defamatory material. Therefore, mere allegations that the accused persons are office-bearers in the Broadcasting Company and that they failed in their responsibility of checking that false information is not published/ disseminated through their channel, is not sufficient to infer their culpability in the publication/dissemination of the defamatory material aired in the Channel, particularly in absence of any provision fastening vicarious liability on them.

35. At this stage, it would be noticed that the allegations against the accused Nos. 1 to 3, i.e. M/s CNN IBN 7, Rajdeep Sardesi and Ashutosh are only that they broadcast the news item prepared by

accused Nos. 4 to 7 under the heading "***Haj Ke Dalal",*** which according to the complainant was defamatory and derogatory. There is no specific allegation in the complaint or even in the statement of the complainant and his two witnesses recorded under section 202 of the Code with regard to role of various accused in the publication or televising the offending programme. In fact, there is no positive averments with regard to role played by each of the accused in the publication or televising the offending programme. The statements only disclose that the offending programme containing defamatory and derogatory imputations were televised. Therefore, in absence of allegations in the complaint as also the statements recorded under section 202 of the Code as to how various accused were involved/responsible for the broadcast of the news item, which was defamatory and derogatory, issuance of process to them is not legally sustainable.

36. Mere mention of the names in the title of the complaint that such and such person is Editor or

Director or Managing Director would not be sufficient to infer the culpability of that person.

37. Unlike civil liability, the penal provisions have to be strictly construed wherein there is no vicarious liability in criminal law unless the statute takes that also within its fold. Therefore, it was incumbent upon the complainant to have made specific allegations as to how and on what basis each of the accused is guilty or has committed the alleged offence. Merely because some of the accused happen to be the Managing Director, Editor-in-Chief, Editor and Founder Editor-in-Chief would not make them vicariously liable for the acts of their employees, who in the instant case happen to be three in number, i.e. respondent Nos. 3 to 5. Distinct and separate allegations qua each of them as to how they were responsible or had committed the offence had to be spelt out.

38. In ***Sham Sunder and others*** vs ***State of Haryana***, 1989 (4) SCC 630, the Hon'ble Supreme Court has held as under:

> "[9] But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

39. In ***Hira Lal Hari Lal Bhagwati*** vs ***CBI***, (2003) 5 SCC 257, the Hon'ble Supreme Court has held as under:

> "[30] In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been therein under wholly discharged and the GCS granted immunity from prosecution."

40. In ***Maksud Saiyed*** vs ***State of Gujarat***, 2008 (5) SCC 668, the Hon'ble Supreme Court has held as under:

> "[13] Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct

question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

41. In ***R. Kalyani*** vs ***Janak C. Mehta***, 2009 (1) SCC 516, the Hon'ble Supreme Court has held as under:

"32. Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in- charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created."

42. In ***Sharon Michael*** vs ***State of Tamil Nadu***, 2009 (3) SCC 375, the Hon'ble Supreme Court has held as under:

"[16] The First Information Report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. There is nothing to show that the appellants herein who hold different positions in the appellant-company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the company."

43. In ***K Sunder*** vs ***State of Haryana***, 1989 (4) SCC 630, the Hon'ble Supreme Court has held as under:

"16. We have noticed hereinbefore that despite of said road being under construction, the first respondent went to the Police Station thrice. He, therefore, was not obstructed from going to Police Station. In fact, a firm action had been taken by the authorities. The workers were asked not to do any work on the road. We, therefore, fail to appreciate that how, in a situation of this nature, the Managing Director and the Directors of the Company as also the Architect can be said to have committed an offence under Section 341 of the IPC.

17. Indian Penal Code, save and except some matters does not contemplate any vicarious liability on the part a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director or the Directors of the Company,

thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter. The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company.

18. In Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. , this Court held as under:

> 28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the Complaint Petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the Court, still the High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure.

44. The legal position was reiterated in a recent judgment of the Hon'ble Supreme Court in ***HDFC Securities Limited and others*** vs ***State of Maharashtra and another***, (2017) 1 SCC 640 wherein it was observed as under:

"19. With the meticulous understanding of the orders of the Courts below in the instant case, we can see that general and bald allegations are made in the context of appellant No.1 who is a juristic person and not a natural person. The Indian Penal Code, 1860, does not provide for vicarious liability for any offence alleged to be committed by a company. If and when a statue contemplates creation of such a legal fiction, it provides specifically therefor, e.g. Negotiable Instruments Act, 1881. Further, reliance was made on S. K. Alagh Vs. State of Uttar Pradesh & Ors., 2008 5 SCC 662, where at paragraph 16, this Court observed that

> "Indian Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a

party who is not charged directly for commission of an offence."

20. Further in Maksud Saiyed Vs. State of Gujrat & Ors., 2008 5 SCC 668, at paragraph 13, this Court observed that:

> "where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The Learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liability. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

21. In Thermax Limited & Ors. Vs. K. M. Johny & Ors., 2011 13 SCC 412, and in Sunil Bharti Mittal Vs. Central Bureau of Investigation, 2015 4 SCC 609, at para 39, this Court held: "Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that

> the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company".

45. Mr. Arjun Lall, Advocate, would however contend that the petitioners are holding different positions/responsibility. Once the petitioners are remiss in discharge of their duties and responsibility, they obviously are vicariously liable for the offence. Reliance was placed upon the following judgments:

i) Tarun Tejpal vs. Jayalakshmi Jaitly, 2007 SCC Online Del 881;

ii) Gambhirsinh R. Dekare vs. Falgunbhai Chimanbhai Patel, 2013 (3) SCC 697;

iii) Rajdeep Sardesai v. State of Andhra Pradesh; 2015 (8) SCC 239; and

iv) M.J. Akbar v. State of A.P., 2011 SCC Online AP 935.

46. On the basis of these judgments, it was submitted that the Editors have to take responsibility of every thing they publish and being responsible for the publication, they are prima facie guilty of offence of defamation. It was further submitted that it is for

the petitioners to appear before the court and plead that the news item published was without their knowledge/consent as at this stage the court is only required to see that a prima facie case is made out for the issuance of process and in the given circumstances no exception to the issuance of process can be taken by the petitioners.

47. As observed above, the complainant has failed to make positive averments against the petitioners in the complaint and attribute specific role of each of them in committing the alleged offence warranting initiation of criminal proceedings. It has not been stated as to how various petitioners were involved/responsible for the broadcast of the news item, which is alleged to be defamatory. The decisions, which have been relied upon by the learned counsel for the respondents to contend that the Editor is responsible for the item which was published are mainly in relation to the print media which is governed by the Press and Registration of Books Act, 1867 (for sort 'Press Act'). So far as the

broadcast of the channels in the cable network/electronic media is concerned, it is the provisions of the Cable Television Networks (Regulation) Act, 1955 (for short 'Cable T.V. Act') that are applicable. Therefore, the responsibility of an Editor of a T.V. Channel cannot be fixed by taking recourse to the Press Act. Even the Cable T.V. Act and the Rules framed thereunder did not provide for defamation of an Editor of any Channel, rather the said terms is conspicuously absent. Therefore, the only provision which one may find of some relevance is section 17 of the Cable T.V. Act, which provides that where an offence is committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

48. It would be noticed that even this provision, i.e. section 17 would only be applicable to

the offence punishable under the Act and not to the provisions of the Indian Penal Code, therefore, merely because a person is alleged to be a Director or an Editor or an employee of the company cannot be held responsible for defamation on account of broadcasting defamatory material unless it is shown that the said person is responsible for making/publishing of the same.

49. Thus, on the basis and in the light of discussion made above, considering the facts that in the complaint as also statements recorded under section 202 of the Code, there is no specific allegations with regard to the role played by each of the petitioners in making or publication of the defamatory material against the complaint, the issue of process against them by virtue of they being office holders / position holders in the Broadcasting Company/ news channel that is by invoking the principle of vicarious liability is neither legally justifiable nor sustainable in law.

50. It is next contended by the learned counsel for the petitioners that the CDRs are not admissible under section 65-B of the Indian Evidence Act, as admittedly they have not been certified in accordance with sub-section (4) thereof. Reliance as placed upon the judgment of the Hon'ble Supreme Court in ***Anvar P V*** Vs ***P K Basheer And Others***, 2014 (10) SCC 473, wherein the earlier view of the two Hon'ble Judges in ***State (N C T Of Delhi)*** Vs ***Navjot Sandhu @ Afsan Guru***, 2005 (11) SCC 600 was over ruled and and it was observed as under:

> "[22] The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not

> be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.
>
> [23] The appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence. Thus, the whole case set up regarding the corrupt practice using songs, announcements and speeches fall to the ground."

51. In view of the law laid down in ***Anvar's*** case, petitioners would submit that the CDRs at this stage are liable to be excluded from consideration. However, on the other hand, Mr. Arjun Lal, learned Advocate would argue that the judgment in ***Anvar's*** has been held to be prospective in nature and reference in this regard has been made to the judgment of the Hon'ble Supreme Court in ***Sonu alias Amar*** vs. ***State of Haryana***, AIR 2017 SC 3441.

52. I have gone through the said judgment and find that though the Bench of two Hon'ble

Judges did feel that the ratio of judgment of ***Anvar's*** case should be prospective as is evident from para 32 of the judgment, which reads thus:

> "[32] The interpretation of Section 65B (4) by this Court by a judgment dated 04.08.2005 in Navjot Sandhu held the field till it was overruled on 18.09.2014 in Anvar's case. All the criminal courts in this country are bound to follow the law as interpreted by this Court. Because of the interpretation of Section 65B in Navjot Sandhu, there was no necessity of a certificate for proving electronic records. A large number of trials have been held during the period between 04.08.2005 and 18.09.2014. Electronic records without a certificate might have been adduced in evidence. There is no doubt that the judgment of this Court in Anvar's case has to be retrospective in operation unless the judicial tool of 'prospective overruling' is applied. However, retrospective application of the judgment is not in the interests of administration of justice as it would necessitate the reopening of a large number of criminal cases. Criminal cases decided on the basis of electronic records adduced in evidence without certification have to be revisited as and when objections are taken by the accused at the appellate stage. Attempts will be made to reopen cases which have become final."

53. However, the fact remains as to whether the Hon'ble Supreme Court in fact held the judgment in ***Anvar's*** case to be prospective? The answer is found in para 35 of the judgment wherein after taking into consideration that the decision in ***Anvar's*** case was rendered by a Bench of Three Hon'ble Judges, the Hon'ble Judges on the basis of the propriety

refrained from declaring that the judgment to be prospective in operation and left it open to be decided in an appropriate case by Three Judges Bench, as would be evident from para 35 of the report, which reads thus:

> 35] This Court did not apply the principle of prospective overruling in Anvar's case. The dilemma is whether we should. This Court in K. Madhav Reddy v. State of Andhra Pradesh, 2014 6 SCC 537 held that an earlier judgment would be prospective taking note of the ramifications of its retrospective operation. If the judgment in the case of Anvar is applied retrospectively, it would result in unscrambling past transactions and adversely affecting the administration of justice. As Anvar's case was decided by a Three Judge Bench, propriety demands that we refrain from declaring that the judgment would be prospective in operation. We leave it open to be decided in an appropriate case by a Three Judge Bench. In any event, this question is not germane for adjudication of the present dispute in view of the adjudication of the other issues against the accused."

54. Therefore, this Court for the time being is bound by the law laid down by the Hon'ble Three Judges in ***Anvar's*** case and the CDRs having admittedly not been certified in accordance with Section 65-B have essentially to be excluded from consideration at this stage.

55. Thus, on the basis of the aforesaid discussion, it is established that:

i) the complainant has failed to make a positive averments against the petitioners in the complaint as also in the evidence led to attribute specific role of each of them in committing the alleged offence warranting initiation of criminal proceedings;

ii) Unlike civil liability, the penal provisions have to be strictly construed wherein there is no vicarious liability in criminal law unless statute takes that within its fold and thus the petitioners merely by virtue of their being Managing Director, Editor-in-Chief, Editor and Founder Editor-in-Chief would not make them vicariously liable for the acts of their employees;

iii) CDRs which formed the sheet anchor of the case of the complainant have not been certified in accordance with law, more particularly, section 65-B of the Indian Evidence Act and will have to be excluded from consideration.

Therefore, once the CDR is excluded from consideration, then obviously the process against the petitioners could not have been ordered to be issued on the basis of the material available with the Magistrate; and

iv) Once the Magistrate has failed to take into consideration all the aforesaid facts as have been noticed above, it can conveniently be held that the learned Magistrate has not applied his judicial mind before issuing process against the petitioners.

56. Accordingly, there is merit in the petitions and the same are allowed. Order dated 1.4.2015 passed in Criminal complaint No. 113A-2 of 15/2007 against the petitioners is quashed and set aside.

57. However, before parting, it is made clear that the order dated 1.4.2015 taking cognizance on the complaint is maintained against the other accused i.e. respondents No. 5 to 7.

(Tarlok Singh Chauhan),
Judge.

29.8. 2017
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