



**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**APPLICATION U/S 528 BNSS No. - 368 of 2026**

Mayank Tripathi and 2 others

.....Applicant(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko. and another

.....Opposite Party(s)

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|-------------------------------|---|-------------------------|
| Counsel for Applicant(s)      | : | Prabhu Ranjan Tripathi, |
| Counsel for Opposite Party(s) | : | G.A.,                   |

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**Hon'ble Saurabh Lavania,J.**

1. Heard Sri Prabhu Ranjan Tripathi, learned counsel for the applicant and learned A.G.A. for the State.
2. In view of the settled legal position, this Court is not inclined to issue notice to opposite party no.2.
3. The applicants have instituted instant application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (here-in-after referred as BNSS) seeking following relief(s):-

*"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the entire criminal proceeding of Criminal Case No. 5554 of 2024 inclusive of impugned summoning order dated 04.10.2024 passed by Additional Civil Judge (S.D.)-I/Additional Chief Judicial Magistrate, Sultanpur, by which the learned Court below has summoned the petitioners in routine and mechanical manner in relation to offences Under section 85, 115(2), 352, 351(2) B.N.S. & 3/4 D. P. Act (Annexure No. 1), in order to meet ends of justice."*

4. In view of relevant provisions pointed out, at the very outset it is stated that at this stage the prayer of the applicant which relates to procedure adopted by learned Additional Civil Judge (S.D.)-1/Additional Chief Judicial Magistrate, Sultanpur (in short Magistrate) while passing the order dated 04.10.2024 in Criminal Case No.5524/2024 be considered leaving it open to challenge the pending criminal proceedings, if cause arises. Prayer acceded.
5. Learned counsel for the applicants submitted that by means of the impugned order dated 04.10.2024 the applicants have been summoned to face the trial for the offence under section(s) 85, 115(2), 352, 351(2) B.N.S. and 3/4 D.P. Act.

6. It is further submitted that impugned order dated 04.10.2024 is in violation of the statutory provision i.e. Section 223 of BNSS, according to which before taking cognizance and summoning the accused the Magistrate/Court concerned is under obligation to issue notice(s) for affording an opportunity of hearing, and in the instant case only after recording all the statement(s) of the complainant and the witnesses, the Magistrate has passed the order dated 04.10.2024.

7. Reference has been made to Section 200 Code of Criminal Procedure (in short 'Cr.P.C.') (now repealed) and Section 223 of BNSS which reads as under:-

| Section 200 of Cr.P.C., 1973                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Section 223 of BNSS, 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p><b>Examination of complainant.</b></p> <p>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:</p> <p>Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses--</p> <p>(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</p> <p>(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:</p> <p>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.</p> | <p><b>Examination of complainant.</b></p> <p>(1) A Magistrate having jurisdiction while 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:</p> <p>Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:</p> <p>Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—</p> <p>(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</p> <p>(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:</p> <p>Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.</p> <p>(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless —</p> <p>(a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and</p> <p>(b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.</p> |

8. Reliance has also been placed on judgment passed by a co-ordinate Bench of this court dated 26.11.2024 in ***Application under Section 482 Cr.P.C. No.10390 of 2024 (2024 SCC OnLine All 8212) Prateek Agarwal Vs. State of U.P. and Another***, judgment of the High Court of Karnataka passed in the case of ***Basanagouda R. Patil Vs. Shivananda S. Patil; 2024 SCC Online Kar 96*** and judgment rendered by the High Court of Kerala at Ernakulam in the case of ***Suby Antony S/o Late P.D. Antony Vs. Judicial First-Class Magistrate passed in Crl. MC 508 of 2025 on 22.01.2025 (2025 SCC OnLine Ker. 532)***.

8.1 The relevant paras of **Basanagouda (Supra)** are being extracted hereinbelow:-

*"8. The obfuscation generated in the case at hand is with regard to interpretation of Section 223 of the BNSS, as to whether on presentation of the complaint, notice should be issued to the accused, without recording sworn statement of the complainant, or notice should be issued to the accused after recording the sworn statement, as the mandate of the statute is, while taking cognizance of an offence the complainant shall be examined on oath. The proviso mandates that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.*

*9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.*

*10. Therefore, the procedural drill would be this way:*

*A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate / concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.*

*11. The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023."*

8.2. The relevant paras of **Suby Antony v. Judicial First-Class Magistrate-III, 2025 SCC OnLine Ker 532**, are being extracted hereinbelow:-

*4. As the term cognizance is not defined in BNSS, it will be profitable to refer the following erudite exposition of the Supreme Court in S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. [(2008) 2 SCC 492].*

“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. “Taking cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a *sine qua non* or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

5. Thus, the taking of cognisance of an offence occurs when the Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence alleged to have been committed by the accused. Once cognisance is taken, then the Magistrate has to decide whether to issue process to the accused or not. Section 225 confers power on the Magistrate to postpone the issue of process to the accused even after taking cognisance of the offence. At that stage the Magistrate can either inquire into the case himself, or direct investigation to be made by a police officer or such other person for the purpose of deciding whether there is sufficient ground for proceeding. The Apex Court in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736], dilating on the limited scope of inquiry under Section 202 Cr. P.C., corresponding to Section 225 of BNSS, held as under;

“4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the [Code of Criminal Procedure](#) is extremely limited — limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint— (i) on the materials placed by the complainant before the court : (ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no *locus standi* and is not entitled to be heard on the question whether the process should be issued against him or not.”

The above decision leaves no room for doubt that under the Code the accused had no *locus standi* even at the stage where the Magistrate decides whether or not to issue process to the accused.

6. While on this question, it will also be profitable to refer the decision of the Apex Court in *A.R. Antulay v. Ramdas Srinivas Nayak* [(1984) 2 SCC 500], wherein the procedure to be followed by the Magistrate upon filing of a complaint is detailed as under;

“When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 CrPC. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present. The other option open to the court is to direct investigation to be made by a police officer.

Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a

*condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may "if he thinks fit, 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...., for the purpose of deciding whether or not there is sufficient ground for proceeding". Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be thwarted or that a pre-process safeguard would be denied."*

*7. Indeed, a radical change in procedure is brought about by the proviso to Section 223(1) of BNSS. Pertinently, in spite of the proviso to Section 223(1) making it mandatory to provide opportunity of hearing to the accused before taking cognizance, Section 226 does not reckon the accused's objection at the stage of taking cognizance as a relevant factor for dismissing the complaint. Being guided by the precedents on Sections 200 and 202 of the Code and the plain language of the proviso to Section 223(1) of the BNSS, this Court is of the opinion that, after the complaint is filed, the Magistrate should first examine the complainant and witnesses on oath and thereafter, if the Magistrate proceeds to take cognizance of the offence/s, opportunity of hearing should be afforded to the accused. I am also in complete agreement with the following procedural drill delineated by the High Court of Karnataka in Basanagouda's case (supra);*

*"9. To steer clear the obfuscation, it is necessary to notice the language deployed therein. The Magistrate while taking cognizance of an offence should have with him the statement on oath of the complainant and if any witnesses are present, their statements. The taking of cognizance under Section 223 of the BNSS would come after the recording of the sworn statement, at that juncture a notice is required to be sent to the accused, as the proviso mandates grant of an opportunity of being heard.*

*10. Therefore, the procedural drill would be this way : A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter."*

8.3. In the case of Prateek Agarwal (supra) similar view has been taken by this court.

9. It is also stated that the impugned order dated 14.10.2024 is also in violation of Section 225 BNSS, akin to Section 202 Cr.P.C. (now repealed). As the applicants are resident of District-Lucknow and complaint was filed at District-Sultanpur and therefore, the Magistrate exercising its power/jurisdiction, in view of Section 225 BNSS, ought have been postponed the issue of process for deciding that whether there is sufficient ground for proceeding. The referred provisions are reproduced hereinunder:-

| Section 202 of Cr.P.C., 1973                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Section 225 of BNSS,2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p><b>Postponement of issue of process—</b></p> <p>(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</p> <p>Provided that no such direction for investigation shall be made,--</p> <p>(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or</p> <p>(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.</p> <p>(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:</p> <p>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.</p> <p>(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.</p> | <p><b>Postponement of issue of process.—</b></p> <p>(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 212, 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:</p> <p>Provided that no such direction for investigation shall be made,—</p> <p>(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or</p> <p>(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 223.</p> <p>(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.</p> <p>(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 Sanhita on an officer in charge of a police station except the power to arrest without warrant.</p> |

10. It is also stated that after recording statement of the complainant and the witnesses, if any, the Magistrate before taking cognizance in the matter, shall afford an opportunity of being heard to the accused. It is for the reason that if upon consideration of the statements and enquiry got conducted, if any, the Court finds that there is no sufficient ground to proceed, it can dismiss the complaint under Section 226 BNSS, which is extracted here-in-below:-

*"226. 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 225, 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. Chapter XVII Commencement of Proceedings before Magistrates."*

11. Learned A.G.A. for the State, though opposed the prayer but he could not contradict the legal position. He further submits that the impugned order may be quashed and the matter may be remitted back, so that the learned Magistrate may proceed in accordance with law and the respondent No.2 cannot be said to be prejudiced at this juncture.

12. Considered the submissions of learned counsel for the parties and perused the record.

13. The instant case relates to Section 223 BNSS(1). This provision provides that the Magistrate having jurisdiction while 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. The first proviso appended to this Section provides that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. The second proviso appended to this Section provides certain contingencies under which, the Magistrate need not examine the complainant and witnesses.

14. Considering the aforesaid, this Court is of the view that after filing of complaint under Section 210 BNSS, the learned Magistrate has to first examine upon oath the complainant and the witnesses, if any, and the substance of such examination is to be reduced in writing, which shall be signed by the complainant and the witnesses and also by the Magistrate as per Section 223(1) of BNSS and thereafter, after considering the same, if he finds that there is no sufficient ground to proceed, he shall dismiss the complaint under Section 226 BNSS and if he finds that it can not be dismissed as such, he shall afford opportunity to the accused for which the notice of being heard shall be issued at that stage and the Magistrate would take cognizance only after affording an opportunity of hearing to the accused the Magistrate would take cognizance and regulate its procedure thereafter. It is for the reason that the accused may not be harassed unnecessarily. This opportunity of hearing shall not be a mere formality.

15. On the issue related to Sections 225 BNSS, akin to Section 202 Cr.P.C. (now repealed) it would be useful/appropriate to refer some pronouncements in which section 202 Cr.P.C. (now repealed), akin to Section 225 BNSS was considered and explained:-

**15.1 The relevant paras of Sunil Todi v. State of Gujarat, (2022) 16 SCC 762 : 2021 SCC OnLine SC 1174, are being extracted hereinbelow:-**

"35. The second submission which has been urged on behalf of the appellants turns upon Section 202 CrPC, which is extracted:

**"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 Session; 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."

36. Under sub-section (1) of Section 202, a Magistrate upon the receipt of a complaint of an offence of which he/she is authorised to take cognizance is empowered to postpone the issuance of process against the accused and either : (i) enquire into the case; or (ii) direct an investigation to be made by a police officer or by such other person as he thinks fit. The purpose of postponing the issuance of process for the purposes of an enquiry or an investigation is to determine whether or not there is sufficient ground for proceeding. However, it is mandatory for the Magistrate to do so in a case where the accused is residing at a place beyond the area in which the Magistrate exercises jurisdiction.

37. The accused persons in the present case reside at Aurangabad while the complaint under Section 138 was filed before the Magistrate in Mundra. The argument of the appellants is that in these circumstances, the Magistrate was duty-bound to postpone the issuance of process and to either enquire into the case himself or to direct an investigation either by a police officer or by some other person. Section 203 stipulates that if the Magistrate is of the opinion on considering the statement on oath, if any, of the complainant and of the witnesses, and the result of the enquiry or investigation if any under Section 202 that there is no sufficient ground for proceeding, he shall dismiss the complaint recording briefly his reasons for doing so. The requirement of recording reasons which is specifically incorporated in Section 203 does not find place in Section 202. Section 204 which deals with the issuance of process stipulates that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, he may issue : (a) in a summons case, a summons for attendance of the accused; (b) in a warrant case, a warrant or if he thinks fit a summons for the appearance of the accused. These proceedings have been interpreted in several judgments of this Court. For the purpose of the present case, some of them form the subject-matter of the submissions by the appellants and the second respondent.

38. The provisions of Section 202 which mandate the Magistrate, in a case where the accused is residing at a place beyond the area of its jurisdiction, to postpone the issuance of process so as to enquire into the case himself or direct an investigation by police officer or by another person were introduced by Act 25 of 2005 with effect from 23-6-2006. The rationale for the amendment is based on the recognition by Parliament that false complaints are filed against persons residing at far-off places as an instrument of harassment. In **Vijay Dhanuka v. Najima Mamtaj** [**Vijay Dhanuka v. Najima Mamtaj**, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , this Court dwelt on the purpose of the amendment to Section 202, observing : (SCC p. 644, paras 11-12).

"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 the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

‘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.”

39. This Court has held that the Magistrate is duty-bound to apply his mind to the allegations in the complaint together with the statements which are recorded in the enquiry while determining whether there is a prima facie sufficient ground for proceeding. In **Mehmood UI Rehman v. Khazir Mohammad Tunda** [**Mehmood UI Rehman v. Khazir Mohammad Tunda**, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124], this Court followed the dictum in **Pepsi Foods Ltd. v. Special Judicial Magistrate** [**Pepsi Foods Ltd. v. Special Judicial Magistrate**, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400], and observed that setting the criminal law in motion against a person is a serious matter. Hence, there must be an application of mind by the Magistrate to whether the allegations in the complaint together with the statements recorded or the enquiry conducted constitute a violation of law. The Court observed : (Mehmood UI Rehman case [**Mehmood UI Rehman v. Khazir Mohammad Tunda**, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124], 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. Special Judicial Magistrate** [**Pepsi Foods Ltd. v. Special 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.”

These decisions were cited with approval in **Abhijit Pawar v. Hemant Madhukar Nimbalkar** [**Abhijit Pawar v. Hemant Madhukar Nimbalkar**, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] . After referring to the purpose underlying the amendment of Section 202, the Court observed : (SCC p. 541, para 25)

“25. ... 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 emphasised by this Court in a recent judgment in **Mehmood Ul Rehman v. Khazir Mohammad Tunda** [**Mehmood Ul Rehman v. Khazir Mohammad Tunda**, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] ....”

40. While noting that the requirement of conducting an enquiry or directing an investigation before issuing process is not an empty formality, the Court relied on the decision in **Vijay Dhanuka** [**Vijay Dhanuka v. Najima Mamtaj**, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] which had held that the 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 enquiry envisaged under Section 202 of the Code.

41. In **Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.** [**Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] , the earlier decisions which have been referred to above were cited in the course of the judgment. The Court noted : (SCC p. 628, para 26).

“26. The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204CrPC or whether the complaint should be dismissed by resorting to Section 203CrPC on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202CrPC, the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.”

42. Hence, the Court held : (**Birla Corpn. Ltd. case** [**Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] , SCC p. 631, para 33)

“33. 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. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in **Mehmood Ul Rehman** [**Mehmood Ul Rehman v. Khazir Mohammad Tunda**, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] ....”

43. The above principles have been reiterated in the judgment in **Krishna Lal Chawla v. State of U.P.** [**Krishna Lal Chawla v. State of U.P.**, (2021) 5 SCC 435 : (2021) 2 SCC (Cri) 601]

44. In this backdrop, it becomes necessary now to advert to an order dated 16-4-2021 of a Constitution Bench in *Expedition Trial of Cases under Section 138 of NI Act, 1881*, In re [*Expedition Trial of Cases under Section 138 of NI Act, 1881*, In re, (2021) 16 SCC 116] . The Constitution Bench notes “the gargantuan pendency of complaints filed under Section 138” and the fact that the “situation has not improved as courts continue to struggle with the humongous pendency”. The Court noted that there were seven major issues which arose from the responses filed by the State Governments and the Union Territories including in relation to the applicability of Section 202 CrPC. Section 143 of the NI Act provides that Sections 262 to 265 CrPC (forming a part of Chapter XXI dealing with summary trials) shall apply to all trials for offences punishable under Section 138 of the NI Act. On the scope of the inquiry under Section 202 CrPC in cases under Section 138 of the NI Act, there was a divergence of view between the High Courts. Some High Courts had held that it was mandatory for the Magistrate to conduct an inquiry under Section 202 CrPC before issuing process in complaints filed under Section 138, while there were contrary views in the other High Courts. In that context, the Court observed : (SCC p. 125, paras 10-11)

“10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23-6-2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See : **Vijay Dhanuka v. Najima Mamtaj** [**Vijay Dhanuka v. Najima Mamtaj**, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , **Abhijit Pawar v. Hemant Madhukar Nimbalkar** [**Abhijit Pawar v. Hemant Madhukar Nimbalkar**, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and **Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.** [**Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] ). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

11. The learned Amici Curiae referred to a judgment of this Court in **K.S. Joseph v. Philips Carbon Black Ltd.** [**K.S. Joseph v. Philips Carbon Black Ltd.**, (2016) 11 SCC 105 : (2016) 4 SCC (Civ) 616 : (2017) 1 SCC (Cri) 270] where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in **Vijay Dhanuka** [**Vijay Dhanuka v. Najima Mamtaj**, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , **Abhijit Pawar** [**Abhijit Pawar v. Hemant Madhukar Nimbalkar**, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and **Birla Corpn. Ltd.** [**Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.**, (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : (2020) 2 SCC (Cri) 828] , the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.”

45. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2)CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.

46. In the present case, the Magistrate has adverted to:

- (i) The complaint;
- (ii) The affidavit filed by the complainant;
- (iii) The evidence as per evidence list and; and
- (iv) The submissions of the complainant.

47. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind. In **Chief Controller of Imports & Exports v. Roshanlal Agarwal** [**Chief Controller of Imports & Exports v. Roshanlal Agarwal**, (2003) 4 SCC 139 : 2003 SCC (Cri) 788] , this Court has held that in determining the question as to whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can only be determined at the trial. [See also in this context the decision in **Bhushan Kumar v. State (NCT of Delhi)** [**Bhushan Kumar v. State (NCT of Delhi)**, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] ].

48. The High Court did not quash the complaint against the appellants since it was *prima facie* established that they were triable for dishonour of cheque. Section 141 of the NI Act provides:

“141. Offences by companies.—(1) If the person committing an offence under Section 138 is 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:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, manager, secretary or other officer of the company, such Director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

49. Section 141 of the NI Act stipulates that if a company is alleged to have committed an offence under Section 138, then every person who “was in charge of, and responsible to, the company for the conduct of the business of the company” shall also be deemed guilty of the offence. The proviso provides an exception if she proves that the offence was committed without her knowledge or that she had exercised due diligence. In **Sunil Bharti Mittal v. CBI** [**Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687**] , a three-Judge Bench of this Court observed that the general rule is that criminal intent of a group of people who undertake business can be imputed to the Company but not the other way around. Only two exceptions were provided to this general rule : (i) when the individual has perpetuated the commission of offence and there is sufficient evidence on the active role of the individual; and (ii) the statute expressly incorporates the principle of vicarious liability. Sikri, J. writing for a three-Judge Bench observed : (SCC p. 638, paras 43-44)

“43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In **Aneeta Hada** [**Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241**] , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of “alter ego”, was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.”

50. In **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla** [**S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89 : 2005 SCC (Cri) 1975**] , a three-Judge Bench while construing the provisions of Section 141 of the Negotiable Instruments Act, 1881, has noted that the position of a Managing Director or a Joint Managing Director of a company is distinct since persons occupying that position are in charge of and responsible for the conduct of the business. It was

observed that though there is a general presumption that the Managing Director and Joint Managing Director are responsible for the criminal act of the company, the Director will not be held liable if he was not responsible for the conduct of the company at the time of the commission of the offence. The Court observed : (SCC pp. 98-99, paras 9-10)

“9. The position of a Managing Director or a Joint Managing Director in a company may be different. These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

10. ... Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a Director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time.”

(emphasis supplied)

51. The same principle has been followed by a Bench of two Judges in **Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi** [**Mainuddin Abdul Sattar Shaikh v. Vijay D. Salvi**, (2015) 9 SCC 622 : (2015) 4 SCC (Civ) 685 : (2015) 4 SCC (Cri) 55] : (SCC p. 627, para 12)

“12. The respondent has adduced the argument that in the complaint the appellant has not taken the averment that the accused was the person in charge of and responsible for the affairs of the Company. However, as the respondent was the Managing Director of M/s Salvi Infrastructure (P) Ltd. and sole proprietor of M/s Salvi Builders and Developers, there is no need of specific averment on the point. This Court has held in **National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal** [**National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal**, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] , as follows : (SCC p. 346, para 39)

‘39. ... (v) If the accused is a Managing Director or a Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.’ ”

52. The test to determine if the Managing Director or a Director must be charged for the offence committed by the company is to determine if the conditions in Section 141 of the NI Act have been fulfilled i.e. whether the individual was in charge of and responsible for the affairs of the company during the commission of the offence. However, the determination of whether the conditions stipulated in Section 141 of the MMDR Act have been fulfilled is a matter of trial. There are sufficient averments in the complaint to raise a prima facie case against them. It is only at the trial that they could take recourse to the proviso to Section 141 and not at the stage of issuance of process.

53. In the present case, it is evident that the principal grounds of challenge which have been set up on behalf of the appellants are all matters of defence at the trial. The Magistrate having exercised his discretion, it was not open to the High Court to substitute its discretion. The High Court has in a carefully considered judgment, analysed the submissions of the appellants and for justifiable reasons has come to the conclusion that they are lacking in substance. ”

## 15.2 The relevant paras of **National Bank of Oman v. Barakara Abdul Aziz**, (2013) 2 SCC 488 , are extracted hereinbelow:-

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. Section 202 CrPC was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,"

The notes on clauses for the abovementioned amendment read 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 amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) dated 21-6-2006.

11. We are of the view that the High Court has correctly held that the above mentioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 CrPC. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court."

15.3. The relevant paras of **Udai Shankar Awasthi v. State of U.P., (2013) 2 SCC 435 : (2013) 1 SCC (Civ) 1121 : (2013) 2 SCC (Cri) 708**, are extracted hereinbelow:-

"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 1996 Act 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 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the 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. (See also *Shivjee Singh v. Nagendra Tiwary* [(2010) 7 SCC 578 :

(2010) 3 SCC (Cri) 452 : AIR 2010 SC 2261] , SCC p. 584, para 11 and National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488 : JT (2012) 12 SC 432] .)"

**15.4 The relevant paras of *Shivjee Singh v. Nagendra Tiwary*, (2010) 7 SCC 578 : (2010) 3 SCC (Cri) 452 , are extracted hereinbelow:-**

"11. Section 202(1) empowers the Magistrate to 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 whom he thinks fit for the purpose of deciding whether or not there exists sufficient ground for proceeding. By amending Act 25 of 2005, the postponement of the issue of process has been made mandatory where the accused is residing in an area beyond the territorial jurisdiction of the Magistrate concerned. Proviso to Section 202(1) lays down that direction for investigation shall not be made where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session or where the complaint has not been made by a court unless the complainant and the witnesses have been examined on oath under Section 200.

12. Under Section 202(2) the Magistrate making an inquiry under sub-section (1) can take evidence of the witnesses on oath. If the Magistrate thinks that the offence complained of is triable exclusively by the Court of Session then in terms of the proviso to Section 202, he is required to call upon the complainant to produce all his witnesses and examine them on oath.

13. Section 203 empowers the Magistrate to dismiss the complaint if, after considering the statements made by the complainant and the witnesses on oath and the result of the inquiry or investigation, if any, made under Section 202(1), he is satisfied that there is no sufficient ground for proceeding. The exercise of this power is hedged with the condition that the Magistrate should record brief reasons for dismissing the complaint. Section 204, which talks of issue of process lays down that if the Magistrate taking cognizance of an offence is of the view that there is sufficient ground for proceeding then he may issue summons for attendance of the accused in a summons case. If it is a warrant case, then the Magistrate can issue warrant for causing attendance of the accused.

14. Section 207 casts a duty on the Magistrate to supply to the accused, copies of the police report, the first information report recorded under Section 154, the statements recorded under Section 161(3), the confessions and statements, if any, recorded under Section 164 and any other document or relevant extract thereof, which is forwarded to the Magistrate along with the police report. Section 208 provides for supply of copies of statement and documents to the accused in the cases triable by the Court of Session. It lays down that if the case, instituted otherwise than on a police report, is triable exclusively by the Court of Session, the Magistrate shall furnish to the accused, free of cost, copies of the statements recorded under Section 200 or Section 202, statements and confessions recorded under Section 161 or Section 164 and any other document on which prosecution proposes to rely.

15. Section 209 speaks of commitment of a case to the Court of Session when offence is triable exclusively by it. This section casts a duty on the Magistrate to commit the case to the Court of Session after complying with the provisions of Section 208. Once the case is committed, the trial is to be conducted by the Court of Session in accordance with the provisions contained in Chapter XVIII.

16. The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process.

17. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so.

18. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI CrPC finds adequate support from the judgments of this Court in **Ramgopal Ganpatrai Ruia v. State of Bombay** [AIR 1958 SC 97 : 1958 Cri LJ 244 : 1958 SCR 618] , **Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar** [AIR 1960 SC 1113 : 1960 Cri LJ 1499 : (1961) 1 SCR 1] , **Chandra Deo Singh v. Prokash Chandra Bose** [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] , **Nirmaljit**

*Singh Hoon v. State of W.B.* [(1973) 3 SCC 753 : 1973 SCC (Cri) 521] , *Kewal Krishan v. Suraj Bhan* [1980 Supp SCC 499 : 1981 SCC (Cri) 438] , *Mohinder Singh v. Gulwant Singh* [(1992) 2 SCC 213 : 1992 SCC (Cri) 361] and *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471]

19. In *Chandra Deo Singh v. Prokash Chandra Bose* [AIR 1963 SC 1430 : (1963) 2 Cri LJ 397 : (1964) 1 SCR 639] , it was held that where there was prima facie evidence, the Magistrate was bound to issue process and even though the person charged of an offence in the complaint might have a defence, the matter has to be left to be decided by an appropriate forum at an appropriate stage. It was further held that the issue of process can be refused only when the Magistrate finds that the evidence led by the complainant is self-contradictory or intrinsically untrustworthy.

20. In *Kewal Krishan v. Suraj Bhan* [1980 Supp SCC 499 : 1981 SCC (Cri) 438] , this Court examined the scheme of Sections 200 to 204 and held: (SCC p. 503, para 10)

“10. ... At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Session, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is ‘sufficient ground for proceeding’ against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinising the evidence is not the same as the one which is to be kept in view at the stage of framing charges.”

16. From the observations made in pronouncement(s) referred above as also the observations of the Hon'ble Apex Court in the case of **A.R. Antulay v. Ramdas Srinivas Nayak (1984) 2 SCC 500**, relevant paras of which has been referred in para 6 of the judgment passed in the case of **Suby Antony (supra)**, this Court is of the view that the inquiry or the investigation, as the case may be, indicated in Section 225 BNSS, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.

17. Upon due consideration of the facts of the case, relevant statutory provisions and also the pronouncements related to the issues involved in the case, this court is of the view that impugned order dated 04.10.2024 is liable to be set aside. It is for the reasons that from the order in issue dated 04.10.2024 it is apparent that an opportunity of hearing was not provided to the accused by the Magistrate before passing the impugned order dated 04.10.2024, which ought to be in view of the aforesaid.

18. The instant application is accordingly **allowed**. The impugned order dated 04.10.2024 passed by learned Additional Civil Judge (S.D.)-1/Additional Chief Judicial Magistrate, Sultanpur in Criminal Case No.5524/2024, is hereby set aside. It is open for the Magistrate to proceed afresh as per law.

**Order Date :- 04.02.2026**

Jyoti/-

**(Saurabh Lavania,J.)**