

# Jaideep Bose vs M/S Bid And Hammer Auctioneers Private ... on 18 February, 2025

1

2025 INSC 241

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 814 OF 2025  
(Arising out of SLP (Crl.) No. 10212 of 2024)

JAIDEEP BOSE

... APPELLANT

VERSUS

M/S. BID AND HAMMER AUCTIONEERS  
PRIVATE LIMITED

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 815 OF 2025  
(Arising out of SLP (Crl.) No. 13443 of 2024)

NERGISH SUNAVALA

... APPELLANT

VERSUS

M/S. BID AND HAMMER AUCTIONEERS  
PRIVATE LIMITED & OTHERS

... RESPONDENTS

WITH

CRIMINAL APPEAL NO. 816 OF 2025  
(Arising out of SLP (Crl.) No. 15653 of 2024)

SWATI DESHPANDE & OTHERS

... APPELLANTS

VERSUS

Signature Not Verified

Digitally signed by

M/S. BID AND HAMMER AUCTIONEERS  
POOJA SHARMA  
Date: 2025.02.18  
18:50:04 IST  
Reason:

PRIVATE LIMITED

... RESPONDENT

2

WITH

CRIMINAL APPEAL NO. 817 OF 2025  
(Arising out of SLP (Crl.) No. 16153 of 2024)

NEELAM RAAJ

... APPELLANT

VERSUS

M/S. BID AND HAMMER AUCTIONEERS  
PRIVATE LIMITED

... RESPONDENT

JUDGMENT

R. MAHADEVAN, J.

1. Leave granted.

2. These appeals are directed against an order dated 18.06.2024 passed by the High Court of Karnataka at Bengaluru<sup>1</sup> in Criminal Petition No.3829 of 2017, titled ‘Bennett Coleman and Co. Ltd and others v. M/s. Bid and Hammer Auctioneers Private Limited, arising out of complaint in PCR No.13146/2014 and CC No.18491 of 2016 pending on the file of the Court of II Additional Chief Metropolitan Magistrate, Bengaluru<sup>2</sup>. By the said order, the High Court dismissed the criminal petition filed by the appellants herein challenging the initiation of the criminal proceedings against them for the offences under sections 499 and Hereinafter referred to as “the High Court” Hereinafter referred to as “the trial Court” 500 of the Indian Penal Code, 1860<sup>3</sup>, however, quashed the complaint as far as M/s. Bennett Coleman and Co. Ltd.<sup>4</sup> (Accused No.1) is concerned.

3. The genesis of the present cases lies in a private complaint dated 22.08.2014 filed by the complainant / respondent herein against the company and its directors, editors and journalists, numbering 14 accused persons, under Section 200 of the Code of Criminal Procedure, 1973<sup>5</sup> read with Sections 499 and 500 IPC. The gravamen of the complaint pertains to certain news articles published in various newspapers viz., Bangalore Mirror, Mumbai Mirror, The Times of India (Bangalore, Kolkata, Mumbai, New Delhi, and Pune Editions), and The Economic Times (New Delhi and Mumbai editions) on 27.06.2014, 28.06.2014, 29.06.2014, 06.07.2014, 07.07.2014, and 20.07.2014 which contained alleged defamatory contents regarding the authenticity of certain paintings to be auctioned by the respondent herein.

4. Upon receipt of the complaint, the sworn statement of the complainant / respondent was recorded on 14.11.2014. Thereafter, the trial Court took cognizance of the complaint and directed to register the same for the offences under sections 499 and 500 IPC and issue summons to the

accused, vide order dated 29.07.2016. The complaint was received as PCR No.13146/2014 and later, For short, "IPC" For short, "the company" For short, "Cr.P.C" registered as CC No.18491 of 2016 which is now, pending on the file of the trial Court.

5. Challenging the issuance of summons, the appellants filed Criminal Petition No.3829 of 2017 before the High Court seeking to quash the criminal proceedings initiated against them. After due contest, the High Court dismissed the petition as against the appellants herein, however, quashed the complaint as far as the company (A1) is concerned. Aggrieved by the same, the appellants are before us with the present appeals.

## CONTENTIONS

6. The learned counsel for the appellant / Accused No.2 [SLP (Crl.) No.10212 of 2024] made the following submissions:

(a) The appellant is neither the author of the alleged defamatory news articles nor editor of any of the newspapers in question; and he is editorial director of the company; and therefore, he is not responsible for the publication of the alleged defamatory news articles.

(b) In the private complaint filed by the respondent, there is no specific averment regarding the appellant's role in publishing the alleged defamatory news articles, except mentioning his name as the editorial director of the company and thus, he could not have been arraigned as an accused.

(c) Under the Press and Registration of Books Act, 1867, it is the "editor"

who controls the selection of matter published in the newspapers, besides requiring the names of editor, printer, and publisher to be published in the print line of the newspapers. The appellant's name does not appear in the print line of any of the newspapers that published the news articles in question. The designation of "Editorial Director" without any specific allegation about the appellant's direct involvement in the publication of the impugned news articles, cannot form the basis for criminal liability. Therefore, the appellant cannot be held liable for the alleged offences.

(d) Section 202 Cr.P.C. as amended in 2005, mandates an inquiry before proceeding against an accused residing outside the jurisdiction of the Magistrate and this provision aims to prevent the harassment of persons residing at far-off places through false complaints. In this case, the Magistrate did not examine any other witnesses except the complainant and the statement of the complainant manifestly fail to prove the allegation of defamation against the appellant. Hence, the failure of complying with the mandatory provision of Section 202 Cr.P.C. before issuing process against the appellant, who resides in Mumbai i.e., outside the territorial jurisdiction of the Bengaluru court, vitiates the criminal proceedings initiated against him.

(e) The complaint lacks the essential ingredients of criminal defamation under Section 499 IPC. The explanation to the said section clearly requires that the imputation must lower the moral or intellectual character of a person in the estimation of others. Whereas, the complaint filed by the respondent relies solely on the complainant's self-estimation of harm without any evidence from third parties about reputational damage. Thus, the failure to establish reputational harm in the eyes of others, renders the said complaint unsustainable.

(f) Without properly appreciating all these aspects, merely on assumption that the appellant being the editorial director, is overseeing the contents of all the newspapers and responsible for the publication of alleged defamatory news articles, the High Court dismissed the criminal petition filed by the appellant, by the order impugned herein, which has to be set aside by this Court.

7. The learned counsel for the appellant / Accused No.12 [SLP (Crl.) No.13443/2024] made the following submissions:

(a) The order impugned herein only refers to the article dated 27.06.2014 titled "Fakes at Art Auction Raise Huge Storm" which was published on the date of auction and was authored by Ms.Neelam Raj (Accused No.4) and it makes no reference to the article authored by the appellant.

(b) There is no allegation that the appellant contributed or assisted or was involved in the said article. Even in the complaint, there is only a bare allegation that the accused have all, in connivance with one another, orchestrated a smear campaign that is intended at ruining the reputation of the complainant and the news articles have been engineered to appear on the date of auction. Thus, there is a bald averment to substantiate the allegation of conspiracy.

(c) The appellant authored a completely different article titled 'Art's Identity Crisis', which was published on 20.07.2014 i.e., almost a month after the auction dated 27.06.2014. She did not draw any conclusion regarding the authenticity of the paintings that the complainant was auctioning, rather the said article focused on the challenge of authenticating Indian art and how it depends less on science and more on an artist's family in India. Therefore, the appellant's article was not defamatory and did not constitute the offence under section 499/500 IPC.

(d) Reliance was also placed on the decisions of this Court in Aroon Purie v. State of NCT of Delhi<sup>6</sup> and Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya<sup>7</sup>, wherein, it was held that there exists no bar that the exceptions to section 499 IPC can be regarded only at the stage of trial.

(e) However, the High Court on the basis of the article authored by the Accused No.4 and without having applied judicial mind to the article allegedly authored by the appellant, erred in upholding the complaint and criminal proceedings emanating therefrom before the Magistrate.

(f) The Magistrate except the complainant, did not examine any other witnesses. The appellant resides in Mumbai, i.e., outside the territorial jurisdiction of the Magistrate Court, but no inquiry was conducted before issuance of summons, and thus, there was no substantial compliance of the mandatory procedure under section 202 Cr.P.C. Hence, the summoning order was 2022 SCC OnLine SC 1491 (2024) 2 SCC 86 bad in law.

(g) Mere factual reference to another allegedly defamatory article or recording of a third-party view by a journalist cannot be held as defamatory and doing so would severely impact freedom of press and places the appellant in jeopardy of being a victim of the law of land being incorrectly applied against her and causing a miscarriage of justice.

(h) It is alleged that the complainant appears to be a serial litigator taking recourse to the criminal process only to stifle the freedom of speech and expression of the press when art experts began to question the authenticity of the paintings being sold by the complainant in its auction.

(i) This Court in Bloomberg Television Production Services India Private Limited & Ors. v. Zee Entertainment Enterprises Limited<sup>8</sup>, has recognized that the constitutional mandate of protecting journalistic expression cannot be understated.

(j) Similar defamation complaint filed by the respondent was quashed by this Court vide judgment dated 20.07.2022 passed in Criminal Appeal No.1008 of 2022 arising out of SLP (Crl) No.6732/2019 titled 'M/s. DAG Pvt. Ltd v. Bid & Hammer Auctioneers (P) Ltd.

With these submissions, learned counsel prayed to allow the appeal and quash the criminal proceedings initiated against this appellant. 2024 INSC 255

8. The learned counsel for the appellants / Accused Nos.8, 9, 10 and 13 [SLP (Crl.) No. 15653 of 2024] made the following submissions:

(a) The trial court overlooked the news articles written by the appellants and erred in issuing process only on the basis of the respondent's interpretation of the news articles made in the complaint and his sworn statement. Even the High Court in the impugned order, referred to only the article written by Ms. Neelam Raj (Accused No.4) and did not consider the news articles written by the appellants to see whether the same were defamatory or not.

(b) The Respondent in paragraph 16 of the complaint stated that Accused No.5-Maulik Vyas and the Appellant No.4 (Accused No.13) co-authored the article dated 27.06.2014 in the Economic Times, however, a bare perusal of the said article shows that it is said to be authored by Accused no 5-Maulik Vyas and only inputs are

said to have been given by Accused No.13. This article only provides information about exchange of legal notices and mentions the comments of the advocate of the respondent.

(c) Since all the appellants are having office/residents at Mumbai and Kolkata i.e., outside the territorial jurisdiction, the Magistrate ought to have conducted inquiry as required section 202 Cr.PC, by examining witnesses other than the complainant before issuing process, which was not done.

(d) No reasons have been given in the summoning order, with respect to delineating the role of each accused, in light of the judgement of this Court in Pepsi Foods Ltd. and Others v. Special Judicial Magistrate and Others<sup>9</sup>.

(e) The respondent did not adduce any legal evidence and his statement manifestly failed to prove the allegation of defamation against the appellants.

(f) The complaint was also fundamentally flawed as self-estimation is not defamation. Since no witness has come to say that complainant has fallen in its estimation/ no third person had come before the Magistrate to even prima facie claim that the reputation of the Respondent had been lowered in their estimation.

Stating so, the learned counsel sought to quash the criminal proceedings initiated against the appellants based on the private complaint filed by the respondent.

9. The learned counsel for the appellant / Accused No.4 [SLP (CrI.) No.16153 / 2024] made the following submissions:

(a) The appellant wrote two news articles, which were carried in different editions using different headlines as decided by the desk. It was stated that portions of an article get deleted as per the discretion of the editor of that edition.

The impugned order of the High Court discussed only one article and remained completely silent on the other article of the appellant and hence, it is liable to be set aside.

(b) The news articles merely state that experts have raised questions without making assumptions / conclusions against the respondent and therefore, (1998) 5 SCC 749 the same would not constitute the offence of defamation.

(c) Further, the news articles were published by the appellant in furtherance of an article previously published in The Indian Express, which was already in public domain, and the subsequent debate initiated by Samindranath Majumdar on social networking websites.

(d) In the article published, the statement of various art experts and family members of artists, such as, Rukhsana Pathan Ara, Susobhan Adhikary, Prof.R.Sivakumar, Balaka Bhattacharjee, Ashish

Anand, Rajani Prasanna Hebbar has been quoted; and no judgment on any works of art was given by the appellant. However, the trial court without looking into the entire contents of the publication, issued process on the basis of the respondent's interpretation of the news articles in the complaint and his sworn statement.

(e) The respondent did not adduce any legal evidence and also the statements of the complainant manifestly fail to prove the allegation of defamation. Further, the summoning order was fundamentally flawed as no third person had come before the Magistrate to even prima facie state that the reputation of the respondent had been lowered in their estimation. In the absence of this material, the very summoning order is bad in law.

(f) Without considering all these aspects, the High Court erred in dismissing the criminal petition by the order impugned herein, which suffers from serious and glaring infirmities and is hence, liable to be set aside.

10. Per contra, the learned counsel appearing for the complainant / respondent submitted that the complainant enjoys a rich legacy that is enviable having been incorporated by persons of impeccable character and reputation. In contrast, the defamatory news articles have had a serious and adverse impact on the reputation of the complainant company. The news articles were widely circulated and caused considerable harm to the company's business interests. As a result, the company's reputation has been significantly tarnished, and its credibility has been undermined in the eyes of its clients, partners, and the public. In light of the substantial reputational damage caused, the respondent preferred a private complaint under Section 200 Cr.P.C., against the accused for committing defamation. The Magistrate after careful consideration of the defamatory nature of the news articles in question, directed to register the complaint and issue summons to the accused.

10.1. The learned counsel further submitted that the complaint itself establishes the appellants' role in the publication of the defamatory news articles in the newspapers. The complainant has sufficiently outlined the defamatory nature of the news articles, which caused harm to their reputation. The issuance of summons by the trial Court is consistent with the legal principles governing the stage of cognizance and process issuance, where a detailed inquiry into the merits of the case is not required. That apart, the High Court's observations, including those in paragraph 3 of the impugned order, are based on a prima facie appreciation of the facts and do not amount to prejudging the case. It is well-settled that at the stage of summoning, the complainant need not prove their case beyond doubt; a mere prima facie case suffices. Thus, according to the learned counsel, the High Court correctly dismissed the challenge to the summons and the same need not be interfered with by this court.

11. We have heard the learned counsel appearing on both sides and also perused the materials available on record.

12. Vide order dated 12.08.2024<sup>10</sup> in SLP (Criminal) No.10212 of 2024, this Court granted an order of interim stay of all further proceedings in connection with Complaint Case No.18491/2016 until further orders. Similar order was passed by this Court in SLP (Criminal) No.13443 of 2024 as well,

on 14.10.2024. Consequently, such benefit was also extended to the appellant in SLP (Criminal) No.15653 of 2024 and the appellants in SLP (Criminal) No.16153 of 2024, vide orders dated 11.11.2024 and 14.11.2024 respectively. The petitioner is the Editorial Director of Bennett Coleman and Company Limited. Mr.R.Basant, senior counsel appearing on behalf of the petitioner submits that:

(i) The complaint lacks specific allegations of acts or omission by the petitioner (except allegations of a general nature);

(ii) The High Court erroneously assumed that the petitioner is the Editor of all the newspapers and publications of the Bannett Coleman and Company Ltd and is, therefore, responsible for all their contents; and

(iii) Separate individuals have been designated under Section 7 of the Press and Registration of Books Act 1867 and hence the complaint of defamation against the petitioner was not maintainable.

3 Issue notice returnable on 9 September 2024.

4 Pending further orders, there shall be a stay of further proceedings in connection with Complaint Case No 18491/2016.

## LEGAL PROVISIONS

13. At the outset, we refer to the relevant legal provisions applicable to the present case, as outlined below:

(a) The Press and Registration of Books Act, 1867 Section 1 – Interpretation clause ‘Editor’ means the person who controls the selection of the matter that is published in a newspaper.

‘Newspaper’ means any printed periodical work containing public news or comments on public news Section 5 Rules as to publication of newspapers. No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) Without prejudice to the provisions of section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication. (2) ....."

Section 7 "Office copy of declaration to be prima facie evidence. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held



(unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, or the editor of every portion of that issue of the newspaper of which a copy is produced."

13.1. It is vivid from the above provisions that every newspaper must clearly mention the names of its owner and editor, ensuring transparency in publication. Furthermore, a statutory presumption is cast upon the editor, who is responsible for the selection of content that is subsequently published, making him accountable for the same unless proven otherwise.

(b) Indian Penal Code, 1860 Section 499 Defamation. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.— No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Section 500 Punishment for defamation. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

13.2. From the above provisions, it is clear that defamation under section 499 IPC necessitates both an intention to harm or knowledge that the imputation is likely to cause harm, and that the imputation must be capable of lowering the reputation of the person in the estimation of others. In other words, the essence of defamation lies not merely in the making of an imputation but in its effect on the perception of the public, thereby impacting the standing of the person in society.

(c) Criminal Procedure Code, 1973 Section 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] [Inserted by Act 25 of 2005, Section 19 (w.e.f. 23-6-2006).] 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 Court on an officer-in-charge of a police station except the power to arrest without warrant.” 13.3. The above provision clearly stipulates that upon receiving a private complaint under section 200 Cr.P.C., the Magistrate must mandatorily conduct an inquiry or investigation before proceeding to issue process against the accused, if such accused resides outside the jurisdiction of the Court. In other words, the Magistrate must examine witnesses before issuing summons in cases where the accused resides outside the Magistrate’s jurisdiction. This mandatory requirement of inquiry or investigation was introduced through section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) which came into effect from 23.06.2006 by introducing the words ‘and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’.

13.4. The above requirement has been eruditely elucidated by this Court in *Abhijit Pawar v. Hemant Madhukar Nimbalkar*<sup>11</sup>. The relevant paragraphs of the said judgment are extracted below:

“23. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the

Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.

24. The essence and purpose of this amendment has been captured by this Court in *Vijay Dhanuka v. Najima Mamtaj* [*Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638; (2015) 1 SCC (Cri) 479] in the following words: (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 (2017) 3 SCC 528 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.”

26. The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of “enquiry” is needed under this provision has also been explained in Vijay Dhanuka case [Vijay Dhanuka v. Najima Mamta, (2014) 14 SCC 638: (2015) 1 SCC (Cri) 479], which is reproduced hereunder: (SCC p. 645, para 14) “14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word “inquiry” has been defined under Section 2(g) of the Code, the same reads as follows:

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

27. When we peruse the summoning order, we find that it does not reflect any such inquiry. No doubt, the order mentioned that the learned Magistrate had passed the same after reading the complaint, verification statement of the complainant and after perusing the copies of documents filed on record i.e. FIR translation of the complaint, affidavit of advocate who had translated the FIR into English, etc...

28. Insofar as these two accused persons are concerned, there is no enquiry of the nature enumerated in Section 202 CrPC.

29. The learned Magistrate did not look into the matter keeping in view the provisions of Section 7 of the Press Act and applying his mind whether there is any declaration qua these two persons under the said Act and, if not, on what basis they are to be proceeded with along with the Editors. Application of mind on this aspect was necessary. It is made clear that this Court is not suggesting that these two accused persons cannot be proceeded with at all only because of absence of their names in the declaration under the Press Act. What is emphasised is that there is no presumption against these persons under Section 7 of the Press Act and they being outside the territorial jurisdiction of the Magistrate concerned, the Magistrate was required to apply his mind on these aspects while passing summoning orders qua A-1 and A-2.

## DISCUSSIONS AND FINDINGS

14. It appears to us that the complainant / respondent herein preferred a single complaint against 14 accused for different news articles written on different dates and published in different editions in different States of the Country, viz., Delhi, Kolkata, Mumbai, Bangalore and Pune. Upon receipt of the complaint, the respondent was examined and his sworn statement was recorded. Thereafter, the Magistrate took cognizance of the complaint and directed to register the same and issue summons to the accused. Consequently, the company (A1) and the appellants herein preferred criminal petition before the High Court to quash the criminal proceedings initiated against them. Vide order dated 18.06.2024, the High Court quashed the complaint only in respect of the Accused No.1 – Bennett Coleman and Co. Ltd., and dismissed the criminal petition insofar as the appellants are concerned. Therefore, these criminal appeals are filed by the appellants.

15. According to the complainant / respondent herein, the defamatory news articles printed, published and circulated by all the accused caused readers to view the complainant with suspicion and also fostered an unjustifiable and unfounded public opinion that the works offered for sale by the complainant through public auction could be fake. It was further alleged in the complaint that the second accused being the editorial director of the company (A1), oversaw the contents of the newspapers and was responsible for news articles' publication; and all other accused, in connivance with each other published various news articles in various newspapers with an intent to scuttle the success of the complainant's auction by harming its reputation or lowering its image in the estimation of the public, thereby committing the offences punishable under Sections 499 and 500 IPC.

16. On the other hand, the appellants entirely refuted the allegations raised in the complaint filed by the respondent. While they have commonly contended that the Magistrate failed to comply with the procedure mandated under section 202 Cr.P.C., their individual responses to the specific allegations regarding their respective publications are tabulated below for ease of reference:

Name of the Details of appellant / Publication accused		Responses to the allegations
Jaideep Bose – A2 SLP (Crl.) No. 10212/2024	Editorial Director of the Company (A1)	He neither authored nor was connected with the publication of the alleged news articles and hence, he cannot be held liable for the same.
Nergish Sunavala – A12 SLP (Crl.) No. 13443/2024	20.07.2014 Times of India	The article pertaining to the appellant was purely based on existing public discourse and previously published material by other reputed sources. There was no intention to defame the respondent and the article was aimed at informing the public about matters of significant interest and concern. No Judgment or any insinuations was made.

Swati Deshpande – A8  Appellant No.1 in SLP (Crl.) No.15653/2024	28.06.2014 Times India Mumbai	The article on the face of it, is not of defamatory. A holistic reading of the article rather shows that a balanced view was taken as it merely presents the views of all parties concerned, including the complainant. There is nothing in the article to suggest any intention or knowledge of causing disrepute to the complainant.
 Shubro Niyogi – A9	 29.06.2014 Times	 The article nowhere mentions the name of of the complainant, rather only reports on

Appellant No.2 India, Kolkata calls by art experts for the creation of a in SLP (Crl.) panel of experts to scrutinize authenticity No.15653/2024 of artworks. There was no intention to disrepute the complainant. When read in its entirety, the article cannot be considered as defamatory.

Ratnottam Sengupta –  A10 Appellant No.3 in SLP (Crl.) No.15653/2024	06.07.2014 Times  India Kolkata	A reading of article shows that it merely of reports on the controversy surrounding  artworks and in a balanced manner, includes the comments and the position of the complainant, while also presenting the views of various other experts in the art-field. The reading of the article in its entirety does not constitute defamation.
 Rashmi Menon – A13 Appellant No.4 in SLP (Crl.) No.15653/2024	 27.06.2014 Economic Times, New Delhi	 The article clearly shows that the appellant only gave certain inputs. Regardless, a reading of the article shows that it merely reports on M. F. Hussain Foundation having sent a legal notice to the complainant, while also displaying the response of the complainant, which at that time had expressed that it was not aware of such notice. This article in no manner can be said to be defamatory.
 Neelam Raj – A4  Appellant in SLP (Crl.) No. 16153/2024	 27.06.2014 Times India, Bangalore 27.06.2014 Times India, New Delhi 27.06.2014, Times	 A reading of the news articles authored by the appellant cannot be said to be defamatory. These news articles, read in their entirety, merely report on the views of art experts and cautions people at large regarding fake art and nothing more. None of the news articles, suggests that there was any intention to harm the complainant's reputation.

India, Mumbai

27.06.2014

Times of  
India, Pune

28.06.2014

Times of  
India,  
Bangalore

17. Before appreciating the rival contentions, it is necessary to look into the specific allegations raised in the complaint against each of the appellants, which are extracted as under:

“2. ....The second accused is the editorial director of the first accused. The third accused is the executive editor of the first accused. The second and third accused oversee the content of the newspapers and are responsible for the contents....

12. On 27.06.2014, the fourth accused, Ms. Neelam Raj, wrote an article that carried the headline, "Fakes at Art Auction Raise Huge Storm". On the front page of the Times of India, Bangalore Edition itself and right under this headline, there is a reference to the complainant by name. The article continues on page 14 with another headline, "Biggest Counterfeit Indian Art Controversy Hits Auction".

Under this headline, there are further states, "A copy or two has cropped up in the most respected of auction houses but Bangalore based Bid and Hammer's forthcoming auction has been assailed by what perhaps is the biggest controversy to come to light in the Indian art market". The article also alleges that the accused tried to contact the complainant's chairman, but was unsuccessful. The complainant never received such calls and it is unethical and wrong to publish an article without even clarifying the facts. It also asserts that the complainant was "caught" in a similar controversy in 2010 over the work of a Souza work. Further, incidents and works that have nothing to do with the complainant are narrated, giving the reader the impression that the complainant is involved in these works also and is a habitual dealer in fake arts and paintings...

13. These allegations and insinuations are clearly and palpably false and render a highly negative image of the works brought to auction by the complainant after extensive study and verification at considerable cost and despite the highly credible process of authentication of each work brought out on auction. The allegations also defame eminent consignors such as granddaughter of Maharaja of Burdwan, Namrata Shirodkar and Mahesh Babu and others.

14. On 27.06.2014 itself, the fourth accused, Ms. Neelam Raj, further authored similar insinuations in the Delhi, Mumbai, and Pune editions of the Times of India under the heading, "Controversy Over Fakes Hits Art Auction" on the front page. On the 12th page of the same edition under the

headline, "Experts Question Authenticity of Signatures dates in auction Art"...

15. The said accused followed this up with another defamatory article on 28.06.2014, the day after the auction with the headline, "More Fake Trouble for Indian Art Mart. The article starts with the words, "Fake" alleging that it continued to cause a tizzy in the art world especially concerning the works featured in the auction of the complainant.

16. On 27.06.2014, the fifth accused. Mr. Maulik Vyas and Ms. Rashmi Menon, the thirteenth accused, co-authored an article in the Economic Times with the headline, "Legal Notice Over Fake Hussains" including on the first page. The article refers to a legal notice issued to the complainant on the very day that the notice was sent and even before it was received by the complainant. This clearly shows the intention of the article was to defame the complainant, knowing fully well that readers of the Economic Times include leading industrialists, who are well known connoisseurs to art and potential customers of the complainant.... It is pertinent to note that the said two accused conveniently ignored the rebuttal and clarifications issued by the complainant against the false charges levelled on the complainant, despite this rebuttal being sent to them well in time for publication the following day. This shows the mala fide intent to defame the complainant, in fact. Subsequently, the thirteenth accused, Ms. Rashmi Menon, confirmed receipt of the rebuttal from the complainant. When asked why she did not publish the rebuttal, she stopped replying / corresponding with the complainant. This shows the mala fide intent to defame the complainant.

18. On 13.06.2014, the eighth accused, Ms. Swati Deshpande, authored an article in the Times of India, Mumbai Edition with the headline, "Auction House Denies 22 Hussain Works are Fake". The article refers to the details of the legal notice and reply, thus casting doubts over the work of the complainant. This is an insinuation that has tarnished the image of the complainant.

19. On 29.06.2014, the ninth accused Mr. Shubro Niyogi, authored an article in the Times of India, Kolkata Edition insinuates that the auction held by the complainant contained fakes. The mala fide intention of the ninth accused is clearly established from the fact that the paintings published in support of the article were not even featured in the catalogue as they did not form part of the auction. So the accused was not even aware of the paintings at the auction but took it upon himself to call them fakes. This insinuation has tarnished the image of the complainant.

20. On 06.07.2014, the tenth accused. Mr. Rathnotham Sengupta, authored an article in the Times of India, Kolkata Edition, with the headlines "Who Speaks the Last Word on Fakes". The article specifically insinuates that Lots 82 and 83 of the auction held by the complainant were identified as fakes. This insinuation has tarnished the image of the complainant.

22. 20.07.2014, the Twelfth accused, Ms. Nargish Sunavala, authored an article in the Times of India, Bangalore Edition, insinuating that the works auctioned by the complainant do not have proper authenticity certificates, deliberately suppressing the crucial processes involved in the complainant's auction, which was in the public domain. This insinuation has tarnished the image of the complainant."



18. It is not in dispute that the appellant (A2) Jaideep Bose is the Editorial Director of the company and other appellants are authors of the alleged defamatory news articles published in various newspapers. The respondent filed a single private complaint against the accused for committing the offence of defamation.

19. Let us first deal with the case of the appellant (A2) Jaideep Bose, who stands on a different footing from the other accused. He is serving as the Editorial Director of the company, which is the owner of all the newspapers in question. According to him, he is neither the author nor the editor of the news articles in question and his role is merely administrative in nature, with no direct involvement in the publication process. He further states that there was procedural irregularity in the process of issuance of summons as he resides in Mumbai, which falls outside the jurisdiction of the Court, and hence, the Magistrate was required to conduct an inquiry by examining witnesses as mandated under Section 202 Cr.P.C.

19.1. As already reiterated, it is the editor who plays a key role in the publication process bearing responsibility for ensuring that the content published adheres to legal standards, including laws surrounding defamation. It is well settled that the Press and Registration of Books Act, 1867 (“the Act”) imposes a higher degree of responsibility and liability on an editor. Section 5 of the Act mandates that every newspaper or periodical publication must specify the name of the editor and owner. Section 7 creates a rebuttable presumption that the editor whose name is printed in the newspaper shall be held to be the editor in any civil or criminal proceedings in respect of that publication. Since an “editor” has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption goes to the extent of holding that he was the person, who controlled the selection of the matter that was published in the newspaper. However, merely because the Act does not mention persons holding other roles in a publication of the company, such as an Editorial Director, or mandate the publication of their names, the same does not imply that such persons cannot be made liable for any defamatory content. The key distinction is that unlike an editor, against whom a statutory presumption is imposed, there is no such presumption against the editorial director at the outset [See: K.M. Mathew v. K.A. Abraham<sup>12</sup>].

19.2. Turning to the complaint, which is also necessary in it, are specific allegations regarding the role of the accused in the publication process. This Court 2002 (6) SCC 670 in *Gambhirsinh R. Dekare v. Falgunbhai Chimanbhai Patel*<sup>13</sup> observed that while the Act does not recognise any other legal entity viz. Chief Editor, Managing Editor, etc. for raising a presumption, such individuals can still be proceeded against, but only when specific allegations are made against them. In the present case, the complaint merely alleges that the appellant (A2) oversaw the publications. No other averments were made to establish as to how the appellant (A2) was responsible for controlling the selection of contents of the newspaper publications. Furthermore, as already stated above, he is the editorial director of the company and not of the individual newspapers. Thus, in our view, such a broad, general or blanket statement without specific or substantive details cannot justify the issuance of summons.

19.3. The Magistrate, without a proper examination and inquiry, proceeded to issue summons to the appellant (A2). It is also pertinent to note here that the appellant (A2) resides in Mumbai, which falls outside the jurisdiction of the concerned Magistrate. In such a scenario, as discussed earlier, the Magistrate was required to proceed with the complaint in accordance with section 202(1) Cr.P.C. However, no such inquiry was conducted in the present case. Therefore, considering all these aspects, we are of the opinion that the complaint is not maintainable against the appellant (A2).

(2013) 3 SCC 697

20. Regarding the appellants in the other appeals, it is evident from the orders of the trial Court as well as the High Court that not all news articles individually authored by the various accused were considered. While passing the impugned order, the High Court referred only to one article authored by Ms. Neelam Raj (A4) and neither took into account nor discussed the other news articles authored by the remaining accused. Furthermore, the mandatory procedure under section 202 Cr.P.C., was clearly not followed. The Appellants viz., A8, A9, A10, A12 and A13 reside in Mumbai / Kolkata, whereas the complaint was filed in Bangalore. The complainant failed to produce any witness to prima facie establish that the alleged imputations had lowered their reputation in the estimation of others and the Magistrate, after merely reviewing the complainant's statement, proceeded to issue summons. Thus, the Magistrate's order clearly suffers from procedural irregularity. Ordinarily, such irregularities would warrant a remand. However, in the present case, the auction was conducted on 27.06.2014 and the complaint was filed on 22.08.2014. No material has also been placed before us to suggest that the auction was unsuccessful or that any damage or loss was actually caused, due to the alleged news articles published in the newspapers. Irrespective of the same, at this stage, remanding the matter for fresh examination of witnesses before issuance of summons would serve no useful purpose, given the remote likelihood of securing witnesses. It would only prolong the litigation yielding little to no benefit especially, since the auction has already concluded and more than a decade has passed. We also take note of the submissions of the learned counsel for the appellants that there is no intent to defame or harm the complainant's reputation. Notably, this Court vide common order dated 20.07.2022 titled 'M/s.DAG Pvt. Ltd. V. M/s.Bid & Hammer Auctioneers (P) Ltd.' allowed similar criminal appeals bearing Nos. 1008/2022 etc. cases, arising from the complaint filed by the same complainant. In view of the above stated reasons, to meet the ends of justice, we are inclined to quash the order passed by the High Court as well as the issuance of summons by the Magistrate. Consequently, the criminal proceedings initiated against the appellants are also liable to be quashed.

21. Before parting, we find it necessary to emphasise that right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India is paramount. At the same time, it is reiterated that those working in the media, particularly, individuals in key positions, authors, etc., must exercise utmost caution and responsibility before publishing any statements, news, or opinions. The power of the media in shaping public opinion is significant and the press possesses the ability to influence public sentiments and alter perceptions, with remarkable speed. As aptly stated by Bulwer Lytton, "The Pen is mightier than the sword". Given its vast reach, a single article or report can resonate with millions, shaping their beliefs and judgments, and it has the capability to cause severe damage to the reputation of those concerned, with consequences that may be

far-reaching and enduring. This highlights the critical need for accuracy and fairness in media reporting, especially when dealing with matters having the potential to impact the integrity of individuals or institutions. Keeping these aspects in mind, publication of the news articles must be done in public interest and with good faith.

22. With the aforesaid observations, we allow all these appeals and quash the impugned order passed by the High Court and summoning orders as well as the criminal complaint filed by the respondent, as far as the appellants herein are concerned. Connected Miscellaneous Application(s), if any, shall stand disposed of.

.....J. [J.B. Pardiwala] .....J. [R. Mahadevan] NEW DELHI, FEBRUARY 18, 2025.