

## **Aditya Mishra vs State Of U.P. Thru. Addl. Chief Secy. ... on 4 August, 2022**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 5154 of 2022

Applicant :- Aditya Mishra

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home And Another

Counsel for Applicant :- Anil Kumar Tiwari, Abhishek Dwivedi

Counsel for Opposite Party :- G.A., Gaurav Mehrotra

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Anil Kumar Tiwari, learned counsel for the applicant, Sri Alok Saran, learned A.G.A. for the State, Sri Gaurav Mehrotra, learned counsel appearing for the opposite party no.2 and perused the entire record.
2. The instant application has been filed by the applicant for quashing the summoning order dated 01.07.2022 passed by Chief Judicial Magistrate, Lucknow in Complaint Case No.58823 of 2022 "State of U.P. through Senior Registrar vs. Aditya Mishra", under Sections 193, 196, 200, 209, 466, 467, 468 I.P.C. read with Section 340/195 Cr.P.C., Police Station Vibhuti Khand, District Lucknow as well as the entire proceeding of Complaint Case No.58823 of 2022 "State of U.P. through Senior Registrar vs. Aditya Mishra", pending in the Court of Chief Judicial Magistrate, Lucknow.
3. In order to appreciate the facts & circumstances which led to filing of Complaint Case No.58823 of 2022, it would be useful to extract herein below the order dated 20.05.2022 passed by a Co-ordinate Bench of this Court in Writ B No.251 of 2022 "Smt. Shams Kazmi vs. Board of Revenue

U.P. Though its Secy. Lucknow and others" :

"1. Heard Sri Shyam Mohan Pradhan, learned counsel who appears for the petitioner in the instant petition which has been filed along with the affidavit of Sri Aditya Mishra who is supposedly the authorized pairokar of the petitioner, Smt. Shams Kazmi and Sri Sunil Kumar Srivastava, learned counsel who appears for Smt. Shams Kazmi who has appeared in person, the learned Additional Chief Standing Counsel and the counsel for the caveator.

2. This matter has been listed before this Court today in light of the order passed on 12.05.2022 and the said order reads as under:-

"Heard Shri Shyam Mohan Pradhan, learned counsel for the petitioner.

At the very outset, before the matter could be heard, Shri S.K. Srivastava, learned counsel had stood out to inform the Court that the instant petition has not been filed by Smt. Shams Kazmi. He further states that neither the petitioner Smt. Shams Kazmi has authorized Shri Aditya Misra to institute the above petition nor any power of attorney has been executed by her in his favour entitling him to file the said petition. He has also moved an application seeking dismissal of the aforesaid petition on the aforesaid grounds.

The said application is accompanied with an affidavit of the petitioner herself. He further submits that the petition has been deliberately got instituted only to get the order passed by the Board of Revenue affirmed whereby harming the rights of the present petitioner. The paragraphs 5 to 8 of the affidavit filed by the petitioner Smt. Shams Kazmi is reproduced hereinafter:-

"5. That both orders dated 09.09.2016 and 03.10.2020 was challenged before Board of Revenue in second appeal by opp.parties of the aforesaid writ petition, there is no doubt that deponent is impleaded in place of her husband after death and second appeal was decided on 25.03.2022 cancelling orders dated 09.09.2016 and 03.10.2020.

6. That deponent was not aware with the proceeding of the cases as her husband died on 06.05.2021, it is evident that deponent is impleaded as successor of deceased husband before Board of revenue.

7. That the deponent became shocked when she acknowledged about the aforesaid writ petition preferred against order of Board of Revenue dated 25.03.2022 on behalf of deponent by some unknown person who became pairokar of deponent showing his name Aditya Mishra. The deponent never gave any power and attorney to Aditya Mishra for contesting the case against the order of Board of Revenue. There is some camouflage of other parties by whom Aditya Mishra became pairokar to defeat

deponent and giving helping hands to the opp.parties.

8. That the deponent never signed upon the writ petition and no any power and attorney was given to Aditya Mishra, he is a stranger for deponent and may harm to the deponent through alleged writ petition."

In this view of the matter, let Aditya Mishra as well as Smt. Shams Kazmi appear in person before this Court on 20.05.2022 along with their respective identities and Shri Mishra shall also carry the authority or power of attorney on the basis of which the petition has been filed by him.

List this matter again on 20.05.2022, as fresh.

If any application is moved by any of the parties for withdrawal of the petition, the same shall also be considered on the next date fixed itself i.e. 20.05.2022.

Office to reflect the name of Shri S.K. Srivastava as counsel for the applicant when the case is next listed"

3. In furtherance of the said order, Sri Aditya Mishra has appeared so also Smt. Shams Kazmi. Sri Aditya Mishra has been identified by Sri Shyam Mohan Pradhan, learned counsel for the petitioner and Smt. Shams Kazmi is accompanied by Sri Sohail Menhdi Khan who is reported to be her nephew and relative and she is identified by Sri Sunil Kumar Srivastava, learned counsel appearing for Smts. Shams Kazmi.

4. First the Court had put a question to Sri Aditya Mishra regarding under which authority, he had filed the instant petition on behalf of Smt. Shams Kazmi, however, he answered that he does not have any written authority nor any power of attorney has been executed in his favour by Smt. Shams Kazmi. He was then asked what is his qualification and he answered that is able to read and understand English reasonably but understands Hindi very well and that he is not educated. Thereafter he gave another statement that he is intermediate pass.

5. He was also specifically asked under what provision could he file an affidavit on behalf of the petitioner without any authority to which he answered that he was explained about the petition by some Mr. Tripathi, a junior counsel in the chamber of Mr. Akhilesh Kalra, who is also a counsel in the instant matter. He volunteered and stated that he has a Will in his favour executed by Sri Kazim Ali Khan, the late husband of Smt. Shams Kazmi and in this view of the matter, he was known to Smt. Shams Kazmi and that he had been authorized to file the instant petition. Another question which was put to Sri Sri Aditya Mishra was whether he has disclosed the fact that Nawab Kazim Ali Khan had executed any Will in his favour or whether this fact was brought to the notice of any of the Courts through which the instant petition has emanated. He answered in the negative and stated that this fact has not been

disclosed nor stated. He was further asked the reason for not disclosing the aforesaid fact to which he kept quite and had no answer.

6. Thereafter the Court called upon Smt. Shams Kazmi and was asked about her age and also the reason whether she understood why she has been called before the Court. Smt. Shams Kazmi stated that she is 82 years old and earlier her husband was contesting the proceedings, however, upon his death, number of persons have come forward to institute proceedings in her name and the present petition is also one such attempt by an un-authorized person of which she had no knowledge or idea. Only when she became aware that her signatures are being forged and that petition has been filed in her name that she has authorized Sri Sunil Kumar Srivastava who appeared before the Court on 12.05.2022 and had filed an affidavit before the Court on the said date. She also stated she has two daughters who are married and settled and she has none to fall back upon and taking advantage of the aforesaid, numbers of persons posing as advocates, well-wishers etc. are flocking to institute proceedings in the name of the petitioner in order to usurp her property.

7. A specific question was put to Smt. Shams Kazmi as to whether she recognized the person who is before the Court today and has been identified as Sri Aditya Mishra by Sri Shyam Mohan Pradhan. Smt. Shams Kazmi categorically denied and could not identify Sri Aditya Mishra and stated that she does not know any such person nor she had seen him before, today. A further question was put to Smt. Kazmi as to whether she had executed any document authorizing any person to institute any proceedings on her behalf and that whether she had authorized any person orally or otherwise to institute any proceedings before this Court or continue any proceedings on her behalf to which she replied in the negative and stated that she has not executed any authority in favour of Sri Aditya Mishra or anyone to continue or contest any proceedings before this Court on her behalf and there appears to be number of persons who are interested in fabricating her signatures to grab her property.

8. The aforesaid statements of Sri Aditya Mishra and Smt. Shams Kazmi were recorded in open Court in front of the learned counsel appearing for the parties.

9. After the statements were recorded, the Court directed both Smt. Shams Kazmi as well as Sri Aditya Mishra to sign on the order sheets as well as their respective counsel who identified them.

10. Having noticed the aforesaid statements and perusing the material on record, this Court is prima facie satisfied that the instant petition preferred in the name of Smt. Shams Kazmi through Sri Aditya Mishra is not bonafide and appears to be an abuse of the process of Court.

11. It has been admitted by Sri Aditya Mishra that he does not have any authority written or otherwise to institute the petition and file the affidavit. Thus, the

institution of the petition by filing an affidavit of a third party stranger i.e. Sri Aditya Mishra is nothing but an abuse of the process and an attempt to deliberately mislead the Court.

12. It will be relevant to notice that the issue regarding institution of a petition and who can file an affidavit on behalf of the petitioner has been the subject matter before the Full Bench of this Court in the case of Syed Wasif Hussain Rizvi Vs. Hasan Raja Khan and 6 others 2016 SCC Online (All.) 175 (FB) wherein after considering the various provisions of the Power of Attorney Act and the Allahabad High Court Rules, 1952 and other provisions wherein in paragraph 7, 8, 12, 18, 19, 24, 25 and 26, the Full Bench observed as under:-

.....7. The Allahabad High Court Rules, 1952 contain in Chapter XXII provisions for directions, orders or writs under Article 226 and Article 227 of the Constitution (other than a writ in the nature of habeas corpus). Under Rule 1(1) of Chapter XXII, an application for a direction, order or writ under Article 226 and Article 227 of the Constitution (other than a writ in the nature of habeas corpus) is required to be made to the Division Bench appointed to receive applications. Rule 1(2) stipulates that the application shall set out concisely in numbered paragraphs the facts upon which the applicant relies and the grounds on which the Court is asked to issue a direction, order or writ and has to conclude with a prayer setting out the exact nature of the relief sought. The Rule further stipulates that the application shall be accompanied by an affidavit or affidavits verifying the facts stated therein by reference to the numbers of the paragraphs of the application containing the facts. Such affidavits shall be restricted to facts which are within the deponent's own knowledge and shall further state whether the applicant has filed, in any capacity whatsoever, any previous application on the same facts and, if so, the orders passed.

8. Chapter IV of the Allahabad High Court Rules provides for affidavits and Oath Commissioners. Rule 9(2) stipulates that an affidavit filed on behalf of the petitioner(s), appellant(s) or, as the case may be, revisionist(s), shall mention the relationship, association or connection of the deponent with the person on whose behalf it has been filed. Rule 12 stipulates that except on interlocutory applications, an affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove. On an interlocutory application where a particular fact is not within the deponent's own knowledge but is based on his belief or information received from others, which he believes to be true, the deponent is required to use the expression that he is informed and verily believes such information to be true or words to that effect.

12. Affidavits under the CPC are governed by the provisions of Order XIX. Order XIX Rule 3 provides that affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are

stated. The Allahabad amendment to Order XIX, inter alia, contains the following in Rule 9:

9. Except in interlocutory proceedings, affidavits shall strictly be confined to such facts as the declarant is able of his own knowledge to prove. In interlocutory proceedings, when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant shall use the expression 'I am informed', and, if such be the case, and verily believe it to be true, and shall state the name and address of, and sufficiently describe for the purposes of identification, the person or persons from whom he received such information. When the application or the opposition thereto rests on facts disclosed in documents or copies of documents produced from any Court of Justice or other source, the declarant shall state what is the source from which they were produced, and his information and belief as to the truth of the facts disclosed in such documents. (22-5-1915).

18. These principles which have been laid down by the judgments of the Constitution Benches of the Supreme Court elucidate the binding position in law. The right which is sought to be pursued in the exercise of writ jurisdiction under Article 226 of the Constitution is a right personal to the petitioner. The only exception which is contemplated, is in the case of a writ of habeas corpus or in a writ of quo warranto. The exception in the case of a writ of habeas corpus is necessitated in order to protect the value which the common law and the Constitution place on personal liberty which enables a writ to be moved by a person other than a person whose right is sought to be espoused. Similarly, the object and purpose of a writ of quo warranto is to protect a public office from a usurper who is continuing in the office in breach of the qualifications or eligibility prescribed for holding such an office of a public nature. The Division Bench of this Court, when it decided the case of Prabhu Nath Prasad Gupta (supra) was not really called upon to decide whether a writ petition could be instituted through the holder of a power of attorney. That was a case where an order of eviction was sought to be challenged not by the person to whom an accommodation had been allotted and who was sought to be removed but by his mother. This was clearly not permissible since the petitioner who had moved those proceedings was not espousing a case personal to her nor was she authorised to do so as an agent of the person who was directly affected.

19. This decision of the Division Bench in Prabhu Nath Prasad Gupta holds, however, that it becomes immaterial whether the power of attorney holder or someone else files a case in his name for the person aggrieved or the person aggrieved files a case through the power of attorney holder, and the petition itself would not be maintainable. With great respect, we are unable to agree with this statement of law contained in the judgment of the Division Bench. We clarify that there can be no dispute about the principle which has been laid down by the Division Bench to the effect that the petitioner in the exercise of the writ jurisdiction under Article 226 of

the Constitution must pursue a claim, right or cause of action personal to him or her. However, when the petitioner seeks to do so through the holder of a power of attorney, the donee of the power of attorney is no more than an agent who acts for and on behalf of the donor, for the reason that the donor is, for some reason, unable to present himself or herself before the Court in order to pursue the proceedings. The donor of the power of attorney may be incapacitated from doing so temporarily for reasons or exigencies, such as exigencies of service or station or, for that matter, an ailment which immobilizes him or her from pursuing the proceedings personally. The important point to be noted, as a matter of principle, is that when the donor authorises the donee to act on his or her behalf, the donee acts as an agent and is subject to the limitations which are created by the instrument by which he is authorised. The donee does not pursue a claim or right personal to him but it is the donor who espouses his own personal right through the holder of a power of attorney.

24. When a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court.

".....25. Having held so, we must, at the same time, emphasize the necessity of observing adequate safeguards where a writ petition is filed through the holder of a power of attorney. These safeguards should necessarily include the following:

(1) The power of attorney by which the donor authorises the donee, must be brought on the record and must be filed together with the petition/application;

(2) The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and (3) The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

26. For these reasons, we hold and have come to the conclusion that the question referred for adjudication before the Full Bench must be answered in the affirmative and is accordingly answered, subject to due observance of the safeguards which we have indicated above."

Thus, in view thereof, this Court is prima facie satisfied that Sri Aditya Mishra did not have any authority to institute the petition in the name of Smt. Shams Kazmi.

13. Upon perusal of the material available on record, this Court finds that the statement given by Sri Aditya Mishra before this Court is also misleading and incorrect, inasmuch as, first he had stated that he is able to read and understand English reasonably and Hindi very well then he stated that he is not educated and further he improved his statement by saying that he is intermediate pass. This also casts a doubt, inasmuch as, the affidavit which has been filed by Sri Aditya Mishra in support of the petition, he has stated his qualification to be a Graduate and has shown his occupation as business.

The contents of the paragraphs signed and filed by Sri Aditya Mishra before this Court along with the petition is being reproduced hereinafter for ready reference:

"Affidavit "I, Aditya Mishra, aged about 44 years s/o Shri Jagat Narayan Mishra, Qualification: Graduate, Occupation: Business, R/o C-3/67, Vishesh Khand, Gomti Nagar, Lucknow, the deponent, do hereby solemnly affirm and state on oath as under:

1. That the petitioner is a very old Muslim pardanasheen lady, as such authorized the deponent as Pairokar of the petitioner to swear this affidavit on her behalf, as such, he is fully conversant with the facts and of the case and those deposed hereunder.

2. That the contents of 1 to 30 paragraph of the accompanying writ petition are true to my knowledge, while those of paras 31 are believed by me to be true on the basis of legal advice.

3. That the annexures 1 to 16 the present petition are true copies of their originals duly compared."

14. Thus, this Court is prima facie again satisfied that the statement as given by Sri Aditya Mishra before the Court is not inspiring at all and appears to be motivated.

15. This conduct, statement of Sri Aditya Mishra is to be seen in context of the statement given by Smt. Shams Kazmi who categorically denies knowing Sri Aditya Mishra or having seen him prior to today i.e. 20.05.2022.

16. Sri Aditya Mishra also could not bring before the Court any document of authorization nor did he have the courage to bring the Will which is said to have been executed in his favour by late Sri Nawab Kazim Ali Khan. Especially, when this Court in its order dated 12.05.2022 had clearly directed that Sri Mishra shall also carry the authority or power of attorney on the basis of which the petition has been filed and as per his own statement, he states that he has a Will in his favour which gave him the authority, yet he did not produce the same or carry it with him.

17. The affidavit which has been filed and is reproduced hereinabove states that the contents of the petition which has been filed are true to his personal knowledge. He has never been authorised nor has been conducting the proceedings before any of the Court either on behalf of Nawab Kazim Ali



Khan and thereafter upon his death on behalf of Smt. Shams Kazmi. Sri Kazim Ali Khan is reported to have died on 06.05.2021 and Smt. Shams Kazmi has been substituted in his place in the proceedings which emanate from the Court of SDO, Sarojini Nagar, Lucknow. Thus, there could be no reason, when he had not been authorized nor appearing in any of the proceedings, yet how could he swear the affidavit on his personal knowledge which also prima facie does not inspire confidence.

18. Noticing the aforesaid, the Court takes strong exception to the manner in which an attempt has been made to file and introduce false affidavits and pleadings before this Court and a petition is sought to be filed in the name of Smt. Shams Kazmi who did not authorize Sri Aditya Mishra to file the same. The act prima facie amounts to filing false affidavits which not only amounts to polluting the pure stream of justice but also amounts to committing criminal contempt, apart from the fact makes a person susceptible to a prosecution in terms of Section 195 & Section 340 Cr.P.C.

19. The Court notices the dictum of the Apex Court in the case of Dhananjay Sharma Vs. State of Haryana and Others 1995 (3) SCC 757; Dalip Singh Vs. State of Uttar Pradesh and Others 2010 (2) SCC 114; ABCD Vs. Union of India, 2020 (2) SCC 52 and wherein the issue of filing false affidavit and polluting the stream of justice has been considered in detail.

20. In view of the aforesaid, the Court is prima facie satisfied that the matter requires action and directs the Senior Registrar of this Court to do the needful to launch a prosecution against Sri Aditya Mishra, Son of Jagat Narain Mishra, R/o C-367, Vishesh Khand, Gomti Nagar, Lucknow before the Competent Court under Section 195 Cr.P.C. and 340 Cr.P.C.

21. Let this matter be placed before the Court on 04th July, 2022, as fresh on which date the Senior Registrar of this Court shall inform and place the action taken report.

22. Since the instant petition has not been filed by Smt. Shams Kazmi and for the reasons aforesaid, cannot be treated to be a petition on her behalf, therefore, this petition shall stand dismissed, however, this dismissal shall not come in the way of Smt. Shams Kazmi, in case if she genuinely wishes to challenge order impugned in this very petition.

Order Date :- 20.5.2022 Asheesh After the order was passed but before it could be signed after the lunch recess, Mr. Akhilesh Kalra, learned counsel appearing on behalf of Sri Aditya Mishra as petitioner in the instant case also appeared before the Court and stated that before signing the order, he may be heard for 10 minutes, he was granted his audience where he made a feeble attempt to explain the filing of the petition by entering into merits of the controversy. After hearing him he was informed that the order passed by the Court prior to lunch still stands."

(emphasis supplied)

4. In compliance with the order dated 20.05.2022 passed in Writ B No.251 of 2022, aforesaid, a Complaint Case No.58823 of 2022 "State of U.P. through Senior Registrar vs. Aditya Mishra" came to be lodged against the applicant.

5. The foremost contention of learned counsel for the applicant is that neither complainant nor witnesses in support of complainant's version were examined by the learned trial Court, therefore, the impugned summoning order dated 01.07.2022 passed in Complaint Case No.58823 of 2022 including the entire proceedings of the aforesaid complaint case is vitiated.

6. It is submitted by learned counsel for the applicant that the applicant is innocent against whom the aforesaid criminal complaint came to be lodged due to misunderstanding. His further submission is that the applicant was not afforded any opportunity of showing cause against him while the order dated 20.05.2022 was passed by a Co-ordinate Bench of this Court in Writ B No.251 of 2022 which ultimately led to filing of Complaint Case No.58823 of 2022.

7. It is also submitted by learned counsel for the applicant that keeping in view the facts and circumstances of the case, the offences under Sections 193, 196, 200, 209, 466, 467 & 468 I.P.C. read with Section 340/195 Cr.P.C. are not at all made out against the applicant because of conspicuous absence of ingredients which constitute aforesaid offences. He has, thus, submitted that the proceedings of instant complaint case is nothing but a malicious prosecution of the applicant as well as an abuse of process of the Court.

8. Per contra, Sri Alok Saran, learned A.G.A. for the State and Sri Gaurav Mehrotra, learned counsel for the opposite party no.2 vehemently opposed the aforesaid submissions advanced by learned counsel for the applicant. They have submitted that the facts which led to filing of instant complaint constitute offences under Sections 193, 196, 200, 209, 466, 467 & 468 I.P.C. read with Section 340/195 Cr.P.C.. The applicant was afforded reasonable opportunity to explain his conduct by a Co-ordinate Bench of this Court while passing the order dated 20.05.2022 in Writ B No.251 of 2022.

9. They have also submitted that the instant complaint filed by the complainant in his official capacity, therefore, recording of his statement in support of complaint is not a condition precedent for summoning the applicant to face trial.

10. They have also submitted that the learned trial Court has summoned the applicant to face trial under Sections 193, 196, 200, 209, 466, 467 & 468 I.P.C. read with Section 340/195 Cr.P.C. vide order dated 01.07.2022. The said order can be assailed by filing criminal revision by the applicant, therefore, by circumventing the statutory remedy available to the applicant, the relief prayed for cannot be granted.

11. Section 200 Cr.P.C. is quoted herein below :

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

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

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

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

Provided further that if the Magistrate ....."

12. In view of the provisions contained in proviso (a) to the Section 200 Cr.P.C., the contention of learned counsel for the applicant is to the effect that the proceedings of Complaint Case No.58823 of 2022 is vitiated, in want of non examination of complaint or other witnesses is wholly misconceived.

13. Hon'ble the Apex Court in Deputy Chief Controller of Imports and Exports v. Roshanlal Agarwal, reported in AIR 2003 SC 1900 has held that once a complaint is filed by a public servant in discharge of his official duty, in view of proviso (a) to Section 200 Cr.P.C., the Magistrate is fully justified in taking the cognizance of the offences without recording the statement of the complainant.

14. Hon'ble the Apex Court in Nupur Talwar v. Central Bureau of Investigation and another, reported in (2012) 11 SCC 465 has held as under :-

"39. The same issue was examined by this Court in Jagdish Ram v. State of Rajasthan [(2004) 4 SCC 432 : 2004 SCC (Cri) 1294] wherein this Court held as under: (SCC p. 436, para 10) "10. The contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet the entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well-written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, 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 be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. (Chief Controller of Imports & Exports v. Roshanlal

Agarwal [(2003) 4 SCC 139 : 2003 SCC (Cri) 788] .)"

(emphasis supplied) All along having made a reference to the words "there is sufficient ground to proceed" it has been held by this Court that for the purpose of issuing process, all that the court concerned has to determine is: whether the material placed before it "is sufficient for proceeding against the accused"? The observations recorded by this Court extracted above, further enunciate that the term "sufficient to proceed" is different and distinct from the term "sufficient to prove and establish guilt".

15. Thus, so far as the contention of learned counsel for the applicant to the effect that the complaint does not disclose ingredients constituting the offences under Sections 193, 196, 200, 209, 466, 467, 468 I.P.C. read with Section 340/195 Cr.P.C. is concerned, it would be apposite to refer to the judgment of Hon'ble the Apex Court rendered in State of Andhra Pradesh v. Gourieshetty Mahesh, reported in (2010) 6 SCC 588 wherein it has been held that while exercising jurisdiction under Section 482 of Cr.P.C., the Court would not ordinarily embark upon an enquiry into whether the evidence is reliable or not or whether there is reasonable possibility that the accusation would not be sustained.

16. A Three Judges Bench of Hon'ble Apex Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others, reported in (1983) 1 SCC 1 has held as under :

"6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code.

7. The limits of the power under Section 482 were clearly defined by this Court in Raj Kapoor v. State [(1980) 1 SCC 43 : 1980 SCC (Cri) 72] where Krishna Iyer, J. observed as follows: [SCC para 10, p. 47: SCC (Cri) p. 76] "Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for

specific power under the same Code."

8. Another important consideration which is to be kept in mind is as to when the High Court acting under the provisions of Section 482 should exercise the inherent power insofar as quashing of criminal proceedings are concerned. This matter was gone into in greater detail in *Smt Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507 : 1976 Supp SCR 123 : 1976 Cri LJ 1533] where the scope of Sections 202 and 204 of the present Code was considered and while laying down the guidelines and the grounds on which proceedings could be quashed this Court observed as follows: [SCC para 5, p. 741 : SCC (Cri) pp. 511-12] "Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code.

(emphasis supplied)

17. It is not in dispute that the impugned summoning order dated 01.07.2022 has come to be passed against the applicant. The proceeding of Complaint Case No.58823 of 2022 is at initial stage. At this stage, the learned Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Moreover, the impugned order dated 01.07.2022 being revisable, the statutory remedy of filing a criminal revision is available to the

applicant. Therefore, to invoke the jurisdiction of this Court under Section 482 Cr.P.C., at this initial stage by circumventing the statutory remedy of filing criminal revision against the impugned order, appears by itself to be abuse of process of this Court by the applicant.

18. In view of aforesaid discussion, the instant application under Section 482 Cr.P.C. filed by the applicant lacks merit, which is accordingly dismissed.

(Ajai Kumar Srivastava-I, J.) Order Date :- 4.8.2022 Mahesh