Supreme Court of India
Deepak Gaba vs State Of Uttar Pradesh on 2 January, 2023
Author: Sanjiv Khanna
Bench: Sanjiv Khanna, M.M. Sundresh

NON-R

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2328 OF 2022

DEEPAK GABA AND OTHERS ...

VERSUS

STATE OF UTTAR PRADESH AND ANOTHER ... R

JUDGMENT

SANJIV KHANNA, J.

This appeal by Jotun India Private Limited (JIPL), Deepak Gaba - Regional Sales Manager - North (Decorative), and Sanjay Ramachandran Nair - Sales and Marketing Director (Decorative), takes exception to the order dated 30th March 2022, whereby the High Court of Judicature at Allahabad has dismissed their petition under Section 482 of the Code of Criminal Procedure, 19731, challenging the summoning order dated 19th July 2018 passed by the Additional Chief Judicial Magistrate, Court No. 8, Ghaziabad, Signature Not Verified Uttar Pradesh, the operative portion of which, reads as under: Digitally signed by BABITA PANDEY Date: 2023.01.02 17:09:21 IST Reason:

> "On the basis of evidence available on records and on the basis of statement of Complainant, the charge is 1 For short, the 'Code'.

appearing prima facie regarding showing forged demand of Rs. 6,37,252.16 against the Complainant by the Opponents Manager Jotun India Pvt. Ltd. Delhi, Chief Manager Jotun India Pvt. Ltd. Andheri East, Mumbai.

Hence, the Opponents Manager Jotun India Pvt. Ltd. through Chief Manager Jotun India Pvt. ltd. Andheri East, Mumbai is liable to (be) summoned for trial in section 406 I.P.C. for trial prima facie." (emphasis supplied)

2. Interestingly, in the cause title of the private complaint filed by Shubhankar P. Tomar, the proprietor of Adhunik Colour Solutions, respondent no. 2 - complainant, states that the complaint

was directed against:

(a) Manager, JIPL, having its office at Saket District Centre, New Delhi;

(b) Chief Manager, JIPL, having its office at Andheri East, Mumbai;

(c) Jotun S/S Hystadveien, Sanddefjord, Norway2; and

(d) Orkala ASA Nedre Skoyen vei, Oslo, Norway3.

3. The Manager and the Chief Manager, JIPL have not been named and identified in the complaint. Neither does the summoning order name the Manager or the Chief Manager, JIPL, who have been 2 For short, 'Jotun S/S'.

3 For short, 'Orkala ASA'.

summoned to stand trial under Section 406 of the Indian Penal Code, 18604.

4. It is an accepted and admitted position that JIPL is a company incorporated under the laws of India and is a part of multinational group mainly dealing in decorative paints and performance coatings (marine, protective and powder coatings). JIPL and Shubhankar P. Tomar, the proprietor of respondent no. 2 - complainant, Ghaziabad, Uttar Pradesh, had entered into dealership agreements5, for supply and purchase of decorative paints in the State of Uttar Pradesh and Delhi region respectively.

5. On 27th September 2016, JIPL filed two separate criminal complaints under Section 138 of the Negotiable Instruments Act, 18816 against Shubhankar P. Tomar, on account of dishonour of cheque no. 463151 drawn on Canara Bank, Patparganj Branch, 4 For short, the 'IPC'.

5 The dates of execution of these agreements are disputed. As per the appellants, the agreements are dated 11th April 2012 and 27th October 2013. As per respondent No. 2 - complainant, the agreements were executed on 20th March 2012 and 30th January 2013. The complaint filed by respondent no. 2 - complainant refers to a third agreement dated 16th May 2014. In the counter affidavit filed by respondent no. 2 - complainant before this court, execution of the agreement dated 20th March 2012 is accepted. It is stated that despite repeated protests, a copy of the agreement dated 20th March 2012 was not furnished to respondent no. 2 - complainant. However, no such assertion is made with regard to the agreement dated 30th January 2013 and 16th May 2014. In fact, an extract of the agreement dated 16th May 2014 is enclosed as Annexure R2/5 to the counter affidavit. The appellants have relied on the clauses of the agreement dated 11th April 2012 enclosed as Annexure P-1, as per which the dealer had agreed to deliver the products to JIPL's direct clients, when requested and if within a reasonable distance from the location of the dealer. Another clause permitted JIPL to enter into a direct contractual relationship with specific customers, if in the

opinion of JIPL they could be served better by JIPL. In such situations the dealer had option to act as an intermediary. The agreement has several clauses relating to prices, invoice and payment. For the purpose of this decision, we are not required to examine and decide these controversies and disputes. 6 For short, the 'NI Act'.

Delhi for Rs. 4,99,610/-, and cheque no. 003252 drawn on HDFC Bank, Chander Nagar, Ghaziabad, Uttar Pradesh for Rs. 1,93,776/- , both dated 8th August 2016. As per the complaints, the cheques were drawn by respondent no. 2 - complainant for discharge of the outstanding amount payable by him to JIPL. The cheques on presentation were dishonoured due to 'insufficient funds' vide memo issued by the respective banks on 12th August 2016. Thereupon, legal notice of demand was issued on behalf of JIPL by speed post and courier on 20th August 2016, which as per the tracking report of the postal authorities, was served on the Ghaziabad address on 24th August 2016, albeit the notice issued at the Delhi address was returned by the postal authorities with the remark "item delivery attempt/unclaimed" dated 23rd August 2016.

6. The facts stated noted above, though admitted, do not find any mention in the private complaint filed by respondent no. 2 - complainant on 23rd December 2017, which is the subject matter of the present appeal and in which the summoning order dated 19th July 2018 was passed by the Additional Chief Judicial Magistrate, Ghaziabad, which order, as noticed above, has been upheld by the High Court.

7. The private complaint filed by respondent no.2- complainant accepts the factum of commercial relationship between the parties, and states that the agreements dated 20th March 2012, 30th January 2013, and 16th May 2014 were executed. It is not specifically alleged that copies of agreements dated 30th January 2013 and 16th May 2014 were not furnished. Regarding the agreement dated 20th March 2012, it is alleged that the agreement was not provided and therefore, respondent no. 2 - complainant had not carried out any work. However, supplies were made on the Ghaziabad account. It is alleged that respondent no. 2 - complainant had given two blank cheques bearing Nos. 580251 drawn on the Bank of Baroda and 003251 drawn on HDFC Bank as security when they had executed the agreements dated 20th March 2012 and 30th January 2013. JIPL were not issuing bills on time despite reminders, but would insist upon payment of money. One forged bill of Rs.79,752/- was raised despite not ordering any goods, and this amount was shown as the balance payable to JIPL as on 30th March 2013. This bill was withdrawn and taken back, as respondent no. 2 - complainant had refused to make payment towards a false bill. Cheque bearing no. 463151 drawn on Canara Bank was given as security for a new dealership/direct customer agreement dated 16th May 2014. For this, written confirmation was taken from Saurav Gaur, a person authorised by JIPL. Further, JIPL would send goods to respondent no. 2 - complainant and issue bills in their name, without asking them. Respondent no. 2 - complainant was also asked to collect the money from third parties. These pleas, when escalated with JIPL, were ignored. Bill of Rs. 53,215/- in the name of respondent no. 2 - complainant, was sent by JIPL to Manav Rachna International directly. Another bill of Rs. 52,000/- was issued in the name of respondent no. 2 - complainant, but they were not concerned whatsoever with the said bill. The bills issued were paid by respondent no. 2 - complainant by bank transfer to JIPL. Respondent no. 2 - complainant was falsely billed to the extent of Rs. 2,00,000/-. Dhiraj and Saurabh Gaur of JIPL had also forged a bill

of Rs. 4,33,633.47p. Respondent no. 2 - complainant had protested by e-mail on 2nd December 2014 and several reminders were sent thereafter. Respondent no. 2 - complainant had thereupon informed JIPL on 13th July 2015 and 19th August 2015 that 242 buckets of 20 litres and 4 litres were available and should be taken back and adjusted against the outstanding amount. However, no reply was received in spite of reminders. E-mails were also written on 4th January 2016 and 11th January 2016. Since there was no response from JIPL, respondent no. 2 - complainant had written letters to Jotun S/S and Orkala ASA, the shareholders of JIPL. They had also sent a registered notice to JIPL stating that Rs.

6,37,252.16p., shown as outstanding amount due and payable by respondent no. 2 - complainant to JIPL, was forged and incorrect.

8. At the pre-summoning evidence stage, two witnesses, namely Shubhankar P. Tomar and his employee Sakshi Tilak Chand, were examined. Shubhankar P. Tomar had deposed that JIPL had violated the terms of service and had cheated him, and a wrong outstanding amount of Rs. 6,37,252.16p. had been shown as payable. He had not received a copy of the written agreement for the purchase of paints from JIPL. He had furnished one blank cheque to JIPL. JIPL would not send invoices on purchase of the goods. Thereafter, JIPL started selling goods to third parties showing that the goods were being sold to respondent no. 2 - complainant. Despite raising objections with the sales manager and manager, JIPL had continued to sell goods to third parties in the name of respondent no. 2 - complainant. Demand of Rs. 6,37,252.16p. was raised against them till the year 2016, in respect of which, a notice was also issued.

9. Sakshi Tilak Chand had deposed that he was working for respondent no. 2 - complainant and used to interact with JIPL. There were discrepancies in the goods ordered by respondent no. 2 - complainant, and the goods delivered by JIPL. The customers would not accept the goods on account of colour mismatch. When the issue was raised, JIPL had asked them to keep the goods, and they would take the goods later. Despite visiting the offices of JIPL and filling up forms for return of the goods, no concrete steps were taken. The goods were never taken back. JIPL would issue statement of accounts without deducting or giving credit of the goods returned by respondent no. 2 - complainant.

10. The private complaint filed by respondent no. 2 - complainant had invoked Sections 405, 420, 471, and 120B of the IPC. However, by the order dated 19th July 2018, summons were directed to be issued only under Section 406 of the IPC, and not under Sections 420, 471 or 120B of the IPC. We have quoted the operative and reasoning portion of the summoning order, that records in brief the assertions in the complaint, to hold that respondent no. 2 - complainant had shown that “a forged demand of Rs. 6,37,252.16p had been raised by JIPL, which demand is not due in terms of the statements made by Shubhankar P. Tomar and Sakshi Tilak Chand”. The order states that respondent no. 2 - complainant had filed photocopy of “one” e-mail as per documents 1 to 34, but the narration and the contents of the e-mail is not adverted to and elucidated.

11. In case of a private complaint, the Magistrate can issue summons when the evidence produced at the pre-summoning stage shows that there is sufficient ground for proceeding against the accused.

The material on record should indicate that the ingredients for taking cognizance of an offence and issuing summons to the accused is made out.7

12. In the present case, the trial court did not issue summons under Sections 420 and 471 of the IPC, or for that matter, invoke the provision relating to conspiracy under Section 120B of the IPC. Although the summoning order dated 19th July 2018 does not deal with these sections of the IPC, we deem it imperative to examine the ingredients of the aforesaid sections, and Section 406 of the IPC, and whether the allegations made in the complaint attract the penal provisions under the relevant sections of the IPC. We have undertaken this exercise in order to carry out a complete and comprehensive analysis of the factual matrix and the legal provisions, and rule out possibility of an error to the detriment of respondent no. 2 - complainant.

7 Dipakbhai Jagdishchndra Patel v. State of Gujarat, (2019) 16 SCC 547; Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609; and Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC

749. Proviso to Section 200 of the Code is not applicable in the present case.

13. Section 406 of the IPC8 prescribes punishment for breach of trust which may extend to three years or with fine or with both, when ingredients of Section 405 of the IPC are satisfied. For Section 406 of the IPC to get attracted, there must be criminal breach of trust in terms of Section 405 of the IPC.9 For Section 405 of the IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

8 406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9 405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction.

Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, thought Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust. (Explanations 1 and 2 and illustrations (a) and (e) to Section 405 of the IPC are excluded, as they are irrelevant.)

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

14. Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.10

15. However, in the instant case, materials on record fail to satisfy the ingredients of Section 405 of the IPC. The complaint does not directly refer to the ingredients of Section 405 of the IPC and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account. On these aspects, the summoning order is equally 10 Sudhir Shantilal Mehta v. Central Bureau of Investigation, (2009) 8 SCC 1. quiet, albeit, it states that “a forged demand of Rs. 6,37,252.16p had been raised by JIPL, which demand is not due in terms of statements by Shubhankar P. Tomar and Sakshi Tilak Chand”. A mere wrong demand or claim would not meet the conditions specified by Section 405 of the IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if respondent no. 2 - complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405 of the IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405 of the IPC, a mere dispute on monetary demand of Rs. 6,37,252.16p, does not attract criminal prosecution under Section 406 of the IPC.

16. In order to apply Section 420 of the IPC, namely cheating and dishonestly inducing delivery of property, the ingredients of Section 415 of the IPC have to be satisfied. To constitute an offence of

cheating under Section 415 of the IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415 of the IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating.11 Explaining the contours, this Court in Mohd. Ibrahim and Another v. State of Bihar and Others12, observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.

17. In the present case, the ingredients to constitute an offence under Section 420 read with Section 415 of the IPC are absent. The pre- summoning evidence does not disclose and establish the essential ingredients of Section 415 of the IPC. There is no assertion, much less legal evidence, to submit that JIPL had engaged in dishonesty, 11 Iridium India Telecom Limited v. Motorola Incorporated and Others, AIR 2011 SC 20. 12 (2009) 8 SCC 751. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to respondent no. 2 - complainant. We respectfully concur with the clarification as well as the ratio explaining Section 415, 464 etc. of the IPC.

fraud, or intentional inducement to deliver a property. It is not the case of respondent no. 2 - complainant that JIPL had tried to deceive them, either by making a false or misleading representation, or by any other action or omission; nor is it their case that JIPL had offered any fraudulent or dishonest inducement to deliver a property. As such, given that the ingredients of Section 415 of the IPC are not satisfied, the offence under Section 420 of the IPC is not made out.

18. Section 471 of the IPC13 is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or electronic record. This Court in Mohd. Ibrahim and Another (Supra), has elucidated that the condition precedent of an offence under Section 471 of the IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471 of the IPC, it has to be proven that the document was "forged" in terms of Section 47014, and "false" in terms of Section 464 of the 13 471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

14 470. Forged document.—A false document or electronic record] made wholly or in part by forgery is designated "a forged document or electronic record" IPC15. Section 470 lays down that a document is 'forged' if there is:

(i) fraudulent or dishonest use of a document as genuine; and (ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one. Section 470 defines a forged document as a false document made by forgery. As per Section 464 of the IPC, a person is said to have made a 'false document':

(i) if he has made or executed a document claiming to be someone else or authorised by someone else; (ii) if he has altered or tampered a document; or (iii) if he has obtained a document by practising deception, or from a person not in control of his senses. Unless, the document is false and forged in terms of Sections 464 and 470 of the IPC respectively, the requirement of Section 471 of the IPC would not be met.

15 464 – Making a false document .— A person is said to make a false document or false electronic record— First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,with the intention of causing it to be believed that such document or part of document, electronic record or 2 [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, singed, sealed, executed or affixed; or Secondly.—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

19. In the counter affidavit filed by respondent no. 2 - complainant, it is submitted that a few bills were faked/forged, as the goods were not ordered. Reference is made to balance of Rs. 79,752/- shown on 30th March 2013, which was objected to and thereupon as per the complaint itself the demand/bill was withdrawn. This would not make the bill a forged document or false document, in terms of Sections 470 and 464 of the IPC. The complaint was made in the year 2017, four years after the bill/claim had been withdrawn, reflecting no criminal intent. The bill was not fake or forged, and at best it could be stated that it was wrongly raised. Moreover, the pre- summoning evidence is silent with regard to this bill and mens rea on the part of the accused is not shown and established. Same would be the position with regard to the bill/invoice of Rs. 53,215/- which was as per the complaint, sent directly to Manav Rachna International at Faridabad. The bill/invoice is not

doubted as 'forged' or 'false' within the meaning of Sections 470 and 464 of the IPC. No doubt, Adhunik Colour Solutions is mentioned as the buyer, and Manav Rachna International as the consignee, albeit the invoice was issued by JIPL. Pre-summoning evidence does not help and make out a case predicated on this bill/invoice. In the counter affidavit filed before us, it is alleged that since this bill was sent to Faridabad, JIPL had added the GST in the invoice. It is argued that had respondent no. 2 - complainant supplied the goods, instead of GST, VAT as applicable in Delhi would have been levied, as respondent no. 2 - complainant was based in Delhi. This argument is rather fanciful and does not impress us to justify summoning for the offence under Section 471 of the IPC. Besides, the assertion is not to be found in the complaint, and cannot be predicated on the pre-summoning evidence. For completeness, we must record that the appellants have placed on record the dealership agreement dated 11th April 2012, which, inter alia states that JIPL has a discretion to establish direct contractual relationship with specific customers, if JIPL feels they can be served better. Further, in such a situation, the dealer, if JIPL agrees, can act as an intermediary. Assuming the bill/invoice had wrongly recorded respondent no. 2 - complainant as the buyer, it is not doubted that Manav Rachna International was the consignee. At best, respondent no. 2 - complainant would not be liable, had Manav Rachna International failed to pay. Non-payment is also not alleged in the complaint or the pre-summoning evidence. Reliance on objections vide e-mails dated 4th July 2014 and 21st July 2014 are of no avail, as they are for the period prior to 31st July 2014, when the bill/invoice was raised.

20. It is evident from the pre-summoning evidence led and the assertions made in the criminal complaint that the dispute raised by respondent no. 2 - complainant primarily pertains to settlement of accounts. The allegations are: (i) goods supplied by JIPL were not as per the requirements and demands of respondent no. 2 - complainant, (ii) goods supplied were different from the order placed, and (iii) goods lying with, and returned by respondent no. 2

- complainant have not been accounted for. These assertions, even if assumed to be correct, would not fulfil the requirements of Section 405 of the IPC, or for that matter Sections 420 or 471. The material on record does not reflect and indicate that JIPL indeed had the dishonest/culpable intention for the commission of the alleged offences under the IPC. Unless the ingredients of aforesaid Sections of the IPC are fulfilled, the offence under Section 120-B of the IPC, for criminal conspiracy, would not be made. In fact, a combined reading of the complaint and the pre-summoning evidence does not disclose any element of criminal conspiracy as per Section 120-A of the IPC. The complaint discloses a civil dispute and grievance relating to the claim made by JIPL. What is challenged by respondent no. 2 - complainant is the demand of Rs. 6,37,252.16p raised by JIPL as the amount payable till the year ending 2016. This assertion made by JIPL is questioned as incorrect. The demand, even if assumed to be wrong, would not satisfy the ingredients of Section 405, or Sections 420 or 471 of the IPC, so as to justify the summoning order. As noted above, JIPL had filed a criminal case under Section 138 of the NI Act as two cheques for Rs. 1,93,776/- and Rs. 4,99,610/- issued by them, on presentation, were dishonoured on account of 'insufficient funds'.

21. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations

pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in Thermax Limited and Others v. K.M. Johny16, as it refers to earlier case laws in copious detail. In Thermax Limited and Others (Supra), it was pointed that the court 16 (2011) 13 SCC 412.

should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued.17 Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the 17 Birla Corporation Limited v. Adventz Investments and Holdings Limited and Others, (2019) 16 SCC 610; Pepsi Foods Ltd. (Supra); and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420.

offence. It should not be passed lightly or as a matter of course.

When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

22. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act No. 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused.18 In the present case, the said exercise has not been undertaken. 18 Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638; Abhijit Pawar v. Hemant Madhukar Nimalkar, (2017) 3 SCC 528; and Birla Corporation Limited (Supra).

23. The order sheet of the trial court enclosed with the appeal reveals that notwithstanding that the summoning order was limited to unnamed Manager and Chief Manager of JIPL, the Additional Chief Judicial Magistrate had deemed it appropriate to issue non-bailable warrant. The non-bailable warrant was not issued in the name of any person but by designation against the Chief Manager JIPL, Andheri East, Mumbai. This was also one of the reasons that had prompted the appellants to the file the petition under Section 482 of the Code.

24. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge.19 Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, 19 Birla Corporation Limited (Supra); Mehmood Ul Rehman (Supra); R.P. Kapur v. State of Punjab, AIR 1960 SC 866; and State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) SCC 335. on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.

25. For the aforesaid reasons, the appeal is allowed. The order of the High Court dated 30th March 2022 in the Application u/s 482 No. 31828 of 2019; the summoning order dated 19th July 2018 in the Complaint No. 3665 of 2017 and the order issuing non-bailable warrant dated 3rd June 2019 in the above complaint passed by the Additional Chief Judicial Magistrate, Court No. 8, Ghaziabad, Uttar Pradesh are set aside and quashed.

.....J.

(SANJIV KHANNA) .....J.

(J.K. MAHESHWARI) NEW DELHI;

JANUARY 02, 2023.