Kailash Chaudhari and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Jun-04-1993

Reported in : 1994CriLJ67

Judge : S.R. Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 156(3), 190, 190(1), 200, 201, 202, 203, 204, 204 and 482; Indian Penal Code (IPC) - Sections 147, 323, 397(2), 452, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 561A; Code of Civil Procedure (CPC) - Sections 151; Constitution of India - Articles 14, 21 and 215; Administrative Law

Appeal No. : Criminal Misc. Appln. No. 8762 of 1993

Appellant : Kailash Chaudhari and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.S. Kushwaha, Adv.

Judgement :
ORDER

S.R. Singh, J.

1. Criminal Misc. Application on hand is a petition under Section 482, Cr. P. C. filed for quashing the complaint dated 8-12-92 (Annexure 1) instituted by respondent No. 2, namely, Ramji Chaudhary. The quashing of the complaint is sought inter alia, on the grounds that the complaint is baseless, vexatious and concocted and that it discloses no offence against the applicants under Sections 147/452/323/504/506, I.P.C. It is alleged in the application that the learned Magistrate has taken cognizance of the offence and summoned the applicants under Section 190 read with Section 204 of the Code of Criminal Procedure by means of the order dated 11-2-93 in a mechanical manner without application of mind and that the issue of process by the learned Magistrate in the instant case amounts to an abuse of the process of law/Court.

2. Sri R. C. Yadav holding brief of Sri K. S. Kushwaha, learned Counsel appearing for the applicant urged that the complaint in the instant case is false, frivolous and vexatious besides being baseless and has been instituted solely with a view to harassing and harrowing the applicants. The learned Magistrate issued the process under Section 204 of the Code, process the argument, in a mechanical manner without applying his mind as to whether or not the complaint disclosed any offence and whether there were sufficient grounds to proceed against the applicants. Sri Yadav placed reliance upon a decision of this Court (Hon. D.P.S. Chauhan, J.) in Modi v. R. K. Sharma. (1991) 28 All Cri C 247 and a decision of the Supreme Court in Mrs. Dhana Laxmi v. R. Prasanna, (1990) 27 All Cri C 39 : (1990 Cri LJ 320) and urged that on the grounds aforesaid the complaint in the instant case is liable to be quashed by this Court under Section 482, Cr. P. C.

3. The petition in hand raises two questions of considerable importance as to what is the nature, scope and ambit of the powers of a Magistrate under Sections 200, 202, 203 and 204 of the Code of Criminal Procedure, 1973; and whether an order issuing process under Section 204 of the Code of Cr. Procedure by a Magistrate taking cognizance of an offence under Section 190(1)(a) is amenable to inherent jurisdiction of the High Court under Section 482, Cr. P. C.

4. In order to appreciate the first limb of the question involved in this case, it would be worthwhile to examine the nature, scope and ambit of the powers of the

Magistrate under Sections 200, 202, 203 and 204 of the Code.

5. According to Section 190, an offence is taken cognizance of by a Magistrate inter alia ! upon receiving a complaint of facts which constitute such an offence. No formal action or action of any kind whatsoever is necessary in order to take cognizance of an offence. The offence is taken cognizance of as soon as the Court competent for the purpose applies its mind to the offence with a view to initiating judicial proceedings against the offender in respect of the offence. When on receiving a complaint, the Magistrate applies his mind for the purpose of proceeding under Section 200, Cr. P. C. and the succeeding sections in Chapter XV of the Code, he is said to have taken cognizance of the offence under Section 190(1)(a) and if instead of proceeding under the chapter aforesaid, he has, in judicial exercise of his discretion, taken action of some other kind such as issuing a search warrant for the purpose of investigation or ordering investigation under Section 156(3), he cannot be said to have taken cognizance of any offence.

6. A conspectus of Sections 190(1)(a), 200, 201, 202, 203 and 204 makes it crystal clear that these provisions read together constitute an integrated procedure to be followed by a Magistrate taking congizance of an offence.

7. According to Section 200 of the Code, a Magistrate taking cognizance of an offence is required to examine upon oath the complainant and the witnesses, if any, and to record the substance of such examination except in cases covered by the provisos thereto. The Magistrate may in his judicial discretion also hold an enquiry or investigation as provided in Section 202 of the Code 'for the purposes of deciding whether or not there is sufficient ground for proceeding' and 'if after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the enquiry or investigation (if any) under Section 202, the Magistrate' is of opinion 'that there is' no sufficient ground 'for proceeding, he shall dismiss the complaint under Section 203, Cr. P. C. and in every such case, he shall briefly record his reasons for so doing and 'if in the opinion of the Magistrate, there is sufficient ground for proceeding' he shall issue summons in a summons case and may issue a warrant, or, in his discretion, a summons in a warrant case, for causing the accused to be brought or to appear for trial of the

offence.

8. Sections 203 and 204 are no doubt worded in a subjective language but the legislature has made enough precautions and provided sufficient safeguards against arbitrary exercise of powers by the Magistrate under Sections 203 and 204 of the Code. The expression 'after considering the statement' and 'shall briefly record his reasons' occurring in Section 203 of the Code conjointly constitute a strong in built safeguard against arbitrary dismissal of a complaint. It is evident that the Magistrate is required to form his opinion after considering the statements etc. and record reasons for dismissal of a complaint. This necessarily implies that though couched in a subjective language-- 'if of opinion' Section 203 is really an admixture of subjective as also objective form of power. In Asbbridge Investment Ltd. v. Minister of Housing and Local Government, (1965) 1 WLR 1320 a case on administrative law there was vested a power with the Minister to do certain thing 'if the minister is of opinion', Lord Denning M. R. said that the Court could quash the minister's order 'if the minister had acted on no evidence or unreasonably or had gone wrong in law.'--H.W.R. Wade on Administrative law 4th Edn., p. 379.

9. In Section 204 of the Code, the Magistrate is no doubt expressly not enjoined with a duty to record reason for issuing process under the section but in my opinion, Section 204 cannot be read in isolation. The powers of the Magistrate under Section 204 have to be read and construed in the context of his powers under Sections 202 and 203. The Magistrate records statements of the complainant and of the witnesses (if any) and holds enquiry or investigation under Sections 200 and 202 'for the purpose of deciding whether or not there is sufficient ground for proceeding.' This necessarily implies that the Magistrate is duty bound to apply his mind to the materials on record for the purpose of forming an opinion whether or not there is sufficient ground for proceeding. I am of the firm view that what is explicit in Section 203--'recording of reasons in brief'-- is implicit in Section 204 of the Code. The Magistrate while issuing process under Section 204 must, in brief, set out the allegations made in the complaint and the material brought on record and must also state that in his opinion, the complaint discloses the ingredients of the offence alleged to have committed by the accused and that the material brought on record as a result of the enquiry or investigation Under Section

200 read with Section 202, prima facie, constitute valid evidence which, if believed and unrebutted at the trial would result in conviction. Any other view of the section may render it unconstitutional and violative of the right to life and liberty guaranteed by Article 21 and the right to multi-faceted equality as visualised and comprehended by Article 14 of the Constitution. It cannot be gainsaid that the concept of 'the Rule of law' is a concept flowing directly and logically from Article 14 of the Constitution and absence of arbitrariness is regarded as a facet of the principle of equality enshrined in Article 14. The fact that Section 204 if formulated in a subjective language 'if in the opinion of' and the fact that unlike the provisions of Section 203, the Magistrate while issuing a process under Section 204 is not required to record reasons, shall not make much difference inasmuch as a valid exercise of discretion requires a genuine application of mind and conscious consideration of the material on record by the Magistrate exercising powers under Section 204. The expression 'if in the opinion of Magistrate' read with expression 'there is sufficient ground for proceeding' occurring in Section 204 of the Code, in my opinion, casts a duty upon the Magistrate to record reasons, in brief, while issuing process under the section so that the accused may know whether or not the discretion has been properly exercised by the Magistrate. The expression 'if in the opinion' occurring in Section 204 is akin to the expression 'is satisfied' which may be construed as 'reasonably satisfied' and if no reasonable person would have been satisfied the Magistrate's order would be liable to be quashed.

10. H.W.R. Wade on Administrative Law, 4th Edn. p. 380 has quoted Lord Wilber-force as under: --

If a judgment required, before it can be made, existence of some facts, then, though the evaluation of those facts is for the secretary of the State alone, the Court must enquire whether those facts exist and have been taken into account, whether the judgment has been made upon a proper self-direction as to those facts, whether the judgment has not been made upon other facts which might not have been taken into account.

11. The above principle has to be kept in mind while construing the nature, scope and ambit of powers conferred upon the Magistrate under Section 204 of the Code

for issue of process and causing a person to be brought or to appear before the Magistrate to face a criminal trial inasmuch as it is a serious matter and necessarily touches the right to life and liberty as also to property of a person. It is the dispensation of justice which would become the causality if the Magistrate takes a wrong step either way. Sufficiency or otherwise of the ground to proceed is the test. Existence of sufficient ground is the condition precedent to be satisfied for issuing process under Section 204 of the Code. It is true that issue of process under Section 204 of the Code is not a final order and is rather a step towards ultimate decision on the complaint but still it is justiciable. The above view and construction of Section 204 of the Code, in my judgment, is in accord with the ever expanding horizon of the concepts of right to life and liberty and equality guaranteed respectively by Articles 21 and 14 of the Constitution as also of human rights jurisprudence.

12. It cannot be gainsaid that the procedural fairness too is of paramount importance from the point of view of the fundamental right to life and liberty. The Magistrate acting under Section 204 of the Code must, therefore adopt a fair procedure. The recording of reasons, in brief, to the effect that there is sufficient ground for proceedings, is a sine qua non for a valid order issuing process under Section 204 of the Code because sufficiency of 'ground for proceeding' is in my opinion justiciable.

13. In Punjab National Bank v. Surendra Prasad Sinha, AIR 1992 SC 1815 : (1992 Cri LJ 2916) it has been held (para 5):

It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment....

There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complainant as vendetta to

harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance....

14. However, as held by the Supreme Court in Nagawwa v. Veeranne, AIR 1976 SC 1947 : (1976 Cri LJ 1533) (Paras 2 and 5):. that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not within the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case.

xx xx xx xx...that in coming to a decision as to whether a process should be issued, a Magistrate can take into consideration inherent improbabilities.

15. In Kewal Kishan v. Suraj Bhan, AIR 1980 SC 1780 : (1980 Cri LJ 1271), a two Judge Bench of the Supreme Court has taken the expression 'sufficient ground for proceeding' occurring in Section 204 of the Code as equivalent to 'prima facie evidence in support of the allegations in the complaint'. It has been observed by the Supreme Court in the said case of Kewal Kishan a case exclusively triable by the Sessions Court that at the stage of Sections 203 and 204 of the Code all that the Magistrate has to do is to see whether on cursory perusal of the complaint and evidence recorded during preliminary enquiry under Sections 200 and 202, Cr. P. C. there is prima facie evidence in support of the charge levelled against the accused. The Court observed (Para 9):

All that he has to see is whether or not there is sufficient ground for proceeding against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial Court. The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which has to be kept in view at the stage of framing charges .... A fortiori, at the stage of Section 202/204, if there is a prima facie evidence in support of the allegations in the complaint relating to a case exclusively triable by a Court of Session, that will be a sufficient ground for issuing process to the accused and committing them for a trial to the Court of Session.

16. In Mohinder Singh v. Gulwant Singh, AIR 1992 SC 1894 : (1992 Cri LJ 3161) a three Judge Bench of the Supreme Court while examining the scope of enquiry under Section 202 has observed as under (Para 11):

The scope of enquiry under Section 202 is extremely restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the face of the statement of the complainant and of his witnesses, if any, but the enquiry at that stage does not partake the character of a full dressed trial which could only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further the question whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of the enquiry contemplated by Section 202 of the Code. The Enquiry Officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to putting the proposed accused on regular trial and that no detailed enquiry is called for during the stage of such enquiry.

17. Having given my anxious consideration to the question I am of the firm view that the formation of the opinion by the Magistrate as to whether there is or there is no sufficient ground to proceed, involves the scrutiny of the complaint and to some extent the evaluation of the material including the statement of the complainant and of the witness, as also of the result of enquiry or investigation, if any, with view to find out whether prima facie offence is disclosed or not. The opinion must appear on the face of the record to have been formed by the Magistrate upon proper self-direction as to the ingredients of the offence and the material on record and it must not be based upon consideration of irrelevant material. In the process, the Magistrate would be acting within jurisdiction if he considers the inherent improbabilities and the circumstances, if any, suggesting the frivolities of the complaint and the same being vexatious.

18. However, an order issuing process on ex parte consideration of the complaint and the material Under Section 204 of the Code being only a step towards trial is an interlocutory order, as held by the Supreme Court in K.M. Mathew v. State of Kerala, (1992) 1 SCC 217 : (1991) 4 JT (SC) 464 : (1992 Cri LJ 3779) and, therefore, the Magistrate on being satisfied that the process ought not to have been issued, may recall, vary or rescind his order. It is in fact a matter of judicial discretion expected of a reasonable person to be exercised by the Magistrate. It may be observed that the parties are not res integra at the stage of issue of process on ex parte consideration of the material on record and that provides the reason why the order issuing process has been held to be interlocutory one. But since the sufficiency or otherwise of the grounds for proceeding is justifiable, the accused person may, in response to the process, appear before the Magistrate and say that there was no sufficient ground to proceed in the matter whereupon the Magistrate would be duty bound to decide the question after considering the view points of the accused on the question of there being prima facie case constituting sufficient ground to proceed and on the question whether the material, if any, brought on record shows that the accusation is frivolous and vexatious. The parties would then be at issue and the Magistrate would at this stage be deciding a res between them and such a decision would then be not the kind of an interlocutory order visualised by Section 397(2) of the Code and, therefore, it can be challenged in revision. The view in Amar Nath's case, AIR 1977 SC 2185 : (1977 Cri LJ 1891) that it is not an interlocutory order was taken in the peculiar fact of that case. The Magistrate in that case although required to hold fresh enquiry, issued process straightway without complying with the order of remand.

19. It is thus evident that Section 204 of the Code of Criminal Procedure not only provides a procedure for proceeding against a person accused of an offence but it also impliedly provides a remedy in that it confers a judicial discretion upon the Magistrate to recall the ex parte order issuing process on being satisfied that it ought not to have been issued. It may be observed that if the matter thereafter comes up before the High Court in revision under Section 397 of the Code, it would be in a better position to appreciate the question as to the complaint being frivolous and vexatious.

20. Now coming to the second limb of the question, at the very outset, it may be observed that the High Courts in India being the superior Courts of record as visualised by Article 215 of the Constitution of India are possessed of plenary and unlimited powers to render justice in a given case except where express or implied curtailment of these powers can be read in any statute. As stated in Halsbury's Laws of England, 4th Edition Volume 10, Paragraph 713 :

Prima facie no matter is deemed to be beyond the jurisdiction of a Superior Court unless it is expressly shown to be so while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceeding that a particular matter is within the cognizance of a particular Court.

21. The abovenoted passage has been quoted with approval by the Supreme Court in M. V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd., (1992) 2 JT (SC) 65, wherein the Supreme Court has observed as under.

The High Courts in India are superior Courts of record. They would have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction including the jurisdiction to determine their own powers.

22. Section 482 of the Code of Criminal Procedure, 1973 like Section 151 of the Civil Procedure Code has saved the inherent powers already possessed by the High Court. Both these sections are in pari materia with each other and identically worded :

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. The question as to the nature, scope and ambit of inherent power of this Court came up for consideration before the Supreme Court in R. P. Kapur v. State of Punjab, AIR 1960 SC 866 : (1960 Cri LJ 1239). Their Lordships of the Supreme

Court expounded the following among other proposition of law with regard to the nature, scope and ambit of inherent powers of the High Court under Section 561-A of the old Code of Criminal Procedure corresponding to Section 482 of the New Code of Criminal Procedure, 1973 :. (a) The said section saves inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice; (b) The inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code; (c) Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere in its inherent jurisdiction with the said proceedings at an interlocutory stage; (d) The High Court may quash the criminal proceedings in exercise of its inherent jurisdiction--

(i) Where it is possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceeding would secure the ends of justice;

(ii) If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is legal bar against the institution or continuance of the said proceeding. Absence of the requisite sanction may, for instance, furnish cases under this category; ,

(iii) Where the allegations in the F.I.R. or the complaint even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. In such category of cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal case to be issued against a person;

(iv) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is of significance to bear in mind that distinction between a case where there is no legal evidence or where there is evidence which

is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which in its appreciation may not support the accusation in question. In exercise of its inherent jurisdiction the High Court would not embark upon an enquiry as to whether the evidence in quests reliable or not for that is a function of the trial court and ordinarily it would not be pen to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

24. In Mrs. Dhana Laxmi v. R. Prasanna Kumar, (1990) 24 All Cri C 39 : (1990 Cri LJ 320), a three Judge Bench of the Supreme Court has held as under:

In the above noted case the High Court analysed the case of the complainant in the light of all the probabilities in order to determine whether a conviction could be sustainable and quashed the proceedings under Section 482 of the Code. The Supreme Court set aside the High Court's order on the ground that it was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with.

25. Section 482, Cr.P.C. being only a saving provision it is not intended to limit the inherent and plenary powers vested in the High Court as a superior Court of record by virtue of Article 215 of the Constitution of India. However, these powers are in respect to the procedure to be followed by Courts in dispensation of criminal justice. These powers are not powers over substantive rights which any litigant may be possessed of. The exercise of inherent powers of the High Court is, however, subject to certain restrictions not as a matter of rule but having been self-imposed as a matter of sound exercise of judicial discretions. As laid down in R. P. Kapoor's case (1960 Cri LJ 1239) (supra), ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceeding at an interlocutory stage and that the inherent powers cannot be exercised in respect of the matters specifically covered by the other provisions of the Code.

26. It is also by now well settled that where there is an express provision barring a particular remedy, the High Court cannot resort to exercise of inherent jurisdiction/

powers under Section 482 of the Code of Criminal Procedure.

27. In Padam Sen v. State of U.P., AIR 1961 SC 218 : (1961 (1) Cri LJ 322), the Supreme Court while dealing with the inherent powers of the High Courts under Section 151, C.P.C. observed as under (paras 8 and 9):

The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature.

xx xx xxThe question for determination is whether the impugned order of the Additional Munsiff appointing Sri Raghubir Parshad Commissioner for seizing the plaintiff's books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure.

In Manohar Lal v. Seth Hira Lal, AIR 1962 SC 527, the principle that inherent power is not to be invoked to circumvent the express provisions of law has been reiterated by the Supreme Court. In Amar Nath v. State of Haryana, AIR 1977 SC 2185 : (1977 Cri LJ 1891) and in K.M. Mathew v. State of Kerala, (1992) 1 SCC 217 : (1992 Cri LJ 3779) the same principle has been reaffirmed. The Supreme Court has held in the case of K. M. Mathew that it is open to the accused to plead before the Magistrate that the process against him ought not to have been issued and that the Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint, that there is no offence for which the accused could be tried. The power of Magistrate to drop proceeding against the accused

has been read by the Supreme Court in Section 204 of the Code not on the basis of any specific provisions requiring the Magistrate to drop the proceedings or rescind the process but by virtue of judicial discretion of the Magistrate.

Emphasis supplied

28. The order issuing the process under Section 204 of the Code has been held to be an interim order and not a judgment and, therefore, it has been ruled by the Supreme Court in K. M. Mathew's case (1992 Cri LJ 3779) (supra) that the order taking cognizance and issuing process under Section 190 read with Section 204 of the Code can be varied, rescinded or recalled by the Magistrate and the proceedings dropped if a complaint on the very face of it does not disclose any offence against the accused.

29. That being the position of law, Section 397(2) of the Code would create express bar to interference in revision against an interlocutory order and that being so the High Court should not, as a matter of sound exercise of judicial discretion, invoke its inherent jurisdiction under Section 482 of the Code to quash the complaint unless the accused has first approached the Magistrate for the purpose of dismissing the complaint on the ground that there was no sufficient ground to proceed in the matter. The accused must be relegated to his remedy under Section 204 of the Code to approach the Magistrate and satisfy him that the process in the case ought not to have been issued. Needless to say that if the Magistrate is so satisfied he may recall the order issuing the process under Section 204 and dismiss the complaint under Section 203 of the Code.

30. In view of the above discussions, I consider it unnecessary to go into the question as to whether the complaint and the proceeding commenced against the applicants on issue of process under Section 204 of the Code is liable to be quashed on the grounds set out in the application, for in my opinion, the applicants have an effective and alternative remedy to approach the learned Magistrate for recall of the order issuing process under Section 204 on the ground that the process in the case ought not to have been issued.

31. The petition is accordingly disposed of with the observations that in case the applicants appear before the learned Magistrate in response to the processes and challenge the order issuing processes on the ground that in the facts and circumstances of the case, the processes ought not to have been issued, the learned Magistrate shall re-examine the matter in accordance with law and in the light of the observations made in the body of the judgment and until the learned Magistrate passes a reasoned order stating that there are sufficient grounds for proceeding against the applicants, the operation of the order issuing processes shall remain in abeyance.