

Mustak Hossain and Others Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Feb. 12, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200
Penal Code, 1860 (IPC) - Section 120B, 406, 420, 499, 500

Hon'ble Judges: Shib Sadhan Sadhu, J

Bench: Single Bench

Advocate: S.K. Basu, Milon Mukherjee, Debasish Roy, Sandipan Ganguly, P.C. Motilal and R.P. Motilal, for the Appellant

Judgement

Shib Sadhan Sadhu, J.

The aforesaid Nine (9) Revisions are being disposed of by a common judgment as common issue of law based on

similar facts, arise for consideration

2. Challenge in these Revisions by the petitioners is to their summoning orders dated 25.03.2008, 31.03.2009, 14.01.2009, 15.01.2009,

21.03.2009, 15.01.2009, 03.03.2009, 04.02.2009 and 04.02.2009 passed by the Learned Metropolitan Magistrate, 6th Court, Calcutta in

complaint case No. C-4328 of 2008, by the Learned Metropolitan Magistrate, 14th Court, Calcutta in complaint Case No. C-26414 of 2008, C-

26411 of 2008, C-26412 of 2008, C-26413 of 2008, C-26410 of 2008 and C-39533 of 2008 and by the Learned Judicial Magistrate, 9th

Court, Alipore in Complaint Case No. C-62 of 2009 and C-63 of 2009 respectively under Section 500 of the Indian Penal Code and the entire

proceedings of the aforesaid trials.

3. A brief resume of the unfolded background facts indicate that complainant Dr. Akbar Ali Khan was an IPS Officer and held an important and

respectable position in the society being posted as DIG of Police, Home Guards, West Bengal. Revisionist accused is the Managing Director of a

Company namely Pataka Industries Pvt. Ltd. having its registered office at Trimurthi Apartment, 4th Floor, 97 Park Street, P.S. Park Street,

Kolkata-700016. In his estimation complainant had a brilliant academic career and he passed the Civil Service Examination conducted by the

UPSC in his very first attempt. He had secured first division/first position in all examinations and he won the gold medal in his LLB(Hons.)

examination. He also obtained Master Degree in History in the year 2000. He served the police service with distinction and discharged various

duties assigned to him successfully with satisfaction and appreciation of the Authority. By virtue of his achievements the complainant held a very

high position in the society and is respected by the people at large.

The accused Mustak Hossain (petitioner herein) was known to the complainant and his family. The complainant and his wife have filed a Civil and

a Criminal case in August/September, 2007 at Alipore Court for recovery of their land and money and for his punishment under Section

420/406/120B IPC. The Civil Court has issued ad interim order of injunction in favour of complainant and the Criminal Court has issued summons

against the accused and seven others. To defame the complainant and to tarnish his family prestige, petitioner/accused, who harboured animosity

against him, had, knowingly sent frivolous and false complaints against him to the Hon"ble Chief Minister of West Bengal, Writers" Buildings,

Kolkata, on 03.03.2005 because of which, complainant was morally and intellectually tormented and his image was tarnished and his reputation

was damaged in estimation of general public. All this was done with intention to cause harm to his reputation and with temerity and as an

abasement. Petitioner/accused had also published those allegations and had even tendered them before the Alipore Court, as an annexure in the

said Civil Suit which was filed by the complainant against him, when the Civil Court had no concern with such writings. This was done by the

accused/petitioner only with the motive to bring down the complainant"s social prestige and with a view to destroy his service career. In that letter

dated 03.03.2005 addressed to the Hon"ble Chief Minister of West Bengal, it was mentioned ""..... Between February, 2004 and August, 2004

Akbar Ali khan took Rs. 1,60,00,000/- in cash from them from time to time for purchase of land but he gave Rs. 1,02,50,000/- to Mr. Abdul

Rahaman Gazi and he refused to repay the balance amount of Rs. 57,50,000/- ""..... ""that he deliberately withheld 76 IGRs in respect of the plots

purchased by registered deed"" ,..... ""that it has been learnt that Mr. Khan has connection with notorious anti-socials who are in visiting terms with

him and that he threatened the petitioner and his family"" . (C-4328 of 2008).

4. In the letter dated 20.03.2006 written by the petitioner No. 3 to the Hon"ble Chief Minister, West Bengal, the following defamatory statements

have been made:

I am shocked to see one Govt. servant of IPS status using his position and office for his undue personal interest. Meanwhile, Mr. Khan has indeed

arranged a complaint in Kolkata Leather Complex P.S., South 24 Parganas against Mr. Abdur Rahim Gazi..." (C-26414 of 2008)

5. In the written complaint dated 13.05.2006 lodged by petitioner No. 4, Ganesh Chandra Sen, an Officer of M/s Pataka Industries (Pvt.) Ltd.

Before the Officer-in-Charge of Park Street Police Station, following defamatory statement has been made:

.....I, Ganesh Chandra Sen,.....do hereby submit this complaint against one Akbar Ali Khan of B-8, Government Housing

Estate, 32, Ballygunge Circular Road, Kolkata-700019, P.S. Ballygunge who was entrusted with Rs. 1,60,00,000/- to buy land in Hathisala

Mouza under P.S. Kolkata Leather Complex and who had misappropriated the same by withholding Rs. 57,50,000/-." (C-26411 of 2008)

6. In the letter dated 28.06.2005 written by the petitioner No. 3 addressed to the Chief Secretary of Government of West Bengal, the following

defamatory statements have been made:

.....I am pleased to intimate you that on 25.06.2005 Mr. Khan arranged to return 67 IGR of Registration of lands out of our 72 IGR retained

by him.....

We believe that you might have left necessary instructions for the recovery of rest of documents along with our fund lying with Mr. Khan and also

the amount due with him on account of Mr. Abdur Rahim Gazi, the poor land broker." (C-26412 of 2008)

7. The written complaints dated 12.01.2008 lodged by petitioner No. 3 before the Officer-in-Charge, Park Street Police Station and the

complaints dated 22.01.2008 lodged by him before the Officer-in-Charge, Kolkata Leather Complex Police Station contained the following

defamatory statements:

.....The contents of the said defence must have infuriated Dr.Akbar Ali Khan and he along with his two associates under the disguise of making

an out of Court settlement came to our office at 97, Park Street, Kolkata-16 on 11.01.2008 at about 3 P.M. and abused me and the other

Directors profusely and threatened that if we do not withdraw our defence as well as the complaint before the Vigilance Commission and Inquiry

Officers, he would take the local elements and exercise his influence to dispossess us from our properties at Hathisala, Rajarhat.

On 21.01.2008, at about 1 P.M. some five/six unknown persons came to our properties at Hathisala Mouza and tried to identify our plots. On

being questioned, the said persons said that they are acting on the instruction of the police and Dr.Akbar Ali Khan and have been asked by them

to take possession of the said plots.

On protest being made, the said persons left the place but they threatened to return shortly with more persons to occupy, if necessary forcefully

our company's properties." (C-26413 of 2008, C-62 of 2009 and C-63 of 2009 respectively).

8. The petition under Section 156(3) Cr.P.C. filed on 17.05.2006 by petitioner No. 4 contained following defamatory statements:

.....that in such manner the accused was entrusted with a total sum of Rs. 1,60,00,000/- by the complainant Company for the purpose of

purchasing lands on behalf of the complainant's company..." (C-26410 of 2008)

9. Further, the petitioners being Directors of M/s. Pataka Industries Private Limited had published a defamatory Advertisement in the English Daily

The Telegraph" which is as follows:

We hereby bring to the notice of all concerned that recently we have come to know that Dr. Akbar Ali Khan, IPS, Deputy Inspector General of

Police, Homeguards, West Bengalhad most illegally and falsely applied for registration of a Trade Mark Label for trading as "FUTURE

FREEDOM FOUNDATION" declaring our name and address, that is to say M/S Pataka Industries Private Limited of Trimurti Apartment, 97,

Park Street, 4th Floor, Kolkata-700016 as the name and address of the Proprietor of the said trade name. The said application has been made by

Dr. Akbar Ali Khan fraudulently without our authority, consent and knowledge. As such our company is not in any way connected with the said

concern "FUTURE FREEDOM FOUNDATION" as we are not at all responsible for the activities of the said concern/body of persons." (C-

39533 of 2008)

10. For such false and malicious letters, the complaints and advertisement, the reputation and image of the complainant have been lowered down in

the eye and estimation of the Hon"ble Chief Minister, the Government superiors, colleagues, sub-ordinates, friends, relatives and the public at

large.

11. With the aforesaid allegations complaints were filed by the complainant (O.P. No. 2 herein) in which the complainant was the sole witness.

12. Learned Chief Metropolitan Magistrate, Calcutta registered the complaints filed before him as complaint case No. C/4328 of 2008, C-26414

of 2008, C-26411 of 2008, C-26412 of 2008, C-26413 of 2008, C-26410 of 2008 and C-39533 of 2008 and transferred the same to the

Learned Metropolitan Magistrates, 6th Court, Calcutta and 14th Court, Calcutta respectively. Similarly the Learned Chief Judicial Magistrate,

Alipore registered the complaints as complaint Case Nos. C-62 of 2009 and C-63 of 2009 and transferred those to the Learned Judicial

Magistrate, 9th Court, Alipore. The Learned Magistrates recorded the statement of the complainant under Section 200 Cr.P.C. in which,

complainant reiterated his allegations inked in his complaint. The Learned Magistrates directed the complainant to file the certified copy of

documents. As documentary evidence complainant had filed the certified copy of Affidavit-in-Opposition filed in Title Suit No. 994 of 2007 filed

by the accused.

13. The Learned Magistrates on the strength of such oral and documentary evidences opined that, they were satisfied that a prima facie case under

Section 500 IPC was made out against the accused/petitioners, and, therefore, had summoned them to stand trial for charge under Section 500

IPC, for defamation, vide impugned summoning orders which are now the subject matter of the instant Revisions.

14. I have heard Mr. Debasish Roy, Learned Counsel for the petitioners who made common submissions in support of these revisions. I have also

gone through the entire proceedings with meticulous care. In spite of service none appeared on behalf of the State or on behalf of the O.P. No. 2.

15. Learned Counsel for the petitioners submitted that from the mentioned words in the complaint no defamation of the complainant is disclosed. It

was evident that, in fact, the words mentioned in the complaints were extracts of letters written by the petitioner No. 3 to the Hon"ble Chief

Minister and Chief Secretary, Government of West Bengal, complaints lodged before the Court and Police Authority and of the Advertisement in

order to apprise the Authority and the public of the nefarious and unbecoming conduct of the complainant and for redressal of his grievance by

protection of his own right and interest. Copies of such letters, advertisement and the Affidavit-in-Opposition have been annexed by the petitioner

as Annexures to these Revisions. Inviting my attention to these annexures, it was submitted that, the truth of the matter was that the company of the

petitioner Mustak Hossain namely ""Pataka Group of Companies"" intended to increase its business by establishing a model residential school and

Pataka Food Park"" in and around Kolkata Airport. In course of search for such land the company came in contact with a land broker named

Abdur Rahim Gazi. Thereafter, the petitioner contacted the O.P. No. 2 who was known to him and expressed his desire for purchasing 150 bighas

of land in Hathisala Mouza, Rajarhat and the O.P. No. 2 offered his help to act as an agent and to render all services to monitor/supervise

purchase of land and also to undertake all monetary transaction including registration of the land. Subsequently from time to time a sum of Rs.

1,60,00,000/- by way of cash was entrusted to the O.P. No. 2 in cash and 76 bighas of land was purchased between the period from February to

August, 2004 by 110 registered sale deeds. The O.P. No. 2 insisted upon the petitioner to form a partnership firm and asked him to dispose of the

purchased land at a higher price and to invest the proceeds in land-trading business with O.P. No. 2. The petitioner did not accept that proposal.

So the O.P. No. 2 deliberately withheld 72 original IGRs" out of 110 IGRs. In the month of September, 2004 Abdul Rahim Gazi disclosed to the

petitioner that he had received a sum of Rs. 1,02,50,000/- from O.P. No. 2 but he did not receive any amount as brokerage/remuneration. The

petitioner demanded accounts from O.P. No. 2 but he avoided. So, the petitioner was compelled to write letters dated 03.03.2005 and

20.03.2006 to the Hon"ble Chief Minister of West Bengal, who was in charge of the Home Ministry, intimating him about the illegal activities of

the O.P. No. 2. In pursuance of such letter a confidential enquiry was held and the allegations against the O.P. No. 2 (complainant) was

substantiated and initiation of Criminal Case was recommended against him for criminal breach of trust. Copy of such report has been annexed

with the marking P-4. It was further submitted that the O.P. No. 2 realizing that his misdeeds have come to light and his service prospects have

come under a cloud, filed a suit being Title Suit No. 994 of 2007 before the Court of Learned Civil Judge, Senior Division, Alipore for declaration

and injunction against the petitioner, Abdur Rahim Gazi and other "Pataka Group of Companies." In that suit the petitioner filed his Affidavit-in-

Opposition being Annexure P-2(1). Thereafter on 17.05.2006 Ganesh Chandra Sen, authorized representative of Pataka Industries (Pvt.) Ltd.,

had filed an application under Section 156(3) Cr.P.C. before the Learned Chief Metropolitan Magistrate, Calcutta who directed the O.C., Park

Street P.S. to investigate into the complaint and to submit report. However, the O.C., Park Street P.S. submitted a report stating that as the

accused was an IPS Officer, the alleged offence should be investigated by an Assistant Commissioner of Police. Later on the Learned Magistrate

dropped the proceeding. Thereafter, the O.P. No. 2 has filed the impugned complaints. Mr. Roy submitted that it is in these documents, e.g. the

letters written by the petitioner to the Hon"ble Chief Minister of West Bengal and the Chief Secretary, Government of West Bengal and to the

Police Authority, the Advertisement and the Affidavit-in-Opposition in T.S. No. 994 of 2007 filed by the petitioner, that extracting one or two

paragraphs, that the present complaints were filed and hence in fact there was no case of defamation. Complaint was made to the Highest

Authority for taking correctional measures against the complainant and public notice was issued as a caution to the intending customers/purchasers

and, therefore, no offence is disclosed against the petitioner/accused and his case is squarely covered under the Eighth, Ninth and Tenth

Exceptions of Section 499 IPC. It is further pointed out that, prior to the filing of the impugned complaints, petitioner/accused had already filed

applications against him before the Hon"ble Chief Minister of West Bengal and other Authority and, therefore, to seek vengeance and with

vindictive intention that the complaints were filed by the complainant.

16. Mr. Roy further submitted that in terms of Explanation 4 to Section 499 of the IPC no imputation is said to harm a person"s reputation unless

that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of

that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a

loathsome state, or in a state generally considered as disgraceful. Thus it is apparent that a person cannot be defamed in his own eyes, nor can he

suffer harm to his reputation in his own estimation. The harm to the aggrieved person"s reputation is to be assessed in the eyes of other persons.

But no other person beyond the complainant was examined before the Learned Magistrates and as such, the basic ingredient of the offence of

defamation, i.e. lowering of moral character of the O.P. No. 2 in the estimation of others, cannot be said to have been shown by the O.P. No. 2

prior to issuance of process and the Learned Magistrates could not have come to a finding and/or satisfaction regarding commission of the offence

of defamation, as defined under Section 499 IPC, by the petitioner. He relied on the decisions reported in 1997 Cri.L.J. 212 (Supreme Court)

(Shatrughna Prasad Sinha, V. Rajbhau Surajmal Rathi and others) and (2010)1 C Cr.LR (Cal) 403 (Dipankar Bagchi V. The State of West

Bengal and Anr.) in support of his submission. In this context Mr. Roy submitted yet further that over the same cause of action the complainant

O.P. No. 2 had initiated a number of proceedings out of which four have been quashed by this Hon"ble Court by passing a common judgment on

07.08.2013 in CRR Nos. 2516, 2517 and 2518 of 2008 and CRR No. 2520 of 2008. He has placed that decision reported in 2013(3)CLJ

(Cal)390. He concludingly submitted that the present proceedings are nothing but vexatious, purposive, malafide and were instituted only to seek

vendetta and therefore, impugned summoning orders including the proceedings be quashed.

17. Section 499 IPC reads as under:-

S.499. Whoever, by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation

concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is

said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if

living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

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

Explanation 4. - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others lowers

the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit

of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as

disgraceful.....

Eighth Exception. - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that

person with respect to the subject matter of accusation.

Ninth Exception. - It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for

the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception. - It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for

the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

18. I have considered the submissions made by Sri Roy and have vetted the oral and documentary evidences including the affidavit. Some

common facts which are not disputed are that the accused is the Managing Director of M/s Pataka Industries (Pvt.) Ltd who had previous

acquaintance with the complainant/O.P. No. 2. It is also not disputed that there was a transaction between them for purchase of land in and around

Kolkata Airport area and the complainant/O.P. No. 2 was paid Rs. 1,60,00,000/- by the petitioner. It is also not disputed that 76 bighas of land

was purchased and the complainant O.P. No. 2 did not return the balance of Rs. 57,50,000/- nor did he furnish any account to the petitioner. It

also goes undisputed that the offending words are extracts of the letters written by the accused/petitioner to the Hon"ble Chief Minister of West

Bengal and police Authorities which were dispatched prior to the filing of the complaints by the O.P. No. 2/complainant. From the contents of

these letters, it is evident that the same were in respect of professional misconduct of the complainant/O.P. No. 2 and his behaviour. In such back

drop, the letters written by the accused/petitioner, have to be read as a whole to decipher true intention of the writer to determine as to whether he

wanted to defame the complainant or his intention was only to raise his voice of protest against the improper and unethical conduct of the

complainant/O.P. No. 2 who was a high ranking police officer and at the same time also to protect and vindicate his right/interest. For determining

such aspect, the letter written by the accused/petitioner read as a whole with prefix and suffixes of the extracted words it becomes evident that

whatever was mentioned by the accused/petitioner was that, being aware of the desire of the petitioner's company to purchase land, the

complainant (O.P. No. 2) met with the petitioner and stated that he was very much eager to extend help towards any development work besides

his employment in police and he would be obliged if he could render any help for the welfare of the cultivators under the agricultural industry

undertaken by the petitioner's company. He also voluntarily undertook to supervise the purchase of land and monetary transaction as an well

wisher and thereafter he took Rs. 1,60,00,000/- from the petitioner's company. After some days, he offered a proposal to the petitioner to enter

into a partnership business of purchasing and selling land but the petitioner refused to accept such proposal. Thereafter, the land-broker Abdur

Rahim Gazi who was entrusted by the petitioner's company to purchase the land informed that he could not purchase land for want of money and

he was also not getting his remuneration. The petitioner was surprised and came to learn from Mr. Gazi that the complainant gave him only

1,02,50,000/-. Immediately thereafter the petitioner asked the complainant for an explanation but he began to threat and withheld 72 IGRs and he

again threatened over telephone when the balance money was demanded. It has been further alleged that the complainant have sent an anonymous

letter to the petitioner directing him to keep silence and even he mentioned that if the Hon"ble Chief Minister would help the petitioner, he would

also not be spared. It was further mentioned by the petitioner in that letter that he came to learn that the complainant had connection with notorious

goons and that he had threatened Mr. Gazi so dreadfully that Mr. Gazi left his house and absconded. All these expressions were mentioned by the

accused/petitioner not with the idea to defame the complainant but to secure his safety and security and to get refund of the balance sum of Rs.

57,50,000/-. It also transpires that the complainant was more worried because his service career was at stake rather than the uttered words. So

with such a feeling of helplessness and insecurity in mind if the accused/petitioner had written the above referred sentences while pointing out

malpractices adopted by the complainant, it was not because he wanted to defame the latter, but because he was very much keen to have invested

money back for the betterment of his company's business. As argued, case of the accused/petitioner is covered in more than one exceptions of

Section 499 IPC. The Hon"ble Chief Minister of West Bengal is the top most authority and if a letter was addressed to him by the Managing

Director of a Company, it does not necessarily mean that the Managing Director wanted to defame the complainant, who was a member of Indian

Police Service. This is absolutely clear from the Illustration which is mentioned in Eighth Exception of Section 499 IPC, as the Hon"ble Chief

Minister has got a lawful authority over the DIG of Police, Home Guard, West Bengal.

19. Similarly it is also not in dispute that the complainant Dr. Akbar Ali Khan or his concern ""FUTURE FREEDOM FOUNDATION"" is not the

authorized agent or partner or dealer of the petitioner company M/S Pataka Industries Private Limited. The first part of the advertisement being

truthful, this cannot be considered as a publication for harming the reputation of the complainant/O.P. No. 2. The second part of the advertisement

is a caution issued by the petitioner to the purchasers/general public that their Company is not in any way connected with the said concern

FUTURE FREEDOM FOUNDATION"". It is obvious that the petitioner wanted to convey to the public that if anybody enters into any

transaction with the said concern ""FUTURE FREEDOM FOUNDATION"", petitioner Company would not be responsible for the deal.

20. Moreover, I am of the view that ingredients for making out offence of defamation under Section 500 IPC are lacking in the instant case. This

aspect is also clear from the statutory Illustrations mentioned in Eighth Exception to Section 499 IPC. It is on record that the departmental inquiry

had been initiated and the complainant was found to be guilty. Therefore, the fact that the accused/petitioner wrote the letters to the Hon"ble Chief

Minister and the Chief Secretary alleging that he had abused his authority which is the gravamen of the present complaint and nothing more, would

be covered by Exception Eight of Section 499 IPC.

21. By perusing the allegations made in the complaint petitions, I am satisfied that no case of defamation has been made out. In this view of the

matter, calling upon the accused petitioners to face trial would be travesty of justice.

22. In Darusing Durgasing Vs. State of Gujarat and Anr. Reported in 2006 Cr.L.J. 720 it has been held as under:-

If the entire affidavit is read as a whole, it mainly contains the denials of the facts stated by the respondent No. 2 in his complaint. Since certain

allegations were made against the office bearers of the Textile Labour Association and other workers, only with a view to bring the correct facts of

the case before the court affidavit-in-reply was filed. In any case, in Judicial Proceeding certain facts are stated on oath and in the interest of

T.L.A. and all other workers. Moreover, the said averments were made in good faith and without any malice. This Court is the proper forum

where the proceedings are pending and ultimately, the Company Application No. 364 of 1998 filed by the Respondent No. 2 was rejected by this

Court. The alleged averments and allegations in the Affidavit-in-Reply are, therefore, covered by the Exceptions 7, 8, 9 to S.499 and hence, no

case is made out for defamation punishable under Section 500 of IPC.

23. In Valmiki Faleiro V. Mrs. Lauriana Fernandas and Others, etc, reported in 2005 Cr.L.J. 3498, the Hon"ble Supreme Court held as under:-

The essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation is

what neighbours and others say he is. In other words, reputation is a composite hearsay and which is a opinion of the community against a person.

Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which a person is held by others. The commission of

offence of defamation or publishing any imputations concerning any person must be ""intending to harm"" or knowing or having reason to believe that

such imputation will harm, the reputation of such person.

24. On the backdrop of aforesaid exposition of law, when the facts of the present cases are given a close and critical look, there remains no doubt

that the words mentioned in the letters and the Advertisement were not with an intention to defame the complainant or harm his reputation or lower

his prestige in estimation of general public and there was total absence of any malice and mens rea and it was inked with an idea to secure the

personal safety and security of the petitioner and to get the entrusted money back for the betterment of his business and also to protect his own

right and interest. It is not at all a case for Criminal prosecution of the petitioner/accused as there is absence of material to disclose offence under

Section 500 IPC. In my considered opinion it is one of those cases which falls in more than one category of the Hon"ble Supreme Court"s

decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2

SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp .

25. In the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT

705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp , the Hon"ble Supreme Court held that forms of judicial review can be

exercised to prevent a miscarriage of justice or to correct some grave errors that might have been committed by the Sub-ordinate Courts. In the

case of State of Haryana Vs. Bhajanlal (Supra) the Hon"ble Supreme Court has laid down some guidelines for the exercise of inherent power by

the High Courts to quash Criminal proceedings in such exceptional cases. To take note of two such guidelines which are relevant for the present

case:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused..... (7) Where a criminal proceeding is manifestly

attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and

with a view to spite him due to private and personal grudge.

26. The Learned Metropolitan Magistrates, Calcutta and the Learned Judicial Magistrate, Alipore while passing summoning orders had only

discussed that they were satisfied that a prima facie case under Section 500 IPC was made out against the accused person. They did not discuss

how the issuance of the letters to the Hon"ble Chief Minister or to the Chief Secretary or complaints lodged with the Police Stations or the

Advertisement published in the Newspaper or filing of the Affidavit-in-Opposition in T.S. No. 994 of 2007 amounted to defamation of the

complainant. While passing summoning order, it is obligatory on the part of the Learned Magistrate to consider the material and evidence placed

on record in the light of offence allegedly committed and analyze it so as to come to a conclusion whether the commission of offence in terms of

provisions of law was disclosed or not. Just reproducing a part of the evidence and stating that he was satisfied that there was sufficient material on

record to summon the accused, only shows non-application of mind. Such an order is a mechanical order since the Trial Court did not apply mind

whether the ingredients of the offence were prima facie satisfied or not in view of the Exceptions given in the Section itself. It is the duty of the

Court to consider if the alleged Act falls under any of the explanation or not. The Learned Magistrates in these cases abdicated their obligation of

analyzing the material in the light of provisions of Section 499 IPC.

27. I find that the complaints were a gross misuse of judicial process and the petitioner was within his right to issue such letters to the Hon"ble

Chief Minister and the Chief Secretary and the Police Authorities being the Lawful Authority complaining of the misconduct of the complainant

who is a High Ranking Police Officer for redressal of his grievance and for protection of his interest. I also find that the petitioner was within his

right to issue a caution notice to the intending purchaser and general public and to inform them that the complainant was not their authorized

agent/partner/dealer and then to caution that if anybody enters into any transaction with the concern ""FUTURE FREEDOM FOUNDATION"" the

petitioner company would not be responsible for the deal.

28. To conclude the discussion, Revisions are allowed. The impugned summoning orders dated 25.03.2008, 31.03.2009, 14.01.2009,

15.01.2009, 21.03.2009, 15.01.2009, 03.03.2009, 04.02.2009 and 04.02.2009 and the proceedings of the complaint case No. C-4328 of

2008, C-26414 of 2008, C-26411 of 2008, C-26412 of 2008, C-26413 of 2008, C-26410 of 2008, C-39533 of 2008 C-62 of 2009 and C-

63 of 2009 under Section 500 IPC are hereby quashed.

29. Let a copy of this judgment be sent to the Learned Trial Court for it's information.

30. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.