

Neutral Citation No. - 2024:AHC-LKO:40489

Reserved on 13.05.2024

Delivered on 29.05.2024

A.F.R.

Court No. - 27

Case :- APPLICATION U/S 482 No. - 3261 of 2017

Applicant :- Azim Premji

Opposite Party :- State Of U.P. Thru. Secy. Home Civil Sectt. Lucknow And Anr.

Counsel for Applicant :- Karunanidhi Yadav

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Shri Karunanidhi Yadav, learned Counsel for the applicant, Shri Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1.
2. As per office report dated 20.03.2024, wherein it has been stated that the Chief Judicial Magistrate, Lucknow has sent a report dated 08.06.2017 stating therein that notice upon opposite party No.2 was served but in spite of service of notice, no counsel has put in appearance on behalf of the opposite party No.2 and the case was taken up for final hearing in the revised call.
3. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicant, namely-Azim Premji seeking quashing of the complaint proceedings pending before the Chief Judicial Magistrate, Lucknow in Compliant Case No.2886 of 2016; State of Uttar Pradesh vs. Azim Premji & Another, and the summoning order dated 03.09.2016 and the order dated 08.02.2017 vide which bailable warrant has been issued against the applicant.
4. Learned counsel for the applicant submitted that the applicant is the Chairman and Managing Director of Wipro Ltd. (Company) and has no interest in any shareholdings or managerial control over the M/s G4S Secure

Solutions (India) Private Limited. Further, the applicant being in the Board of Directors of Wipro has nothing to do with the day-to-day operations of the Wipro office at Lucknow. The applicant has no administrative control over G4S which is an agency which provides security services.

5. Learned counsel for the applicant further submitted that vide agreement dated 18.03.2015, the company entered into an agreement with M/s G4S Secure Solutions (India) Pvt. Ltd., the service provider, to provide security services to the company. In the said agreement, it has categorically been provided under clause 2 that the service provider i.e., M/s G4S Secure Solutions (India) Pvt. Ltd. agrees to render all services there under as a service provider and any other person employed or engaged by the service provider to perform the services will act and will be considered for all purposes as an independent contractor to Wipro and not as an employee and agent of Wipro.

6. Learned counsel for the applicant further submitted that the facts in brief are that the present applicant is the Chairman and Managing Director of Wipro Limited (Company), a globally renowned Company in Information and Technology and Information Technology enabled Services domain. Wipro Group of Companies (Wipro Group) has varied other legal entities and has also diversified into various other endeavors such as Consumer Products, Lighting, Infrastructure Engineering and other related services.

7. Learned counsel for the applicant further submitted that Wipro Group is known as a Model employer with multiple employee oriented policies. Wipro Group employs highly ethical practices and conducts its business strictly on ethical and lawful principles.

8. Learned Counsel for the applicant further submitted that for providing security services at its various facilities across India, the Company engages the services of varied third party security agencies. One of such security agencies engaged by the Company known as G4S Secure Solutions India Private Limited (hereinafter referred as 'G4S') is accused no.2 in the current Complaint. The task of security services is outsourced to G4S, which is an

entirely separate legal entity. It is merely an act of availing services from a specialized agency, and there is no commonality of Freight on Road management between the Company and G4S. The present applicant has no concern with, and does not have any interest in, or control over G4S, which is a separate and distinct legal entity.

9. Learned counsel for the applicant further submitted that from the perusal of the Complaint dated 26.08.2016 made by opposite party No.2, it appears that during an inspection of G4S by Labour Enforcement officer i.e. opposite party No.2, on 02.06.2016, certain alleged violations of law were discovered and notices were allegedly issued to the Wipro Company and G4S. It is the specific case of the applicant that at no point of time, was any notice ever received by any establishment of the Company, and least of all, by the applicant herein. The applicant is a permanent resident of Bengaluru, Karnataka State, and hardly ever visits Lucknow even in his official capacity. Being the Chairman and Managing Director of the Company, the applicant is not involved at all in day to day functions of the office of the Wipro Company situated at Lucknow. No direct executive function is exercised by the applicant for the office of the Wipro Company at Lucknow.

He further submitted that as stated above, no notice of any alleged violation was received by any office of the Wipro Company. The Wipro Company became aware of the complaint only when a constable of U.P. Police visited the Company's Lucknow office on 17.04.2017 and stated that he was carrying a bailable warrant of arrest of Mr. Azim Premji i.e. the applicant. It was this visit that prompted the functionaries of the Wipro Company to make immediate inquiries from the court of learned Chief Judicial Magistrate, Lucknow and also from the Labour Enforcement Officer and it was discovered that the alleged violation does not in any manner relate to the Wipro Company or the present applicant.

10. Learned counsel for the applicant further submitted that no offence(s) as alleged in the complaint are made out against either the Wipro Company or against the applicant. It is also the case of the applicant that the actual employers in question i.e. G4S are not under the supervision and management

of the applicant, and he has no control whatsoever, over their affairs and activities. It is also submitted that G4S, being the actual employers in question, there is no justification for issuing summons and bailable warrant against the applicant.

11. Learned counsel for the applicant further submitted that no vicarious liability for the alleged violations in question vests upon the applicant. The cryptic prosecution story is false, fabricated, baseless and unfounded.

12. Learned counsel for the applicant further submitted that the allegations leveled against the applicant does not inspire confidence and the impugned complaint has been lodged with an oblique motive for collateral purposes to harass and pressurize the applicant and further, learned court of Chief Judicial Magistrate, Lucknow also failed to apply its judicial mind while summoning the applicant, as there was no sufficient material to summon and issue bailable warrant against the applicant for the alleged offences.

13. Learned Counsel for the applicant further submitted that impugned summoning order dated 03.09.2016 and order dated 08.02.2017 issuing bailable warrant against the applicant are not sustainable in the eyes of law, as the same have been passed in mechanical manner without applying the judicial mind, because on the face of record itself it is apparent that impugned summoning order dated 03.09.2016 and order dated 08.02.2017 issuing bailable warrant against the applicant have been passed by the Chief Judicial Magistrate concerned without assigning any reason, therefore the same are liable to be quashed by this Court alongwith the proceedings of the aforesaid complaint case.

14. Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 has opposed the argument advanced by learned Counsel for the applicant and submitted that the summoning order dated 03.09.2016 and bailable warrant dated 08.02.2017 are rightly passed as prima facie offence is made out against the applicant and the trial court has rightly passed impugned summoning order as well as the bailable warrant after considering the

material placed on record, thus, the applicant is not entitled for any relief by this Court and the present application may be rejected.

15. After considering the arguments advanced by learned counsel for the applicant and learned A.G.A-I for the State-opposite party No.1 and after perusal of the record, materials and arguments presented, this Court finds that the summoning order dated 03.09.2016 and the subsequent bailable warrant issued on 08.02.2017 against the applicant, lacks necessary legal and factual foundation. There appears force in the argument of learned Counsel for the applicant that the applicant has no administrative control over the functioning of G4S, he could not have been summoned for the alleged violation of the Equal Remuneration Act, 1976 (hereinafter referred to as "the Act") under which the complaint has been preferred by opposite party No.2. Moreover, the applicant was never been notified of the said proceedings nor any notice was ever served at any office of Wipro Company and since the said outsourcing of services for providing security at Wipro Office at Lucknow has been given to G4S, the applicant cannot be made accused in case of any alleged violation of the provisions of the Act in so far as security personnel are concerned.

16. Further, learned Chief Judicial Magistrate, Lucknow has failed to ensure the compliance of Section 202 Cr.P.C., where it has been provided that if an accused resides outside the jurisdiction of the court concerned, an enquiry on fact is mandatory before issuing a summoning order. On this ground alone the proceedings as also the summoning order dated 03.09.2016 as well as the order dated 08.02.2017 issuing bailable warrant against the applicant appear to be against the settled prepositions of law.

17. Further, while passing the summoning order dated 03.09.2016; and for that matter even registering of the complaint case, no reason has been assigned by learned Chief Judicial Magistrate, Lucknow. All what the summoning order dated 03.09.2016 states that the challan has been received on 03.09.2016 and the case be registered and the accused be summoned fixing 24.09.2016 as the next date for appearance of the accused. The said order does not even mention the content of challan and thus, it reflects that learned Chief Judicial Magistrate, Lucknow has not applied its mind while

summoning the applicant to face trial and he has failed to enquire even briefly the question as to whether any culpability be imputed to the applicant or other accused persons.

18. It is further observed here that in the said agreement dated 18.03.2015 under Clause 2 and 4, it has been specifically provided that the service provider is responsible for paying all wages, salaries, provident funds, E.S.I.C. or any other statutory benefits under the applicable law and ordinary and necessary expenses of its agents or employees including, but not limited to, all applicable taxes and employee State Insurance. The relevant extracts of Clause 2 and Clause 4(h) are being reproduced hereinbelow:-

"2. Personnel :

Service Provider agrees that in rendering all services hereunder, Service Provider and any person employed or engaged by Service Provider to perform the Services will act and be considered for all purposes as an independent contractor to Wipro, not as an employee or agent of Wipro. In its capacity as an independent contractor, Service Provider agrees and represents the Service Provider:

(i) Has the right to control and direct the means and methods of performing the Services by itself and its agents or employees, subject to the general direction of Wipro;

(ii) Service Provider agrees not to represent itself as Wipro's agent for any purpose to any party unless specifically unauthorized to do so, in advance and in writing, and then for the limited purpose(s) stated in such authorization.

(iii) Service Provider shall provide with a replacement personnel within 30 days of Wipro raising request for such replacement.

4 Representations & Warranties

Service Provider warrants and represents to Wipro that:

h) Service Provider is responsible for paying all wages, salaries, P.F., E.S.I.C. or any other statutory benefits under the applicable law and ordinary and necessary expenses of its agents or employees including, but not limited to, all applicable taxes and employee State Insurance;"

19. Further, the complaint dated 26.08.2016 which has been instituted before learned Chief Judicial Magistrate, Lucknow is in a cyclostyled printed format which is bereft of any details and merely states that the applicant alongwith other accused i.e. Shri Sanjeev Pandey of M/s G4S Secure Solutions (India) Pvt. Ltd. has violated the provision of Section 8 of the Act

together with Rule 6 of the Rules framed thereunder and that they were found guilty and consequently they may be prosecuted.

20. Further, on bare reading of complaint dated 26.08.2016, it is apparent that there was no objective material before learned Chief Judicial Magistrate, Lucknow to formulate an opinion for issuance of summoning order or even to register the complaint. It is thus, apparent that the registration of the complaint, the issuance of summoning order dated 03.09.2016 and the consequential issuance of bailable warrant vide order dated 08.02.2017 had been done in a mechanical manner sans application of mind whereas it has repeatedly been held that prior to the issuance of a summoning order it is imperative for learned Chief Judicial Magistrate to examine the complaint to ensure that the Directors or other senior officers of the company who have been named in the complaint are vicariously liable for the act complained of. It was also imperative for learned Chief Judicial Magistrate, Lucknow to ensure that there was sufficient incrementing evidence against the applicant coupled with criminal intent or the statutory regime attracts the doctrine of vicarious liability. In the instant case, learned Chief Judicial Magistrate, Lucknow did not ascribe any incriminating role against the applicant nor was any statutory regime or vicarious liability invoked. As per the settled law, learned Chief Judicial Magistrate, Lucknow could not have issued process to the applicant under Section 204 Cr.P.C. and as such the entire complaint proceedings initiated against the applicant as well as summoning order dated 03.09.2016 and the order dated 08.02.2017 issuing bailable warrant against the applicant are without jurisdiction.

21. Further, the question which arises for consideration before this Court in the present case is that whether the applicant was liable for any offence even if the allegations in the complaint are taken on their face value to be correct in entirety. The Company is a body incorporated under the Companies Act. Vicarious criminal liability of its Directors and Shareholders would arise provided any provision exists in that behalf in the statute. The Statute must contain provision fixing such a vicarious liability. Even for the said purpose, it would be obligatory on the part of the complainant and the investigating

agency to make requisite allegations and collect evidence in support thereof which would attract provisions constituting vicarious liability.

22. Further, the Hon'ble Supreme Court also in the case of ***Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609*** while dealing with the issue of vicarious liability of the Officers, Directors, Managing Directors, Chairman of the Company was pleased to observe in paras- 42 to 44 and 48 to 50 of the aforesaid judgment, which read as under:-

"42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada [Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241], the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act

attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see SWIL Ltd. v. State of Delhi [(2001) 6 SCC 670 : 2001 SCC (Cri) 1205]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not

permissible at this stage to consider any material other than that collected by the investigating officer."

23. The Hon'ble Supreme Court also in the case of ***Shiv Kumar Jatia Vs. State of NCT of Delhi : (2019) 17 SCC 193*** while dealing with vicarious liability of Managing Director of the Company was pleased to observe in paras-21 and 22 as under:-

"21. By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

22. In the judgment of this Court in Sharad Kumar Sanghi v. Sangita Rane [Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781 : (2016) 1 SCC (Cri) 159] while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 CrPC. In the case on hand principally the allegations are made against the first accused company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is Accused 2 is a party by making vague allegations that he was attending all the meetings of the company and

various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day-to-day affairs of the company. In the absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."

24. Thus, an Officer, Director, Managing Director or Chairman of the Company can be made an accused along with the Company only if there is sufficient material to prove his active role coupled with criminal intent. Indian Penal Code does not contain any provision for vicarious liability. For Managing Director or Director to be accused and their implications in the offence allegedly committed on behalf of the company, when the accused is a Company, the complaint/ FIR or Charge-sheet must contain requisite allegations of commission of the offence by such individual(s).

25. It is further observed here that the applicant, a distinguished industrialist and the Chairman and Managing Director of Wipro Ltd., has consistently demonstrated a commitment to ethical business practices and social responsibility. Under his leadership, Wipro has not only thrived as a global leader in the IT industry but has also been at the forefront of numerous philanthropic initiatives aimed at improving education, healthcare, and environmental sustainability in India and beyond. In reflecting upon the character and contributions of the individual summoned before the court, it is imperative to consider the specifics of the case at hand and to also consider the broader context of the individual's life and work. This court recognizes the multifaceted nature of the applicant, whose endeavors as both an industrialist and a philanthropist, has left an impeccable mark on society.

26. Further, the journey of an industrialist is often arduous, demanding an intricate balance of vision, risk-taking, and relentless pursuit of innovation. The applicant, namely-Azim permji has exemplified these qualities, fostering economic growth and creating

employment opportunities that have significantly contributed to the prosperity of the community. His enterprise has not only driven industrial advancement but has also catalyzed ancillary development, uplifting the standard of living of many.

27. It is equally noteworthy that his commitment to philanthropy, a testament to their deep-seated belief in the interconnectedness of all individuals within the society. His philanthropic initiatives have spanned diverse fields such as education, healthcare, and environmental sustainability, reflecting a holistic approach to social responsibility. By investing in the betterment of the less privileged, he has demonstrated a profound understanding of the ethical imperative to share the fruits of success for the common good.

28. Philosophically, one might invoke the concept of "karma yoga" from the Bhagavad Gita, which espouses selfless action as a path to spiritual fulfillment. In applicant's life work, this Court observe a parallel to this ideal—a harmonious blend of personal success and altruistic service. Such a balance is not merely commendable but serves as an inspiration, reminding us that true greatness lies in the ability to transcend personal ambition for the welfare of others.

29. Futher, it is pertinent to note here that the applicant has no direct involvement in the day-to-day operations of Wipro's office in Lucknow or any managerial control over M/s G4S Secure Solutions (India) Pvt. Ltd., the external third-party vendor responsible for providing security services to Wipro. The contractual agreement dated 18.03.2015 between Wipro and M/s G4S Secure Solutions explicitly outlines that the security personnel are independent contractors, not employees or agents of Wipro. This agreement further clarifies that the responsibility for complying with all statutory requirements, including the payment of wages and other benefits, lies solely with the service provider.

30. Given these facts, the applicant's impeccable reputation as an industrialist who upholds the highest standard of corporate governance and

his extensive philanthropic contribution should be taken into account. His involvement in the case appears to stem from a misunderstanding or misapplication of legal principles rather than any malafide intent or violation of the Equal Remuneration Act, 1976. The orders issued against him lacks substantive ground, as the applicant has no direct or indirect control over the alleged matter and in light of the applicant's distinguished career and substantial contributions to society, it is evident that the proceedings against him are unfounded and merit reconsideration. His exemplary record as an industrialist and philanthropist should serve as a testament to his integrity and the improbability of his involvement in any legal violations concerning the employment practices of an independent contractor, thus, the impugned proceedings initiated against the applicant is nothing but an abuse of process of law.

31. Further, the Hon'ble Supreme Court in the case ***Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice."

32. Further, the Hon'ble the Supreme Court in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in ***2022 SCC Online SC 1383*** has specifically held in paragraph No.38 that the order of issuance of

process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of *Lalankumar Singh and Others (supra)* is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is

sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

33. Further, the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. v. Judicial Magistrate*** reported in ***(1998) 5 SCC 749*** has been pleased to observe paragraph No.28, which is reproduced hereinunder:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

34. Further, the Hon'ble Supreme Court in the case of ***Mehmood UL Rehman v. Khazir Mohammad Tunda and Others*** reported in ***(2015) 12 SCC 420*** has been pleased to observe paragraph No.20, which is reproduced hereinunder:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered

along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

35. Further, the Hon'ble Supreme Court in the case of ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar*** reported in ***(2017) 7 SCC 760*** has been pleased to observe paragraph No.13, which is read as under:-

13. Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

36. Further, Hon'ble the Supreme Court has provided guidelines in case of ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335*** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(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."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(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."

37. Further the Hon'ble Supreme Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) *R.P. Kapoor Vs. State of Punjab*, AIR 1960 S.C. 866, (ii) *State of Bihar Vs. P.P. Sharma*, 1992 SCC (Crl.)192, (iii) *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another*, (Para-10) 2005 SCC (Cri.) 283 and (iv) *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra*, AIR 2021 SC 1918.

38. In *S.W. Palankattkar & others Vs. State of Bihar*, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

39. Thus, in view of the law laid down by the Hon'ble Supreme Court and in light of the observations and discussions made above and keeping view the facts and circumstances of the case, and from the perusal of the record, the impugned complaint proceedings pending before the Chief Judicial Magistrate, Lucknow in Compliant Case No.2886 of 2016; State of Uttar Pradesh vs. Azim Premji & Another, and the summoning order dated 03.09.2016 and the order dated 08.02.2017 vide which warrant has been issued against the applicant are liable to be quashed as in the present case learned Chief Judicial Magistrate, Lucknow has failed to apply his judicial mind to the facts of the case and the law applicable thereto while summoning the applicant and issuing bailable warrant, the Chief Judicial Magistrate has not examined the nature of allegations made in the complaint and the evidences both oral and documentary in support thereof.

40. Accordingly, the **impugned complaint proceedings pending before the Chief Judicial Magistrate, Lucknow in Compliant Case No.2886 of 2016; State of Uttar Pradesh vs. Azim Premji & Another, and the summoning order dated 03.09.2016 and the order dated 08.02.2017 vide which bailable warrant has been issued against the applicant** are hereby ***quashed***.

41. For the reasons discussed above, the instant application under Section 482 Cr.P.C. filed by the applicant is ***allowed*** in respect of the instant applicant, namely-Azim Premji.

42. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

43. No order as to cost(s).

Order Date :- 29.05.2024

Piyush/-

(Shamim Ahmed, J.)