

GAHC010064342022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./335/2022

NATWARLAL AGARWAL
S/O LATE RAM NIVAS AGARWAL,
R/O D. NEOG PATH,
P.S. BHANGAGARH, GUWAHATI, KAMRUP (METRO), ASSAM-781005

2: SRI MANOJ AGARWAL
S/O SRI NATWARLAL AGARWAL
R/O D. NEOG PATH
P.S. BHANGAGARH
GUWAHATI
KAMRUP (M)
ASSAM
PIN-78100

VERSUS

THE STATE OF ASSAM
REP. BY THE LD. PP, ASSAM

2:DR. BHAGAWATI PRASAD TODI
S/O D. NEOG PATH

P.S. BHANGAGARH
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN-781005.

3:DR.ANKIT TODI
S/O DR BHAGAWATI PRASAD TODI
R/O D. NOEG PATH
P.S. BHANGAGARH
GUWAHATI
KAMRUP (M)

ASSAM
781005

4: PURVANCHAL PRAHARI
A DAILY HINDI LANGUAGE NEWSPAPER
PUBLISHED FROM GUWAHATI BY G.L. PUBLICATIONS LIMITED
G.S. ROAD
ULUBARI
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN-781007

5: SMTI. MEERA MURARKA
EDITOR OF PURVANCHAL PRAHARI
G.L. PUBLICATIONS LIMITED G.S. ROAD
ULUBARI
GUWAHATI
KAMRUP (METRO)
ASSAM
PIN -781007

6: P LAL
PRINTER OF PURVANCHAL PRAHARI

G.S. PUBLICATIONS LIMITED
G.S. ROAD
ULUBARI
GUWAHATI-781007
KAMRUP (M)
ASSAM

7: G.S. PUBLICATION LIMITED.
G.S. ROAD
ULUBARI
GUWAHATI-781007
KAMRUP (M)
ASSA

Advocates for the petitioners : Mr. J. Roy, Sr. Adv.,
Assisted by Mr. A. Gautam, Adv.

Advocates for the respondents: Mr. A. K. Bhuyan, Adv. (resp.no. 2 & 3)
Mr. P. Bhagat, Adv. (resp.no. 4 to 7)

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 21.03.2023

Date of Judgment & Order : 15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. J. Roy, learned Senior Advocate assisted by the Mr. A. Gautam, learned counsel appearing for the petitioner. Also heard Mr. A. K. Bhuyan, learned counsel appearing for the respondent Nos. 2 & 3; and Mr. P. Bhagat, learned counsel appearing for the respondent Nos. 4 to 7.

2. This is an application under Section 482 of the code of Criminal Procedure, 1973 for setting aside and quashing the complaint Case being C.R. Case No. 3048/2019 under Sections 499/500/501/502/34 of the Indian Penal Code and the order dated 11.02.2020 taking cognizance against the petitioners.

3. The brief facts leading to this present petition is that on receiving summons from the Court of learned Judicial Magistrate First Class, Kamrup Metro, the petitioner came to know that the respondent Nos. 2 & 3 have lodged the complaint before the learned Chief Judicial Magistrate, Kamrup Metro arraying the petitioners as accused Nos. 5 & 6 with the allegation that a news article published on 28.06.2019 in the respondent No. 4's newspaper under the headline as "Advocate made an attack over Father-Son: Case Registered" the incident also described in the said published news. The publication or the news

item, due to which the respondent Nos. 2 & 3 have presumed themselves to be defamed, have lodged the connected complaint/petition before learned Chief Judicial Magistrate, Kamrup Metro, which is accordingly registered as C.R. Case No. 3048/2019 under Sections 499/500/501/502/34 of the Indian Penal Code. Though the matter was initially committed by Mr. U. Borah, learned Judicial Magistrate First Class, Kamrup Metro but on the basis of the transfer petition, the same was transferred before the Court of learned Judicial Magistrate First Class, Kamrup Metro.

4. It is further stated that the incident, as published in the newspapers of respondent No. 4 dated 28.06.2019 is absolute true and the same has been published pursuant to lodging of an ezahar by the petitioner No. 1 on 26.09.2019 at Bhangagarh Police Station against the respondent Nos. 2 & 3 describing about the incident that took place on that day. The said ezahar has been registered and numbered as Bhangagarh Police Station Case No. 222/2019 under Section 341/325/506/34 IPC. In the said case the charge-sheet was also filed by the Investigating Officer against the respondent No. 2 under Sections 294/323/506 IPC. One Civil suit is also pending before the learned Munsiff No. 1, Kamrup Metro at Guwahati preferred by the petitioner No. 1 pertaining to common passage used by both the petitioners and the respondent No. 2.

5. The said suit is registered and numbered as T. S. No. 137/2015 and in the said title suit the petitioner No. 1 has also preferred a Misc. Case which is numbered as Misc. (J) Case No. 221/2015 seeking mandatory injunction for removal of the iron shed installed by the respondent No. 1 and also prayed for a prohibitory injunction restraining the respondent No. 1 from parking any vehicle

over the common passage but the learned court of Munsiff No. 1, Kamrup Metro vide order dated 24.09.2015 dismissed the said Misc. (J) Case No. 221/2015. On being aggrieved by the petitioner No. 1 preferred an appeal before the Court of learned Civil Judge, Kamrup Metro which is registered and numbered as Misc. Appeal No. 31/2015 and vide order dated 26.04.2019, the order was pleased to set aside and an appeal was allowed restraining the respondent No. 1, his men, agents, workmen and associates from blocking the common passage.

6. The respondent No. 2 has preferred a civil revision petition before this Court challenging the order passed by the learned Civil Judge No. 1, Kamrup Metro, which is registered as C.R. P(I/O) No. 182/2019 and vide order dated 14.06.2019, this Court was pleased to suspend the operation of order dated 26.04.2019 passed by the learned Civil Judge No. 1 till returnable date subject to the condition that respondent No. 2 would not pose any obstruction in the free and unhindered usage of the disputed passage.

7. But the respondent Nos. 2 & 3 had blocked the common passage on 26.06.2019 by parking the vehicle and when the petitioner requested the respondent Nos. 2 & 3 to clear the said passage, the respondent Nos. 2 & 3 physically attacked them and also threaten them and as a result they sustain injury and the petitioner No. 1 was heavily bleeding and for which he had to lodge the FIR before the Bhangagarh Police Station. Accordingly, finding sufficient materials the charge-sheet was filed against the respondent Nos. 2 & 3 under Sections 294/323/506 IPC.

8. It is further stated that the ingredients under Sections

499/500/501/502/34 IPC are not at all attracted against the petitioners and the news item published by the respondent No. 4 is absolutely true and it does not contain any defamatory statements and in the said news item the incident was described in detail and there is no fabrication at all.

9. The respondent Nos. 2 & 3 have lodged a totally false and concocted complaint by misleading the learned Court below. The complaint has been lodged by suppressing the actual material facts and there are no ingredients to attract Section 499 IPC against the present petitioners. According to the first exception of defamation "***It is not defamation to impute anything which is true concerning any person, if it be for public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.***"

10. In the instant case, the respondent Nos. 2 & 3 had committed an offence against the State by physically assaulting the petitioners in which the petitioner No. 1 had to lodge an FIR where the charge-sheet is also filed against the present respondent Nos. 2 & 3. And as such, the act of the petitioners does not fall under the purview of section 499 IPC and accordingly, the connected complaint case and order by taking cognizance are likely to be set aside and quashed against the petitioners.

11. According to the fourth exception of section 499 IPC "***It is not defamation to publish substantially true report of the proceeding of a court of justice, or of the result of any proceedings.***" The respondents have lodged the complaint case only because the petitioners have lodged FIR

against the respondent Nos. 2 & 3. Further, in the said news item there is no false or fabricated statement and the actual fact of the case or the actual contents of the FIR was published in which charge-sheet was also filed against the respondents.

12. Before taking cognizance in the said complaint case, the learned Court below ought to have examined the Investigating Officer of Bhangagarh Police Station under Section 200 of the Code of Criminal Procedure to ascertain the truthfulness of the actual facts but without ascertaining the veracity of the said allegations made by the petitioners, the learned Court below took the cognizance which is not deniable in the eye of law and liable to be set aside and quashed.

13. On the perusal of the FIR as well as the charge-sheet, it transpires that the said news item was published in terms of the contents of the said FIR lodged by the petitioner No. 1 against the respondent Nos. 2 & 3 and as such the complaint itself has been lodged dishonestly by making false and fabricatory statements by suppressing some vital facts of the case. And as such, the complaint as well as the order of the cognizance is liable to be quashed.

14. In the instant case, it cannot be said that the petitioners had any dishonest intension to defame the respondent Nos. 2 & 3 by publishing the news item which was published on the behest of the FIR registered as Bhangagarh P. S. Case No. 222/2019. Further, the learned Court below as well as the Hon'ble Court in appeal and revision passed the order against the respondent Nos. 2 & 3, and hence they lodged the complaint only due to

grudge. As such, the complaint case filed by the respondent Nos. 2 & 3 is nothing but an abuse of process of the Court. The complaint case being C. R. Case No. 3048c/2019 does not disclose any cognizable offence against them as no defamatory statements has been made by the petitioners against the respondent Nos. 2 & 3 and hence, the order for taking the cognizance passed by the learned Court below is arbitrary, illegal, without jurisdiction and not sustainable in the eye of law and thereby, the same is liable to be set aside and quashed.

15. The petitioners also filed an additional affidavit to bring some additional documents and accordingly, the news item as well as the statements of respondent Nos. 2 & 3 made in the complaint case was also produced as additional documents.

The learned counsel for the petitioners had relied on the following judgments:

- (i) *Balraj Khanna v. Moti Ram* (1971) 3 SCC 399
- (ii) *Konath Madhavi Amma v. S. M. Sherief* 1985 Cri LJ 1496 (Ker.)
- (iii) *H.R.A. Choudhary v. Rockybul Hussain* (2008) 1 GLT623
- (iv) *Pepsi Foods v. Special Judicial Magistrate* (1998) 5 SCC 749
- (v) *GHCL Employees Stock option Trust v. India Infoline Ltd.* (2013) 4 SCC 505
- (vi) *Mehmood Ul Rehman v. Khazir Mohd. Tunda* (2015) 12 SCC 420
- (vii) *Birla Corp.Ltd v. Adventz Investments & Holdings Ltd.* (2019) 16 SCC 610
- (viii) *Jahida Tabasuna v. State of Assam* 2020 SCC Online Gau 164
- (ix) *Srichand Gobindram Nagpal and others v. M. Lakshmana* 1971 Cri

LJ 1400 (Mad.)

- (x) *Sanatan Sanstha v. State of Goa & Anr. 2007 Crk LJ 2216 (Bom.)*
- (xi) *Anjana Saikia (Das) v. Anuradha Das & Anr. (2003) 2 GLR 565*
- (xii) *Aroon Purie v. State (NCT of Delhi) 2022 SCC Online SC 1491*
- (xiii) *Rajendra Kumar Sitaram Pande v. Uttam (1999) 3 SCC 134*
- (xiv) *Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar (1998) 4 SCC 112*
- (xv) *Vivek Goenka v. Y. R. Patil (2000) 9 SCC 87*
- (xvi) *B. R. K. Aathithan v. Sun Group and Another 2022 SCC Online SC 1705*
- (xvii) *Vijay & Anr. v. Ravindra Ghisulal Gupta 2022 SCC Online Bom 1315.*

16. Relying of those citation it is submitted by the learned counsel for the petitioners, that the learned Court below took the cognizance against the present petitioners under Sections 499/500/501/502/34 IPC without having any materials in the complaint as well as in the statements of the witnesses recorded under Section 200 and 202 Cr.P.C. All the witnesses have stated that they have heard that the petitioners had gone to the press and got the news published, and simply deposed a publication of news item. The reputation of the complainant got imputed, but none of the witnesses described any defamatory statement before the petition and simply stated that the news article dated 28.06.2019 had defamed the respondent Nos. 2 & 3. The respondent Nos. 2 & 3 have not specifically pleaded that the exact word allegedly used by the petitioners when they purportedly conveyed information to employees of the respondent No. 4. The complainant should have described the actual word used or the statements made by the accused person, if the words are very few and statements are brief or the complainant can reproduce substantial part alleged

to have been utter by the accused.

17. Accordingly, it is submitted that reliance can be placed on the judgments passed by the Supreme Court in ***Balraj Khanna & others Vs. Moti Ram***, reported in 1971 (3) SCC 399 and also the judgment of the Hon'ble Kerala High Court ***Konath Madhavi Amma vs. S. M. Sherief***, reported at 1985 Cri LJ 1496. The learned counsel mainly stress on the para Nos. 25, 26, 27 & 28 of the said Judgments, wherein, the ***Hon'ble Supreme Court*** has held that the actual word stated to have been used by the accused which are stated to be defamatory should be reproduced by the complainant.

18. The learned counsel for the petitioners also raised the point in the argument that the complainant cannot be allowed to fill up the lacunae through evidence during trial as no case is made out against the present petitioners from the statement made by the respondent Nos. 2 & 3 under Sections 200/202 Cr.P.C.

19. In view of the judgment passed by this Court in ***H. R. A. Choudhary v. Rockybul Hussain***, reported at (2008) 1 GLT 623, the respondent Nos. 2 & 3 should not be allowed to continue the complaint case against the petitioners with a view that the evidence during trial will fill up the lacunae of the pre summoning evidence adduced by the respondent Nos. 2 & 3 while taking cognizance by the learned Court below.

20. The para No. 11 of the said judgment read as under:

"11. ***The news item not having been proved in accordance with law, in my***

view, it cannot at this stage be acknowledged to be an admissible piece of evidence in support of the averments in the complaint. Noticeably, the impugned order dated 29.06.2007, does not refer thereto and does not demonstrate that the satisfaction of the learned trial court, is also founded thereon. Reliance on the news item, in the instant proceeding, therefore, is not permissible. In any view of the matter, the challenge to the initiation and maintainability of the impugned criminal proceeding, has to be tested on the occurrence of the materials available before the learned trial court at the relevant point of time."

21. Further, it is submitted by the learned counsel for the petitioners that neither the respondent No. 2 nor the respondent No.3 legally proved the contents of alleged defamatory news article and also they did not prove the contents of the concerned newspaper article in their statement under Section 200 Cr.P.C in accordance with law. He further given stress in the para 10 of the above referred judgment wherein it is held as under:

"10. I have bestowed my anxious considerations to the rival submissions. The allegations against the petitioner, as cullable from the complaint, is that he by misusing his position got a news published in the issue dated 29.06.2007 of the daily Asomiya Khabar, containing a serious allegation by his party AUDF, that the opposite party in the capacity of the Forest Minister has a hand behind the ULFA's threat to Badaruddin Azmal to quit Assam within the time fixed. A plain reading of the extracted portion of the news item as set out in the complaint per se, does not demonstrate that the insinuation against the opposite party had been levelled by the petitioner himself. The complainant in his statement under Section 200 Cr.P.C., though referred to the said news item, omitted to prove and exhibit the same to bring it on record as a piece of evidence. He only testified that the news item, which alleged that he had a hand behind the statements made by ULFA, had maligned his political and social reputation and was intended to cause to damage his public image. He, however, clarified that he had no grievance against the Chief Editor, the Executive Editor and the Printer of the newspaper, but instead that Shri Dadu Tai be construed to be an accused for making allegations against him in the news item."

22. It is further submitted by Mr. Roy, learned Senior Advocate for the petitioner that the learned Court below took cognizance of the complaint case and passed the order for issuance summon without application of mind. No reasoned order was passed by the learned Court below under what basis the Court was satisfied and issue the summon or took the cognizance against the present petitioners. The learned counsel relied on the decision of **Hon'ble Apex Court** reported in (1988) 5 SCC 749 and in para 12 of the said judgment the Hon'ble Apex Court has held as under:

"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 scrutinize 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."

23. It is further argued by Mr. Roy, learned Senior Advocate that the said position of law is crystallized and has been followed consistently by the Hon'ble Apex Court in ***GHCL Employees Stock option Trust v. India Infoline Ltd., reported at (2013) 4 SCC 505; Mehmood Ul Rehman Vs. Khazir Mohd. Tunda, reported at (2015) 12 SCC 420; and Birla Corp.Ltd Vs. Adventz Investments & Holdings Ltd., reported at (2019) 16 SCC 610.*** This Hon'ble Court has also expressed the same view in the recent judgment in

Jahida Tabasuna v. State of Assam, reported at 2020 SCC Online Gau 164.

24. In the written argument it is submitted that the learned Court below failed to accord due consideration in the following aspects in *seriatim*:

- i. The complaint does not specify the defamatory words uttered by petitioners;
- ii. The complaint is not, ipso facto, maintainable against the petitioners;
- iii. The absence of the said words is not rectified in the pre-summoning evidence under Sections 200/202 Cr.P.C;
- iv. Such lacunae in pre-summoning evidence cannot be rectified during trial;
- v. The causes of action delineated under paragraphs 16 and 17 of the complaint evince that the complaint is targeted at the libel allegedly committed by respondent Nos. 4 to 7 herein;
- vi. The allegedly defamatory news article itself was not proven in pre-summoning evidence; and
- vii. The allegations against petitioners herein are patently inadmissible in Court, being hearsay, in the absence of depositions of the individuals who heard petitioners utter the allegedly defamatory words.

25. Further another points raised in the argument that the petitioners were summoned only on the basis of hearsay evidence and as per the statements made by the complainant/respondents, the petitioners defamed the respondent Nos. 2 & 3 in front of all employees of the respondent No. 4, but the respondent

No. 4 was not called for before summoning the present petitioners or before taking cognizance by the learned Court below. Reliance in this regard is placed on the judgment of the ***Hon'ble Madras High Court in Srichand Gobindram Nagpal and others v. M. Lakshmanan***, reported at 1971 Cri LJ 1400, and also relied on the judgment of the ***Hon'ble Bombay High Court in Sanatan Sanstha v. State of Goa & Anr.***, reported at 2007 Cri LJ 2216. It is also further submitted that the petitioners cannot be prosecuted merely for lodging an FIR against the respondent Nos. 2 & 3, the complaint has been filed only as a proxy litigation only to harass the petitioners as they have lodged the FIR against the respondent Nos. 2 & 3. Institution of Criminal Proceedings cannot form the basis for filing a defamation, as held by this ***Hon'ble Court in Anjana Saikia (Das) v. Anuradha Das & Anr.***, reported at (2003) 2 GLR 565. Wherein, it has been held that the exceptions 8 & 9 under Section 499 IPC would absolve accused persons in a defamation complaint which alleges defamatory imputation via allegations in the FIR. Further, relying on the judgment by ***Hon'ble Apex Court.***, reported in 2022 SCC Online SC 1491 ***Aroon Purie v. State***, wherein, it is held as under that " *it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial.*" Further, reliance are placed on the judgments of the Hon'ble Supreme Court passed in ***Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar***, reported at (1998) 4 SCC 112, and ***Rajendra Kumar Sitaram Pande v. Uttam***, reported at (1999) 3 SCC 134.

26. Accordingly, it is submitted by Mr. Roy, learned Senior Advocate that the Criminal Proceeding as well as the order of taking cognizance passed by the learned Court below is liable to be set aside and quashed as there is no

materials to take cognizance and Moreso, the entire contents of the complaint does not attract the case under Sections 499/500/501/502/34 IPC.

27. In this context, Mr. A. K. Bhuyan, learned counsel appearing on behalf of respondent Nos. 2 & 3 has submitted that it is the duty of the Printer, Publisher and Editor to go to the route of the matter to verify the veracity of the news item and there is no materials that the allegations made in the FIR is true and the news item which is published on true facts to come under any exceptions under Section 499 IPC. The defamation case is also filed against the Printer, Publisher and Editor of the said newspaper as they published the news in connivance with the petitioners. More so, all the statements in the complaint are sufficient to make out a case under Sections 499/500/501/502/34 IPC under which cognizance has been taken by the learned Court below. Further, the learned Magistrate took cognizance of the offence after recording the statement of complainant as well as the witnesses under Sections 200/202 Cr.P.C and finding a prima facie case the cognizance accordingly taken against the petitioners. As per the Section 105 of the Evidence Act the burden is to discharge at the time of evidence and the cognizance can be taken if a prima facie is established to issue summon against the accused persons.

28. The learned counsel also made an elaborate submission on the judgment relied by the petitioners side. Coming to the judgment of the ***Hon'ble Bombay High Court***, reported in 2022 SCC Online Bombay 1315. It is submitted that in para Nos. 12 & 27 of the said judgment, it is held that the responsibility of the publication would not rely on persons other than the name of responsible persons but herein in this instant case, there is a specific allegations which has

brought against the present petitioners that news item was published at the instance of the petitioners.

29. In the judgment of the ***Hon'ble Apex Court***, reported at 2022 SCC Online SC 1705 as relied by the petitioners are not applicable in the instant case, as in the said judgment the learned magistrate did not take cognizance of the offence and under that reference the judgment was passed. Coming to the judgment of ***Hon'ble Supreme Court.***, reported at legal eagle (SC) 06 has expressed the view that the burden will be on the accused to claim protection under Section 499 IPC where the accused were remotely connected with the matter of publication, their names directed to be deleted from the array of accused. But herein, in this instant case, it is seen that it is the petitioners under whose instants the news item was published and hence, the present petitioners are fully involved in publication of the defamatory news item.

30. In the case of ***Aroon Purie, the Hon'ble Apex Court*** had held that the benefit of an exceptions to Section 499 IPC can be extended and it is not taken to be rigid principle that benefit of exception can only afforded at the stage of trial and it is submitted by the learned counsel for the respondents that in paragraph No. 24 of the said judgment there was no specific allegations against the Editor-in-Chief of the said newspaper who was arrayed as accused No. 1. In this instant case, it is the allegations that the Printer, Publisher and Editor of the said newspaper had published the defamatory news item in connivance with the present petitioners.

31. In regards to the ***judgment of this Court.***, reported in (2020) 207 AIC

721, it is held that if evidence collected, by the prosecution do not disclose the commission of the offence to make out the case against the accused, the power under Section 482 can be exercised to quash the complaint but herein, this instant case, it is the specific allegations are brought against the petitioners alleging that the news item was published at the instance of the petitioners and also in connivance with the Publisher, Editor and the Printer of the said news item and thus, it cannot be held that on the basis of the complaint as well as the statements recorded under Section 200/202 Cr.P.C there was no prima facie case to take cognizance against the accused persons. In the case of ***Birla Corp. Ltd & ors***, it is held that no specific allegations against the accused persons and the allegations in the complaint also did not disclose a prima facie case to fulfill the ingredients under which the cognizance was taken.

32. Accordingly, it is submitted by the learned counsel appearing on behalf of the respondents that the complaint was lodged against the present petitioners along with the Editor, Printer & Publisher of newspaper "*Purvanchal Praharī*" with the specific allegations that the defamatory news item was published in the said newspaper by the Printer, Publisher and Editor in connivance with the present petitioners and it is also alleged that news item was published only at the instance of the present petitioners. Further, it is submitted that the learned Court below recorded the statements of the complainant as well as the two witnesses under Sections 200/202 Cr.P.C and took the cognizance finding a prima facie case against the petitioners along with the other respondents.

33. At the time of filing of the complaint, the newspaper was also part of the record and on the basis of which after recording the statement of the witnesses

the cognizance was taken. In the order of cognizance it is specifically stated by the learned Court below that after the perusal of the entire case record and also statement made by the complainant as well as the witnesses, it was held by the learned Court below that there is a prima facie case which is made out against the accused/petitioners and accordingly, the cognizance was taken under Sections 499/500/501/502/34 IPC. Thus, from the order itself it is seen that the cognizance was taken by the learned Court below only considering the materials on record, and the statements made by the witnesses and also considering the materials available in the complaint case itself. Thus, the order of the cognizance passed by the learned Court below cannot said to be the order passed without applying his judicial mind.

34. He further submitted that it is a fact that an FIR was lodged against the present respondent Nos. 2 & 3 but all the allegations made in the said FIR are concocted and false allegations and only on the pretext of filing of FIR, the petitioners cannot come under the exception of Section 499 IPC. Moreso, it is specifically mention that the complainant in his statement as well as the witnesses that from publication of the said news item the present respondent Nos. 2 & 3 are defamed in the society and images are also malign in the society. The witnesses in their statements made under Sections 200/202 Cr.P.C clearly stated that the false news item is published in the newspaper only to defamed the respondent Nos. 2 & 3. Further, it is submitted by the learned counsel for the respondents that the learned Judicial Magistrate First Class, Kamrup Metro took cognizance of this Case finding a prima facie case against the present petitioners along with the respondent Nos. 4, 5 & 6. It is necessary to establish prima facie case and after the case of the present petitioners comes under any

exception under Section 499 IPC, the matter can be agitated before the Court at the stage of hearing or evidence but as the cognizance has already taken finding a prima facie case, therefore, it is not a fit case to exercise the power under Section 482 Cr.P.C for quashing of the complaint as well as the order of the cognizance taken by the learned Court below.

35. After hearing the entire submissions made by the learned counsels of both sides and after perusal of the documents as well as the judgments placed before this Court, it is seen that the respondent Nos. 2 & 3 lodged a complaint against the present petitioners along with the other respondents for publication of the news items which is alleged to be defamatory and further allegations that due to publication of the said defamatory news item, both the respondent Nos. 2 & 3 are defamed in the society and their names and reputation are also malign in the society. In the said case of the defamation, the main allegation brought against the present respondent Nos. 2 & 3 is that the news item was published only at the instance of the petitioners and the news item was published in connivance with the Editor, Printer and Publisher of the said newspaper.

36. The learned counsel for the respondents also placed a reliance on the following decision:

- (i) ***Judgment passed in criminal petition No. 242/2009 dated 29.06.2020, Jatin Choudhary & Ors v. Hadarna***
- (ii) ***AIR 1966 SC 97(Harbhajan Singh-Vs-State of Punjab)***
- (iii) ***AIR 1981 SC 1514(Sewakram Sobhani V. R. K. Karanjiya &***

Ors.

37. It is a fact that for the alleged instant one FIR was lodged by the petitioners before the police station and also the charge-sheet was also filed against the respondent No. 2 but specific allegations brought against the petitioners along with other respondents that the news item was published only to harass the present respondent Nos. 2 & 3 and also to defame them in the society.

38. The learned counsel for the petitioners had given stress on the points that there cannot be any defamation unless the actual word stated to have been used by the accused, which are stated to be defamatory should be reproduced by the complainant. In this context, as stated above that he placed reliance on the judgment of ***Hon'ble Apex Court*** passed in ***Balraj Khanna's case*** and also relied on another decision of ***Hon'ble Kerala High Court*** passed in ***Konath Madhavi Amma's case*** but herein this instant's case, it is seen that the case of defamation has been filed against the present petitioners along with other respondents with the allegations that defamatory news item has been published against the petitioners only to defame in the society. It is also a fact that the said news item is also a part of the record and on perusal of the statement made by the complainant, it is seen that, as per the said news item he habitually fights with other persons, thus in the statement made by the complainant it is seen that the said in the news item it is not only published that the complainant assaulted the petitioners but also stated that he used to fight with the other persons and he is habituated to assault or fight with other persons in that locality. As the defamatory case is based only on the publication

of the news item and accordingly the reproduction of the exact word used by the accused will not come and it is seen that the statement which are alleged to be defamatory are already reproduced by the complainant in his statement as well as the news item is also a part of the record.

39. As per the learned counsel for the petitioners the present case of the defamation filed by the respondents comes under the 1st & 4th exceptions of 499 IPC. According to the 1st exception of the defamation ***"It is defamation to impute anything which is true concerning any person, if it be for public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."*** Further, according to 4th exception of 499 IPC ***"It is not defamation to publish substantially true report of the proceeding of a court of justice, or of the result of any proceedings."*** In this context, the decision of this Court passed in criminal petition 243/2009 can be relied, wherein, it is held as under:

"In order to attract the 1st exception, it must be shown that the imputation is true concerning the person and it has been made for public good but whether any public good is achieved or not is to be find out upon assessment of the facts proved in the case and is question of fact. Under the 1st exception such a publication is not defamatory to impute anything which is true concerning any person, if it is for public good that imputation is to be made or published. The provisions of exception are the matter of defence is taken, admittedly, the burden will lie upon such person to prove the same. The exceptions as incorporated under Section 400 IPC, matters are to be proved by placing necessary and relevant facts before the learned trial court and in the instant case that stage has not yet come."

40. Herein in this instant case, it is to be seen whether the publication of the said news item is for public good or it is true fact. As stated above in the said news item not only it is published that the respondents were engaged in fighting

with the petitioners but also it reported that they are also habituated in fighting with others. Coming to the 4th exception it is seen that the FIR is lodged against the respondent Nos. 2 & 3 and in the said case the charge-sheet has also been filed against the respondent No. 2 & 3 but the case is still pending at the stage of trial. Hence, at this stage it cannot be held that the information which was received by the publication team is true fact. The charge-sheet is submitted by the Investigating Officer only finding a prima facie case against the respondents but the outcome of the said proceedings is yet to come.

41. More so, as per the allegations made in the complaint the news item which is alleged to be defamatory was published only at the instance of the petitioners and thus, specific allegations is brought against the present petitioners behind the publication of news item which is alleged to be defamatory. While passing the judgment in criminal petition 243/2009 passed by this Court, the decision of ***Hon'ble Apex Court in R.K.M Goenka*** (Supra's) case is also referred and in para 16 of the said judgment read as under:

"This court in Indian Oil Corpn.v.NEPC India Ltd at pp.747-48 has observed as under: (SCC para 12)

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, CBI v. Dancans Agro industries Ltd., State of Bihar v. rajendra Agarwala, Rajesh Bajaj v. State (NCT of Delhi), Medchl Chemicals & Pharma (P) Ltd.v.Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and zandu Pharmaceutical works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are:

(i) A complaint can bequashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merit of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

The Hon'ble Apex Court also referred in Bhajan Lal's case reported in 1992 Supp (1) SCC 335, which held as under:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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 FIR 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."***

41. So, from the entire discussion made above, it is seen that the learned JMFC took cognizance in the said criminal case on perusal of the record and the statements made by the complainant as well as the witnesses under Section 200/202 Cr.P.C and hence, it cannot be held that the learned JMFC did not pass

the order of cognizance applying his judicial mind and at the same time from the discussion made above it is seen that the prima facie, case does not come under the exception of 1st & 4th exceptions under Section 499 IPC and these are the questions of fact and it is required to be proved by the petitioners and the defence will definitely get a chance to disprove the allegations or the discharge their burden.

42. So, from the entire discussion made above, I find that this is not a fit case to exercise the power under Section 482 Cr.P.C. In the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant