

GAHC020002242023



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

Case No. : Crl. Pet./6/2023

SHRI. TANGMONG AND 13 ORS
S/O PACHI,
R/O NOKHU, NOKING VILLAGE,
NOKLAK, NAGALAND

2: SMTI. VIKETUONUO KIRE

R/O TENYIPHE - 1 VILLAGE

CHUMOUKEDIMA
NAGALAND

3: SHRI. ACHUM NGULLIE

R/O BAYAVU COLONY
KOHIMA
NAGALAND

4: SMTI. LANUYANGLA

R/O KUMLONG WARD
MOKOKCHUNG

5: SMTI. TEMEJENINLA
R/O DILONG WARD

MOKOKCHUNG
NAGALAND

6: SMTI. NANGSHIENLA AIER

R/O HILL VIEW COLONY
DIMAPUR
NAGALAND

7: SMTI. KHUMDIBILA SANGTAM

R/O LOWER BAYAVU
KOHIMA
NAGALAND

8: SMTI. SENSONARO LONGCHAR

R/O PHEZHU
JOTSOMA
KOHIMA
NAGALAND

9: SMTI. KEDUONEINUO SOLO

R/O KOHIMA VILLAGE
KOHIMA
NAGALAND

10: SMTI. ONENTILA LONGKUMER

R/O UPPER AGRI COLONY

KOHIMA
NAGALAND

11: SHRI. THEJAVI CHUCHA

R/O UPPER AGRI
KOHIMA
NAGALAND

12: SMTI. RITE-U MERO

R/O LOWER PWD
KOHIMA
NAGALAND

13: SMTI. ARHONI

R/O LUMAMI
ZUNHEBOTO
NAGALAND

14: SMTI. NECULU CHUZHO

R/O AGRI FARM

KOHIMA
NAGALAN

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR,
GAUHATI HIGH COURT, KOHIMA BENCH

2:SMTI. RUOKUONUO USOU

D/O SHRI. VISOLIE USOU

PERMANENT R/O OF CHEDEMA VILLAGE

DISTRICT - KOHIMA
NAGALAN D

Advocate for the Petitioner : TOSHI O. LONGKUMER

Advocate for the Respondent : P.P, NAGALAND

Date of hearing	: 04.06.2024.
Date of Judgment	: 02.08.2024

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

:: Judgment and Order ::
[CAV]

Heard Mr. Toshi O. Longkumer, learned counsel for the petitioners. I have also heard Mr. V. Zhimomi, learned PP for the respondent No. 1 and Mr. L. Iralu, learned counsel for the respondent No. 2.

2. This is an application under section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the Criminal Proceedings in Criminal Complaint Case No. 1/2023 pending

before the Court of JMFC, Kohima, Nagaland.

3. The case of the petitioners, 14 in numbers, in brief is that being aggrieved by the appointment of Assistant Professors on contract basis at State College of Teachers Education (SCTE), Kohima without qualification sine advertisement, the petitioners along with 20 others filed the writ petition before this Court being registered as WP(C)/340/2022 assailing the appointment of the present respondent No. 2/complainant along with 30 others arraying them as private respondent Nos. 4 to 34 on the ground that they were all appointed without having requisite qualification sine advertisement. The said writ petition is still pending before this Court.

4. Being aggrieved by the contention made in the writ petition being WP(C)/340/2022, the complainant/ respondent No.2 herein filed the criminal complaint case against the petitioners before the learned Court of Judicial Magistrate First Class, Kohima.

5. The learned counsel for the petitioners submits that the present criminal petition has arisen out of the criminal complaint case filed by the respondent no. 2 before the JMFC, Kohima alleging that the present petitioners by their pleadings in the writ petition pending before this Court in WP(C) No. 340/2022 has maliciously and with clear intention defamed her. The relevant sections of the Indian Penal Code basing of which the complaint has been filed are Sections 34, 109, 117, 120-B and 500 of the Indian Penal Code.

6. The learned counsel for the petitioners submitted that the subject matter in WP(C) 340/2022 is that the petitioners have challenged the action of the State respondents in appointing the respondent No. 2 and 30 (thirty) others who were allegedly appointed without qualifications and without advertisement as Assistant Professors in various Government Colleges across Nagaland. This was filed on the basis of an RTI Information dated 16.11.22 furnished by the Department of Higher Education, Nagaland and relevant Service Rules and University Grant Commission Guidelines (UGC), 2010. The complainant/ respondent No. 2 appears at Sl. No. 143 of the said RTI reply wherein her qualification is reflected as M.A. with NET whereas as per the relevant Rules and UGC guidelines a candidate to be appointed as Assistant Professors in the State College of Teachers Education (SCTE) must have M.Ed or M.A in Education with B.Ed whichever is applicable.

7. The learned counsel for the petitioners further submits that when the matter was thus situated, without even making appearance in person or through counsel in the said Writ Petition, the Complainant/ respondent No. 2 herein has filed the Criminal Complaint case which is numbered as Criminal Complaint case No. 01/2023 before the learned Judicial Magistrate First Class, Kohima and in pursuant to it, without prima facie satisfaction of any offence summon order dated 28th April, 2023 were issued to the petitioners.

8. It is further submitted that the instant criminal Petition

was filed by the petitioners with a prayer to quash and set aside the Criminal Complaint case No. 1/2023 and by an order dated 01.06.2023 this Hon'ble Court was pleased to stay the criminal proceedings. While the instant criminal petition was still pending for adjudication before this Hon'ble Court, the petitioners in WP(C)/340/2022 prayed for striking off the name of the complainant/ respondent no. 2 herein from the array of the respondents stating inter alia that the respondent No. 2 possesses the requisite qualifications including NET and accordingly, by an order dated 08.05.2023 the same was allowed.

9. The learned counsel for the petitioners further submits that two writ petitions WP(C)/12/2019 and WP(C)/65/2019 were filed by 19 (Nineteen) petitioners including the petitioner No. 3 challenging the appointment of 175 Assistant Professors and the present complainant/respondent No. 2 herein was arrayed as respondent No. 17 in WP(C)/12/2019. The learned Counsel further submits that by a common judgment and order dated 06.06.2022 this Hon'ble Court without going into the merits of the case dismissed the petitions on maintainability and locus standi while granting liberty to file appropriate petition.

10. The learned counsel for the petitioners submits that in order to attract the offence of defamation under section 499 of the IPC there has to be imputations and it must have been made in the manner as provided in the provision with the

intention of causing harm or having reason to believe that the imputation made will harm the reputation about whom it is made; causing harm to the reputation about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens-rea is a condition precedent to constitute the offence.

11. It is further submitted that the alleged defamatory statements as claimed by the respondent No. 2/complainant appears at para **9, 11, 12** and **16** of WP(C)/340/2022. The complainant has taken out of context the impugned statements/pleadings from the petition and in isolation without the contextual bearings of the entire statements is claiming such pleadings to be imputations and defamatory. Thus, the complainant has miserably failed to establish prima facie harm being caused to her and the criminal complaint does not disclose having intention to cause harm.

12. The learned counsel for the petitioners submits that the petitioners have specifically mentioned that, "As per the list, the respondent nos. 4 to 34 does not possess the minimum requisite qualifications to hold the posts as mandated by the UGC guidelines". Basing on the RTI information dated 16.11.2022, the petitioners have in good faith come before this Hon'ble Court raising their concerns on the appointment process. It is further submitted that even on a plain reading of the said paragraphs, there is no such imputations to attract the offence and further without the clear intention to cause

harm, the complaint lacks basic ingredients of section 499 and no useful purpose would be served in permitting the Trial Court to proceed with the complaint.

13. In support of his submissions, the learned counsel for the petitioners have placed reliance in the decision of the Hon'ble Supreme Court in the case of ***Rajesh Rangarajan Vs. Crop Care Federation of India and Anr*** reported in ***(2010) 15 SCC 163***.

14. The learned counsel for the petitioners further submitted that it is a settled law that criminal complaint should prima facie disclose the offence alleged in the complaint and as such all material documents should form part of the complaint to enable the Court to form its opinion. However, in the instant case, the complainant had suppressed material documents more particularly the RTI list dated 16.11.2022 which is heavily relied on by the petitioners in WP(C)/340/2022. He further submitted that the respondent No. 2/complainant did not include any of the annexures that is part of the writ petition being WP(C)/340/2022 and as such, the complainant had approached the court below with unclean hands. The criminal complaint is inherently defective devoid of material documents to establish a prima facie satisfaction of the alleged offence and since the substance of the criminal complaint is on the subject matter of the writ petition, without the material documents of the writ petition, the learned JMFC ought to have dismissed the complaint.

15. The learned counsel for the petitioners submitted that in all the paragraphs of the complaint, it is invariably stated that the petitioners by their pleadings have defamed the complainant. However, nowhere in the complaint, the complainant has stated actually as to how those pleadings in the writ petition are defamatory in nature and how those allegations are sufficient to constitute the offence under section 499 or 500 of the IPC. There is absolutely no facts or circumstances in expressed terms stated in the complaint which are sufficient to constitute any offence against the petitioners.

16. It is further submitted that the criminal complaint has been filed against all the 14 (fourteen) petitioners on the ground that there is a common criminal conspiracy under section 120B of IPC to commit the offence of defamation. However, on plain reading of the section it can be safely understood that section 120B is attracted only when the offence is punishable with death, imprisonment for life or rigorous imprisonment for 2(two) years and upwards. The maximum punishment for defamation provided under Section 500 IPC is simple imprisonment for two years. It is further contended that it is apparent on the face of record that the learned Judicial Magistrate First Class (JMFC), Kohima should have exercised due diligence in issuing the process and as such, the complaint should have been dismissed on the grounds of maintainability and lack of jurisdiction.

17. It is the further contention of the petitioners that Freedom of Speech and Expression is a fundamental right enshrined under Article 19 (1) (a) of the Constitution of India which includes right to publish. The petitioners in exercising their fundamental rights have approached this Hon'ble Court seeking for justice within the confines of their pleadings and nowhere else. It is imperative that freedom of speech and expression must be protected in the Courtroom and the petitioners with that trust have approached this Hon'ble Court challenging the executive action of the State respondents in making appointments without advertisement and qualifications. It is further submitted that as custodian of fundamental rights, the complainant should not be allowed to undermine the rights of the petitioners to approach this Hon'ble Court on questions of public employment.

18. The learned counsel for the petitioners further contended that an important point for consideration before this Hon'ble Court is whether the Court of JMFC had the jurisdiction to take cognizance of the criminal complaint without a prima facie satisfaction when the substance of the issue was already seized by this Hon'ble Court in W.P(C) no. 340/2022.

19. The learned counsel for the petitioner submitted that on a technical standpoint, when a litigant approaches this Hon'ble Court for issuance of a writ under Article 226 of the Constitution of India, the petition is addressed to the Chief Justice and his Lordship's companion Judges. The pleadings

including all the allegations are made in the confidence of the Chief Justice of the Hon'ble High Court. Once the petition is admitted and notice is issued, the matter is seized by the Chief Justice and the High Court. A remedy to that effect to rebut the allegations is afforded to the parties to whom notices have been issued. In essence, in no way, the learned JMFC could have the jurisdiction to entertain a matter which is already subjudiced before the Hon'ble High Court.

20. The learned counsel for the petitioners submitted that the respondent No. 2/complainant by instituting the Criminal complaint has undermined the jurisdiction of this Hon'ble Court in adjudicating the matter. He further submitted that the statements that forms part of the pleading may or may not be wholly true subject to adjudication and when the matter in dispute was seized by this Hon'ble Court, instituting criminal proceedings is an abuse of the process of law. Such action of the respondent No.2/complainant calls for initiation of contempt proceedings against her.

21. It is further submitted that the complainant is a public servant and is subject to public scrutiny if there are reasons to do so. The petitioners had merely questioned the process involved in appointing the complainant along with 30(Thirty) others. The petitioners will be covered by the third exception and the Eight exception of Section 499. Thus, the learned JMFC, Kohima has without application of mind and jurisdiction, set in motion the criminal process and the same

is liable to be quashed and set aside.

22. The learned counsel for the petitioners further submits that in view of the facts and circumstances, it is a fit case where this Hon'ble Court may exercise its inherent power under Section 482 of Cr.PC by quashing the impugned Criminal Complaint case no. 1/2023. He further placed reliance on the authority in ***State of Haryana and Ors Vs. Bhajan Lal and Ors*** reported in ***1992 Supp (1) SCC 335*** para 102 and submits that the instant case is covered by the guidelines 1, 3, 5, 6 and 7 of para 102 in *Bhajan Lal* (supra).

23. The learned counsel for the petitioners finally submitted that the respondent No. 2/ complainant should not be allowed to use a criminal case as an instrument of harassment or with the ulterior motive to pressurize the accused which is sought to be done in the present case. If such mala-fide actions of the complainant are left unchecked, it will have a chilling effect on every litigants that approaches this Hon'ble Court and the faith that is imposed on the judiciary by the citizens to safe guard the fundamental rights will be eroded.

24. In support of his submission, the learned counsel for the petitioners has placed reliance on the following decisions of the Hon'ble Supreme Court and the High Courts:

(i) The case of ***S. Khushboo v. Kanniammal*** reported in ***(2010) 5 SCC 600***; para 34, 35, 47 & 54

"34. *It is our considered view that there is no prima facie case of defamation in the present case. This will become self-evident if we draw attention to the key ingredients of the offence contemplated by Section 499 IPC, which reads as follows:*

"499. Defamation.- 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 expected, 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. ..."

The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499 further states that 'It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.'

35. *With regard to the complaints in question, there is neither any intent on part of the appellant to cause harm to the reputation of the complainants nor can we discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. As mentioned earlier, the appellant's statement published in 'India Today' (in September 2005) is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a 'company or an association or collection of persons'. It is difficult to fathom*

how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if we refer to the remarks published in 'DhinaThanthi' (dated 24.9.2005) which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if we consider these remarks in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. That imputation can only be found in the complaints that were filed by the various respondents. It is a clear case of the complainants reading in too much into the appellant's remarks.'

47. *In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the 'freedom of speech and expression'.*

54. *In conclusion, we find that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the appeals are allowed and the impugned judgment and order of the High Court dated 30.4.2008 is set aside. The impugned criminal proceedings are hereby quashed."*

(ii) In the case of **M. L. Wadhawan V. Zunzarrao Bikaji Nagarkar**, reported in **(2018) 13 SCC 290**; para 3

"3. *In the above facts, we are of the view that, prima facie, no case of defamation under Section 499 of the Indian Penal Code is made out on the allegations levelled against the appellant. The essential ingredients of the offence under Section 499 read with the Exceptions thereto are not made out so as to warrant continuance of the impugned criminal proceedings. We, therefore, interfere with the impugned order passed by the High Court and quash the criminal proceedings against the accused-appellant."*

(iii) In the case **of Kishore Balkrishna Nand V. State of Maharashtra and Anr** reported in **(2023) 8 SCC 358**; para 15, 16 & 17

"15. We are of the view that no case is made out to put the appellant to trial for the alleged offence. There is no defamation as such.

16. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out.

17. In the overall view of the matter, we are convinced that the appeal deserves to be allowed and is hereby allowed. The impugned order passed by the High Court is hereby set aside. As a consequence of the same, the original order passed by the Magistrate issuing summons, is also hereby quashed and set aside. The criminal proceedings in the form of Criminal Case No.247 of 2002 pending in the Court of Judicial Magistrate First Class, Worora, Chandrapur, Maharashtra stand terminated."

(iv) In the case of **Rajesh Rangarajan V Crop Care Federation of India** reported in **(2010) 15 SCC 163**; para 2 &3

" 2. Mr. Raj Panjwani, learned Senior Counsel appearing for the appellant has drawn our attention to Annexure P-1, which is the Report of the Fact-Finding Committee which deals with farmers' deaths due to exposure to pesticides in Warangal District of Andhra Pradesh. We have carefully perused the Report. The relevant page of the Report, which is at P.40 of the paper book, clearly indicates that the Fact-Finding Committee was not aimed at doing health study or in-depth scientific investigation, but to do an indicative study which would lead to a larger health study. The general tenor of the Report indicates that the Report was meant to focus the harmful effects of exposure to pesticides. It is quite evident from the Report that it was not meant to harm, hurt or defame any individual or the manufacturing company. Mr.

Panjwani, learned Senior Counsel appearing for the appellant also fairly submitted that the Report was not intended to harm or defame any individual or manufacturers of pesticides.

3. *In our considered opinion, the complaint filed under Sections 120B, 34, 500, 501 and 502 of the Penal Code, 1860 lacks basic ingredients. According to our view, no useful purpose would be served in permitting the trial court to proceed with the complaint which lacks the basic ingredients of the aforementioned sections. Consequently, we quash the complaint."*

(v) In the ***Grievances Redressal Officer, Economic Times Internet Ltd. And Ors Vs. V. V. Minerals Pvt. Ltd.,*** reported in ***2020 SCC OnLine Mad. 978***; para 14, 20, 25, 26 and 28

"14. *The Hon'ble Division Bench of the Madras High Court comprising their Lordships Chief Justice A.P.Shah and Justice Prabha Sridevan in R.Rajagopal vs. J.Jayalalitha (AIR 2006 Mad 312) laid down the principle as follows :*

"Thus law is well settled that so far as Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them. In the case of public officials, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties and this is so even where the publication is based upon the facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. ...

20. *What must be seen is whether the subject matter is a public question or not. Exception No.3 to Section 499 IPC refers to public question. Of course, the said expression has not been defined anywhere including the Law lexicons. But, one can safely understand it to mean an issue in which the public or the community at large has a stake or interest. Media ought to be relieved from any criminal prosecution*

once it is noted that its case falls within the Exception as delineated above.

25.*When the media is accused in a criminal defamation proceeding in a trial court, one remedy open to it is to move the High Court under Section 482 of Cr.PC. This provision pertains to the inherent powers of the High Court to make such orders to prevent abuse of the process of any court or otherwise to secure the ends of justice. Most of the legal provisions conferring power are couched in a permissive language. But there is something called ethical imperative. It envisions that inherent powers go with implicit duties. Courts often nudge and remind the executive that possession of power is coupled with a duty to exercise the same. Judicial power can be no different. When freedom of press which is a fundamental right is at stake, higher judiciary is obliged to exercise not only its inherent power but also exert itself a bit. An unused power is a useless tinsel. There is no point in merely saying that press is the foundation of democracy.*

26.*There is a game called "Parama Padham". The board will have snakes and ladders. When the dice is rolled and the counter lands at the bottom of the ladder, it moves to the top. If it lands on the head of the snake, it slides down to the bottom. Section 482 of Cr.Pc becomes the head of the snake when the petition is dismissed and the petitioner is back to the trial court. Since the constitutional courts have been tasked with a duty to be proactive when it comes to protection of fundamental rights, I am obliged to examine the defence of the petitioners. The objection by the respondent that the petitioners' contentions revolve around facts cannot be a fig leaf for throwing out the petition. If a summary examination of the materials produced by the accused can bring their case within one of the Exceptions, I can give relief to the petitioners here itself instead of making them undergo the ordeal of trial. Such an activist role will have to be played by the higher judiciary because it is a matter of record that criminal defamation proceedings have become a tool of intimidation and before corporate bodies and powerful politicians whose pockets are tunnel deep and whose hands are long even media houses having good resources have capitulated.*

28.*The fact that the Hon'ble Division Bench is actively seized of the matter is more than sufficient to indicate the importance of the issue raised by the third petitioner. Article 51(A)(i) of the Constitution states it shall be the duty of every*

citizen of India to safeguard public property. The national wealth of India including the beach sand minerals are obviously public properties. The article penned by the third petitioner raised an issue in which the people at large definitely have an interest. The article has been published only in the wake of the notice issued by the Hon'ble First Bench of the Madras High Court. When the Hon'ble First Bench thought it fit to issue notice based on the allegations made by a litigant and when it raised a public question, the media is certainly entitled to carry a story on it. This is something that would on the very face of it fall within Exception No.3 to Section 499 IPC. When a defence can be established in a summary manner and does not warrant a regular trial, relief ought to be granted in a petition under Section 482 of Cr.Pc. As already pointed out, the petitioners 2 and 3 have shown their bonafides by reaching out Thiru.Vaikundarajan and publishing his response in the very same article."

(vi) In the case of ***State of Haryana and Ors Vs. Bhajan Lal and Ors*** reported in ***(1992) Supp 1 SCC 335***; para 102.

"102. *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, thought 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 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."

25. Per contra, the learned counsel for the respondent No. 2/complainant submits that in her affidavit-in-opposition the respondent No. 2 had categorically made it clear and stated that she is duly qualified and is presently working as Assistant Professor. It was stated that she has an **MA Education certificate and B. Ed certificate** and the education certificate and the marksheet were also annexed at Annexure 11 to the affidavit. It is submitted that in the M.A. Education, the respondent No. 2/ complainant has scored 58.19%

whereas as per the requirement it is only 55%. In her B.Ed. examination also, she has scored 60.36%.

26. It is submitted that after hearing the parties in WP(C)/12/2019, the Hon'ble Court by judgment and order dated 06.06.2022 had dismissed the said writ petition. However, thereafter, the petitioner has again filed another writ petition being WP(C)/340/2022 assailing the appointment of around 31 Associate Professors. The name of the accused No. 3 in the criminal complaint is the petitioner No. 3 and the respondent No.2/complainant has been impleaded as respondent no. 22, Smti. Ruokuonuo Usou.

27. The further contention of the respondent No. 2/complainant is that she is aggrieved by the contention made by the petitioner in the said writ petition being WP(C)/No. 340/2022. The specific grievance of the respondent No. 2/complainant is that the petitioner has made an allegation against the respondent No. 2/complainant in the said writ petition that she is not qualified to be appointed as Assistant Professor. The further contention of the writ petitioner in the said writ petition WP(C)/340/2022 is that they filed the RTI application and as per the RTI reply, a list was furnished to them, where it is stated that the respondent No.2/complainant does not possess the minimum requisite qualification to hold the post of Assistant Professor at State College of Teachers Education.

28. It is the further contention of the respondent No.

2/complainant that the persons who obtain the said information through the RTI application are one Mr. Vide and Mr. Viho who is one of the petitioners in the above-mentioned WP(C)/340/2022. The respondent No. 2/complainant is aggrieved by the statement made in Para 9, 11, 12 and 16, of the said writ petition being WP(C)/340/2022 wherein the petitioner has maliciously made allegation against the respondent No. 2/ complainant that she does not possess the requisite qualification to hold the post of Assistant Professor at the State College of Teacher's Education.

29. Being aggrieved by the said allegation, the respondent No. 2/ complainant, had filed the criminal complaint No. 1/2023 before the learned Court of Judicial Magistrate, First Class, Kohima. The learned JMFC, Kohima took cognizance of the offenses against the accused and passed the order dated 25.01.2023 and issued process on 27.04.2023 against the accused/petitioners herein. However, the said order dated 25.01.2023 and the summon dated 27.04.2023 are not under challenge as there is no prayer against the said order and summon.

30. It is the further contention of the respondent No.2 that during the pendency of the writ petition being WP(C)/340/2022 as well as the criminal complaint lodged before the learned JMFC, Kohima, the petitioner/accused submitted before the Hon'ble Court for withdrawal of the name of respondent No. 2/ complainant and accordingly, by

an order dated 08.05.2023, the name of respondent no. 2/complainant has been struck off from WP(C)/340/2022. It is submitted that by withdrawing the name of the respondent No. 2/complainant, the present criminal petitioner has admitted that they have made false allegation against the respondent No. 2/ complainant that she does not possess the requisite qualification, thus, the offence has already been committed. And since the offence has already been committed, the contention of the learned counsel for the petitioners that there is no any intention to defame or harm the reputation of the respondent No. 2/complainant and that the said statement in the writ petition was made bona-fide based on the RTI information are question of fact to be decided by the Trial Court and hence the present criminal petition must be dismissed.

31. In support of his submission, the learned counsel for the respondent no. 2/complainant relied on the following decisions of the Hon'ble Supreme Court and High Courts:

(i) In the case of ***M.K. Varghese Cor Episcopa Vs. State of Kerela and Anr*** reported in ***2020 SCC OnLine Ker 85***, the Hon'ble High Court held as under:

"10. *The writ petition filed by the petitioner against the complainant contained a statement that, the persons who were accused in the case registered as Crime No.472/2018 of Nooranad police station, are the hired goons of the complainant. The writ petition also contained a statement that the crime committed which led to the registration of Crime No.472/2018 of Nooranad police station is the handwork of the complainant and that respondents 8 to 10*

in the writ petition are the contract killers hired by the complainant. Prima facie, these statements in the writ petition filed by the petitioner, are defamatory to the complainant.

11. *If the pleadings filed in the court contain defamatory statements, it amounts to publication (See Thangavelu Chettiar v. Ponnammal : AIR 1966 Mad 363). Once a statement is filed in a court of law, it can be considered as published (See Prabhakaran v. Gangadharan : 2006 (2) KLT*

12. *There is no merit in the contention of the learned counsel for the petitioner that the statements made by the petitioner in the writ petition filed before this Court enjoy absolute privilege. In Shybimon v. Haridas : 2010 (2) KHC 607: 2010 (2) KLT 158, it has been held as follows:*

"If a party to a judicial proceeding is prosecuted for the criminal offence of defamation in respect of a statement made in such judicial proceeding either on oath or otherwise, his criminal liability must be determined by reference to the provisions of Section 499 IPC alone. The English common law doctrine of absolute privilege can be set up as a defence only in a suit for damages under the Law of Torts. No such privilege is recognized by the Indian Penal Code beyond the limits of the exceptions embodied in Section 499 of the Indian Penal Code. The said provision together with its exceptions forms a complete code in itself with regard to the criminal liability of a person accused of the offence of defamation. Every defamatory statement not coming within any of the 10 Exceptions to Section 499 IPC is punishable under Section 500 IPC. The Court cannot engraft thereupon any further exceptions derived from the common law of England or based on grounds of public policy."

13. *The privilege defined by the exceptions to Section 499 of the Indian Penal Code must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to the English Common Law to add new grounds of exception to those contained in the statute (See Tiruvengadamudali v. Tripurasundari Ammal: AIR 1926 Mad 906). If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499 I.P.C and the court cannot engraft thereupon exceptions derived from the*

Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege (See Satis Chandra Chakrabarti v Ram Dayal : AIR 1921 Cal 1).

14. *The decision in Tiruvengadamudali (supra) has been referred to by the Supreme Court in M.C. Verghese v. T.J. Ponnann : AIR 1970 SC 1876 and it has been held as follows:*

"In Thiruvengadamudali v. Tripurasundari Ammal, ILR 49 Madras 728 a Full Bench of the Madras High Court observed that the exceptions to Section 499 I.P.C must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to the English common law to add new grounds of exception to those contained in the statute. A person making libellous statements in his complaint filed in court is not absolutely protected in a criminal proceeding for defamation, for under the Eighth Exception and the illustration to Section 499 the statements are privileged only when they are made in good faith. There is therefore authority for the proposition that in determining the criminality of an act under the Indian Penal Code the courts will not extend the scope of special exceptions by resorting to the rule peculiar to English common law."

(ii) The case of **S.P. Bobati and Others Vs. Mahadev Virupaxappa Latti** reported in **ILR 2005 KAR 960**, wherein the Hon'ble High Court held as under:

15. *However, it is defamatory to impute that a man is unfit for his profession or calling owing to want of ability or learning. So, to say about an actor that he or she cannot act, or to say about a person in respect of his profession or calling that he is incompetent or unfit for the purpose are defamatory. Similarly, a statement made against an Advocate that certain persons had engaged and reposed their confidence in him but he, after accepting the brief, betrayed their confidence and let his clients down is highly defamatory. So also if an allegation or imputation is made touching his honesty, or integrity, or ability to conduct case, or knowledge of law, it amounts to defamation. Thus, to say that the words are defamatory in respect of his profession or calling, such words must call attention to some quality in the man that would be detrimental, or the absence of some*

quality that would be essential to the successful carrying out of the business or calling in which he is engaged. Keeping these things in mind, let me consider whether the allegations or imputations found in the complaint amount to defamation within the meaning of Section 499, constituting an offence under Section 500 of the IPC or not."

(iii) The case of **Himanshu Bhatt Vs. Indian Railway Catering and Tourism Corporation and Ors** reported in **2015 SCC OnLine Del 12393**, wherein the Hon'ble Supreme Court held as under:

"11. An imputation which disparages a person in his profession, calling, trade or business is bound to be stigmatic, and therefore any imputation which is disparaging in the way of a person's occupation would be stigmatic.

The test whether an imputation against a person is disparaging/stigmatic would be : whether the words used tend to lower the person in the estimation of right thinking members of the society. In the context of defamation/liability in the decision reported as (1970) 1 All ER 1094 Drummond-Jackson Vs. British Medical Association, imputation of incompetence in the conduct of one's business was held capable of being defamatory even though such an imputation does not expose such a person to hatred, ridicule or contempt or cause others to shun or avoid him."

(iv) The case of **Dr. Alka Sehgal Vs. Dr. Gurjit Kaur in Criminal Misc No. 3017 of 2012**, wherein the Hon'ble High Court held as under:

" 32. The learned counsel for the petitioner during the course of arguments is fair enough to concede that in case it is proved that complainant is possessing the qualification for the post for which she is holding under the PNDT Act, in that case, sending notice in the newspaper that she is unqualified, amounts to defamation."

(v) In the case of **Sewakram Sobhani Vs. R. K. Karanjia, Chief Editor, Weekly Blitz and Ors** reported in **(1981) 3 SCC 208**, wherein the Hon'ble Supreme

Court held as under:

"16.*In Harbhajan Singh v. State of Punjab, this Court observed (at p. 244):*

"Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case...what is the nature of the imputation made, under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception."

17. Again in Chaman Lal v. The State of Punjab this Court said (at p. 916):

"In order to establish good faith and bona fide it has to be seen first the circumstance under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith.

Good faith requires care and caution and prudence in the background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution."

18. *Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the Article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at*

verification? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalize the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on."

32. Heard both the learned counsel for the parties and due consideration has been given to the contention and the submission made by the parties. Upon consideration and hearing the parties, the question emerges to be decided by this Court in this instant case is as to whether basing on the false statement made by the petitioners in the writ petition filed by them in WP(C)/340/2022, a criminal complaint case can be proceeded against them for offence of criminal defamation under sections 34, 109, 117, 120 B and 500 of IPC, 1860.

33. To understand the provision and the ingredient therein, we may first see the above provisions:

"Section 34.- Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were

done by him alone.

Section 109- *Punishment of abatement if the act abetted is committed in consequence and where no express provision is made for its punishment. - Whoever abets any offense shall, if the act abetted is committed in consequence of the abatement, and no express provision is made by this Code for the punishment of such abatement, be punished with the punishment provided for the offense.*

Section 117- *Abetting commission of offense by the public or by more than ten persons.- Whoever abets the commission of an offense by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

Section 120B- *Punishment of criminal conspiracy. - (1) Whoever is a party to a criminal conspiracy to commit an offense punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offense.*

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offense punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 500- *Punishment for defamation. - Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."*

34. As discernible from the records, earlier the petitioners filed writ petition being WP(C) No.12(K) of 2019, challenging the appointment of Assistant Professors in Education at SCTE, Kohima. The respondent No.2 herein was impleaded as respondent No.17 alleging against her that has been appointed as Assistant Professor (Education) at college of Teacher Education, Kohima without requisite qualifications. The respondent No.17, filed her affidavit in opposition with preliminary objection on the maintainability of the writ petition. In her affidavit, amongst other she had clearly

stated that she possessed the required degree of MA (Education) and B.Ed. And as such, she was eligible for appointment as Assistant Professors in Education at SCTE, Kohima. Upon hearing the parties, the said writ petition WP(C)/12/2019, was dismissed on the ground of maintainability and locus standi on 06.06.2022.

35. However, the petitioners have again filed writ petition which has been registered as WP(C)/340/2022. In the said writ petition, the respondent No.2 herein/complainant has again been impleaded as respondent No.22. The complainant/ respondent No.2 herein is aggrieved by the statement of the petitioners at para 9, 11, 12 and 16 of the said writ petitions. In the said paragraphs, the petitioners have stated that the respondent No. 2/complainant does not possess the minimum requisite qualification to hold the post as mandated by UGC guidelines issued from time to time and the Nagaland Higher Education Service Rule, 2015. It further stated that the respondent No.2/complainant does not possess the required degree/qualification to hold the post of Assistant Professor in the State College of Teachers Education. It is the contention of respondent No.2 that she has all the requisite qualification to be appointed and hold the post of Assistant Professor and she had clarified the same to the petition and annexed her marksheets. However, despite of such clarification being made by the respondent No. 2, the petitioners have over and over again made the same statement in

WP(C)/340/2022. The learned counsel for the respondent submitted that the said false allegation against the respondent No.2/complainant was even published in the local newspapers.

36. It is the said allegation in the subsequent writ petition filed by the petitioners, that the respondent No.2 is aggrieved and filed the impugned complaint against the petitioners in the month of January,2023. However, thereafter, the petitioners have made a prayer before the Court for striking off the name of the respondent No. 22 on the ground that she possesses the requisite qualification including NET for appointment of Assistant Professor in the State College of Teacher Education, and accordingly prayed for striking off the name of respondent No. 22 from the array of respondents in the WP(C)/340/2022. Accordingly, by an order dated 08.05.2023 the name of the respondent No.22/ respondent No.2 herein has been struck off from the array of respondents in the said writ petition. This prayer for striking off the name of the respondent No.22/respondent No.2 herein has been done only after filing of the impugned complaint against the petitioner/accused.

37. It is also seen that on perusal of the complaint and statement made by the complainant and examination of the documents produced, the learned trial court having satisfied itself and found prima facie case of defamation against the accused persons/petitioners herein and taken cognizance of

the offences.

38. The contention of the petitioners/accused persons is that they have made the said statement in the writ petition bona-fide based on the RTI information received by them. However, the contention of the respondent No.2/complainant is that it was made deliberate with an intention to defame her reputation. Be that as it may, now since the complaint filed by the respondent No. 2/complainant has already been taken into cognizance for trial, the rival contentions that the statement/allegations made in the writ petition was made with intention to defame the reputation of the complainant or it was made with bona-fide belief based only on RTI information is a question of fact to be decided by the Trial Court after examination of the witnesses as submitted by the learned counsel for the respondent No.2.

39. In view of the above and by taking into consideration of the various decisions of the Hon'ble Supreme Court and various High Courts as relied upon by the parties, the submission made by the learned counsel for the parties, this court finds sufficient force in the submission made by the learned counsel for the respondent No.2, that the matter involves with the question of fact which can only be decided by the trial Court after examination of the witnesses and after appreciation of the evidences produced.

40. In view of the above, this court is not inclined to interfere with the trial proceeding of the Criminal complaint

Case no. 1/2023 pending before the learned Court of the Judicial Magistrate First Class, Kohima Nagaland at this stage.

41. Accordingly, this petition is dismissed. The interim order passed earlier shall stand vacated.

42. The Criminal Petition is thus, disposed of.

Send back the records.

JUDGE

Comparing Assistant