DINESH SADANAND SHERLA
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4391 OF 2021

Rahul Gandhi ...Petitioner
V/s.
1. The State of Maharashtra
2. Mahesh H. Shrishrimal ...Respondents.

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Mr. Sudeep Pasbola, Sr. Advocate a/w. Mr.Rohan Chauhan, Mr.Chinmay Godse and Mr. Rajan Gurnani i/by. Mr. Kushal Mor for the Petitioner.
Dr. Milind Sathe, Advocate General with Mrs. Mankuwar Deshmukh, Addl. Public Prosecutor and Mr. A.R. Patil, APP, for the Respondent/State.
Mr. Rohan Mahadik a/w. Ms Mehkala More i/by. The Juris Partners for Respondent No.2.
PI Prashant Patil and PSI Deepak Hol attahced to D.B. Marg Police Station is present.

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CORAM : N.R. BORKAR, J.
DATE : 8.9.2026.

ORAL ORDER :

1. This petition takes exception to the order dated 28.8.2019 passed by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai below Exhibit-1 in C.C. No. 67/MISC/2018.

2. In a complaint case filed by respondent No.2, by the impugned order, the learned Metropolitan Magistrate has issued process against the present petitioner for the offence punishable under Section 500 of the Indian Penal Code (IPC).

3. According to respondent No.2, who claims to be a Member of Bharatiya Janata Party (for short ‘BJP’) on 20.9.2018, the petitioner who is a Member of Parliament from the Indian National Congress Party conducted a public rally in Rajasthan. It is alleged that, during the said rally, he made the following defamatory remarks against the Hon’ble Prime Minister of India, Shri Narendra Modi:

> "*Modi ji ne kaha tha main desh ka PM nahi banna chahta hoon, main desh ka chowkidar banna chahta hoon. Aur aaj desh ke dil mein ek nayi awaaz uth rahi hai, gali gali mein shor hai, Hindustan ka chowkidar chor hai.*"
>
> *(English translation: "Modi ji had said, 'I don't want to become the PM of the country, I want to become the country's watchman.' And today, from the heart of the country, a new voice is rising: There is a clamour in every street, India's Watchman is a thief.")*

4. It is alleged that the aforesaid defamatory remarks made by the petitioner were widely aired on various news channels, disseminated across social media platforms including WhatsApp, Facebook, and Twitter (X), and published in several newspapers.

5. According to the respondent No.2 subsequently, on 24.9.2018, the petitioner commented on a video and posted on his personal Twitter account as follows:

> "*The sad truth about India's Commander-in-Thief.*"

6. Respondent No.2 alleges that the aforesaid defamatory statement, whereby the petitioner labeled the Hon’ble Prime Minister of India, Shri Narendra Modi, as a "*Commander-in-Thief*", directly accused all BJP Members and Indian citizens associated with him of theft.

7. It is alleged that on 25.9.2018, the aforesaid defamatory statement came to be published in Loksatta newspaper stating that:

> "*Modi he choranche sardar aahet, ase Rahul yanni tweet madhye mhatle aahe.*"
>
> *(English translation: "Rahul has stated in his tweet that Modi is the commander of thieves.")*

8. It is further alleged that on 25.9.2018, while addressing a meeting of Congress workers at Amethi, the petitioner again made the following defamatory remarks against the Hon'ble Prime Minister, Shri. Narendra Modi :

> "*Yeh jo bhrashtachar ke khilaaf ladne aaye the, isne Anil Ambani ke haath mein 20,000 crore rupaye pakda diye. Achha abhi toh shuruwat hai, abhi dekhna maza aayega aane wale do-teen mahino mein aisa maza dikhaenge aapko. Narendra Modi ji ke jo kaam hai – Rafale, Vijay Mallya, Lalit Modi, Notebandi, Gabbar Singh Tax – bhaiya in sab kamome chori hai par ek-ek karke hum dikha denge ki Narendra Modi ji chowkidar nahi hai, Narendra Modi ji chor hai.*"
>
> *(English translation: "This person who had come claiming to fight against corruption has handed over Rs. 20,000 crore to Anil Ambani. Well, this is just the beginning. Now you will see the fun over the next two or three months. We will show you such fun. In all the work of Narendra Modi ji – Rafale, Vijay Mallya, Lalit Modi, note ban, and Gabbar Singh Tax – there is theft in all these dealings. But one by one, we will show that Narendra Modi is not a Watchman, Narendra Modi ji is a thief.")*

9. Respondent No.2 alleges that the petitioner has made direct allegations of theft against all Members of the BJP with intent to

harm their reputation and thereby committed the offence of defamation.

10. I have heard learned Senior Advocate Mr. Sudeep Pasbola for the petitioner, Mr. Rohan Mahadik, the learned Advocate for the respondent No.2/complainant and Dr. Milind Sathe, learned Advocate General for the State.

11. The learned Senior Advocate for the petitioner submits that the complaint is politically motivated and is filed just to harass the petitioner. It is submitted that the complaint is not maintainable as respondent No.2/complainant lacks *locus standi* to file the complaint. It is submitted that in terms of Section 199 of the Cr.P.C., only a '*person aggrieved*' by the defamatory imputation can file a complaint, and Court can not take cognizance of such offence under Section 499 of the IPC unless the complaint is by such a person. It is submitted that the material produced by respondent No.2 / complainant in support of his complaint does not contain any reference to him and thus he cannot be said to be a person aggrieved.

12. The learned Senior Advocate for the petitioner further submits that respondent No.2 has filed the complaint as a Member of the BJP. It is submitted that Explanation 2 to Section 499 of the IPC, which addresses defamation of an association or collection of persons, applies only to a definite and determinable body of persons. It is submitted that the BJP, being a vast political party,

constitutes an unascertainable and indeterminate group. It is submitted that thus no individual Member thereof can claim personal defamation arising from the imputation in question. In support of his submissions, the learned Senior Advocate has placed reliance on the judgments of the Hon'ble Supreme Court in *G. Narasimha, G. Kasturi and K. Gopalan Vs. T.V. Chokkappa*[1], *S. Khushboo vs. Kanniammal & Anr.*[2], *Balasaheb Keshav Thackeray vs. State of Maharashtra & Anr.*[3], *MJ Akbar & Ors. Vs. Narul Alam & State*[4] *and Smt. Aruna Asaf Ali & Ors. Vs. Purna Narayan Sinha*[5].

13. On the other hand, the learned Advocate for respondent No.2/complainant submits that Section 199 of the CrPC postulates a "*person aggrieved*" and not a "*person defamed*", therefore, the legislature has not intended that only the person defamed would have the *locus standi* to initiate criminal prosecution for defamation. It is submitted that the respondent No.2/complainant is an active functionary of the BJP Maharashtra Pradesh Committee since 1997, and as such is aggrieved by the petitioner's defamatory remarks, including "*The sad truth about India's Commander-in-Thief*". It is submitted that this defamatory statement insinuates that the Hon'ble Prime Minister of India, Shri Narendra Modi, is a "*Commander of Thieves*", thereby imputing thievery to members of the BJP.

1 (1972) 2 SCC 600
2 (2010) 5 SCC 600
3 2003 (1) Mh. L. J.
4 90 CWN 471
5 1984 Cri. L. J. 1121

14. Learned Advocate for the respondent No.2/complainant submits that after the above defamatory statement was made by the petitioner, the same was widely circulated through news and electronic media as well as on social networking sites. It is submitted that the petitioner deliberately published the said video containing his defamatory allegations on social media so that the media would further amplify, publish, and circulate the same to the general public. It is submitted that the same was done with a view to lower down the reputation of all the BJP Members in the eyes of the general public. It is submitted that the complaint at the instance of respondent No.2 is thus very much maintainable. In support of his submissions, the learned Advocate for respondent No.2 has placed reliance on the judgments in *Mathruhoomi Printing and Publishing Co. Ltd. vs. P. Gopalankutty & Anr.*[6], *Rahul Gandhi vs. State of Jharkhand & Anr.*[7], *Shriniwas s/o. Mulchand Ladaniya vs. Laxminarayan s/o. Jainarayan Rathi & Ors.*[8], *Rahul Gandhi vs. Rajesh Mahadev Kunte & Anr.*[9], *Yashwant Sinha & Ors. vs. Central Bureau of Investigation & Anr.*[10].

15. The learned Advocate General for the State of Maharashtra submits that the jurisdiction of this Court under Section 482 of the CrPC or under Article 227 of the Constitution of India to quash criminal proceedings questioning the issuance of process is of an exceptional nature and must be exercised sparingly, only to

6 SC Special Leave Appeal (Crl.) No. 2368 of 2022.
7 2024 SCC OnLine Jhar 563.
8 2003 (2) Mh. L. J.
9 SC SLP (Crl) no. 3749 of 2015.
10 SC Review Petition (Crl.) no.46/2019 in W.P. (Crl.) no. 298/2018.

prevent a manifest miscarriage of justice or abuse of the process of law. The learned Advocate General submits that the petitioner has not seriously disputed that the complaint discloses the ingredients of the offence of defamation under Section 499 of the IPC. It is submitted that the only challenge is that respondent No.2 lacks *locus standi* to institute the complaint in view of Section 199 of the CrPC. It is submitted that the said provision expressly mandates that no court shall take cognizance except upon a complaint made by some person aggrieved by the offence. It is submitted that the scope of expression "*some person aggrieved*" is of wide import and is required to be determined in the facts and circumstances of each case. In support of the said submission, the learned Advocate General has relied upon decisions in *Subramanian Swamy vs. Union of India*[11] *and John Thomas vs. Dr. K Jagdeesan*[12]*.*

16. With regard to Explanation 2 to Section 499 of the IPC, the learned Advocate General submits that the same deals with an imputation concerning an association or collection of persons as such. Although the Explanation is wide, it refers to a determinate and definite body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community, stood defamed. In support of this submission, reliance is placed on the decision in *Dr. Shashi Tharoor vs. State*[13]*.* In conclusion, the learned Advocate General submits that respondent

11 (2016) 7 SCC 221
12 (2001) 6 SCC 30
13 2024 SCC OnLine Del. 6005

No. 2, as a Member of the BJP, has *locus standi* to file the present complaint.

17. Having considered the rival submissions advanced by the learned Senior Advocate for the petitioner, the learned Advocate for respondent No.2/complainant, and the learned Advocate General for the State of Maharashtra, the question that arises for determination is whether respondent No.2/complainant can be said to be a "*person aggrieved*" within the meaning of Section 199 of the CrPC.

18. Section 199 of the CrPC reads thus:

> ***"199. Prosecution for defamation.—***
>
> ***(1)*** *No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:*
>
> *Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.*
>
> ***(2)*** *Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory, or a Minister of the Union or of a State or of a Union*

Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) *Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.*

(4) *No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—*

(a) *of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;*

(b) *of the State Government, in the case of any other public servant employed in connection with the affairs of the State;*

(c) *of the Central Government, in any other case.*

(5) *No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.*

(6) *Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."*

19. The scope of the expression "*some person aggrieved*" came up for consideration before the Hon'ble Supreme Court in *John Thomas v. Dr. K. Jagadeesan (supra).* The Hon'ble Supreme Court held that the collocation of the words "*some person aggrieved*" indicates that the complainant need not necessarily be the person

actually defamed. Whether a complainant has reason to feel aggrieved by the publication is a matter to be determined by the Court depending upon the facts and circumstances of each case.

20. In the present matter, on a *prima facie* reading of the alleged defamatory statement, "*The sad truth about India's Commander-in-Thief*" *inter alia* describes the Hon'ble Prime Minister, who is also the prominent leader of the BJP, as having engaged in acts of theft as the "*Commander of Thieves*". Therefore, at this threshold stage, it cannot be said that the said defamatory imputation is incapable of extending to those clearly identified with the party. Whether the imputations were in substance confined to the Hon'ble Prime Minister alone, or whether and to what extent they cast their shadow upon the Members and functionaries of the party, in view of *John Thomas (supra),* is a determination that must await trial.

21. The question as to whether a political party answers the description of definite and determinate body contemplated by Explanation 2 of Section 499 of the IPC came up for consideration before the Delhi High Court in *Dr. Shashi Tharoor v. State & Anr*. *(supra).* In the said case, certain imputations made against Honble Prime Minister of India Shri Narendra Modi were sought to be prosecuted at the instance of an office-bearer of the BJP. Assailing the order of issuance of process under Section 482 of the Cr.P.C., it was contended that a national political party is too vast and indeterminate body to be defamed as a class. Repelling this

contention, the Delhi High Court held that a political party, by virtue of its statutory registration under Section 29A of the Representation of the People Act, its obligation of return filing under the Income Tax Act, and its defined constitution and organizational structure, possesses a distinct, definite, and identifiable legal identity, and does not partake of the character of an indeterminate mass merely because its membership is numerically large.

22. Considering the overall facts and circumstances, I am not inclined to interfere in the impugned order. The Petition is dismissed.

23. The learned counsel for the petitioner submits that to enable the petitioner to approach the Hon'ble Supreme Court against this order, the interim order operating in the present matter be continued for a period of six weeks. The trial Court shall defer the hearing of the proceedings in question for a period of six weeks.

[N.R.BORKAR, J.]