

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4960 OF 2014

Mr. Rahul Gandhi, M.P
Vice President, Indian National
Congress, residing at 12, Tuglak
Lane, New Delhi 110 011

...Petitioner

Versus

1. Rajesh Mahadev Kunte
Business man residing at
Kanchangauri, Kasaral Bhiwandi,
Thane Dist.

2. State of Maharashtra
Government Pleader office
Criminal Appellate Side High
Court Bombay

...Respondents

Mr. R.S. Cheema, Sr. counsel a/w Mr. Prasad Dhakepalkar,
Sr. Advocate, Mr. K.C. Mittal and Ms Tarannum Cheema i/b
Mr. Manmohan Rao and Ms Deepa Kamath for Petitioner.
Mr. V.S. Kokaje, senior counsel i/b Ms Anuradha A. Garge a/w
Mr. Vinayak Dixit, and Mr. R.S. Apte, senior counsel for
Respondent No.1.
Mr. S.K. Shinde, P.P. a/w Mr. V.B.K. Deshmukh, APP,
for the Respondent No.2-State.

CORAM:-M.L. TAHALIYANI, J.

**DATE ON WHICH THE JUDGMENT IS
RESERVED : 9th March , 2015.**

**DATE ON WHICH THE JUDGMENT IS
PRONOUNCED : 10th March, 2015.**

JUDGMENT :-

Admitted. By consent of the parties taken up forthwith for final hearing.

2. The Petitioner is member of Parliament and is vice president of Indian National Congress (I.N.C.). He is aggrieved by the order passed by the 3rd Judicial Magistrate, First Class, Bhiwandi in OMA/353/2014 dated 11-7-2014 summoning the Petitioner to appear before him and to answer the charge for the offence punishable under section 500 of the IPC. The process has been issued on the complaint filed by Respondent No.1. The Respondent No.1 is a resident of Bhiwandi (District-Thane) and claims to be a member of *Rashtriya Swayamsevak Sangh(R.S.S.)* since childhood. At present he is working as *Karyawah* (Secretary) of *Rashtriya Swayamsevak Sangh*, Bhiwandi Taluka.

3. He has alleged that there was a rally of I.N.C. on 6-3-2014 at village Sonale near Bhiwandi for parliament election campaign. The rally was addressed by the Petitioner. It is alleged that the Petitioner during the course of address to the public and media had alleged that

the members belonging to R.S.S. had killed Gandhiji. English translation of alleged offending portion can be reproduced as under :

“We gave the telephone to India, This is their style. Gandhiji was killed by them; persons from the R.S.S. Shot Gandhiji. And today their people talk of Gandhiji. Sardar Patel: Sardar Patel Ji was a leader of the Congress Party. He was written very lucidly about the R.S.S.; he has written very clearly about their organisation.”

4. The main offending portion of the address was, “Gandhiji was killed by them; persons from R.S.S. Shot Gandhiji”. Respondent No.1 in his complaint has alleged that by making such a statement against R.S.S., the Petitioner has committed offence of defamation as defined under section 499 and punishable under section 500 of the IPC. It is alleged that intention was to harm the reputation of R.S.S. and its members.

5. On receipt of complaint the learned Magistrate took statement of Respondent No.1 on oath and sent the complaint to police for enquiry under section 202 of Cr.P.C. After receipt of enquiry report, a summons as stated above has been issued against the Petitioner.

6. The arguments of learned senior counsel Mr. Cheema and learned senior Counsel Mr. Kokaje on behalf of the Petitioner and the Respondent No.1 respectively, were heard. At the outset it may be mentioned here that Petitioner does not deny to have made the statement alleged against him by the Respondent No.1. It is admitted position that a rally was held at village Sonale and it is further admitted position that the statement with regard to R.S.S. was made by the Petitioner during the course of his address. It is not denied that the portions of address of the Petitioner were published in electronic as well as print media.

7. Since the factual position with regard to making of the statement and publication thereof is admitted, the prime question which needs to be examined is as to whether the Petitioner intended to harm or knew that he would be harming or had reason to believe that the statement made by him would harm the reputation of R.S.S. and consequently its members including Respondent No.1.

8. There is no dispute that R.S.S. is a determinate body and it will fall under the *Explanation 2* of section 499 of the IPC. Therefore, any offended member of R.S.S. is said to be aggrieved person and can file a complaint, against a person who intends to harm the reputation of R.S.S.

9. As already stated what is required to be considered is as to whether there was requisite intention or knowledge on the part of the Petitioner or whether he had reason to believe that he would be harming reputation of R.S.S. by making the alleged statement. During the course of arguments learned senior counsel for the Petitioner submitted that the facts of the case and the background in which the statement was made by the Petitioner need to be considered. Learned senior counsel Mr. Cheema has submitted that the Petitioner was addressing the members of rally on the point of philosophy of Congress and the statement made by the Petitioner shall be read in that context. It was further submitted that the statement made by the Petitioner was plain statement and that the Petitioner did not intend to harm the reputation of R.S.S. The reference to the killers of Gandhiji had come in the speech of the Petitioner only because the Petitioner felt that names of Gandhiji and Sardar Vallabhbhai Patel were appropriated or usurped by B.J.P. though

both the leaders originally belonged to Congress. The statement was made by the Petitioner in that context and not with a view to harm reputation of R.S.S. It was submitted by learned senior counsel Mr. Cheema that it is a matter of history and the issue regarding killing of Gandhiji is a public question and it is in a public domain. Therefore, if any statement is made by the Petitioner in respect of a question within the public domain it would not amount to defamation and would be covered by *Third Exception* of section 499 of the IPC.

10. My attention was invited to the Government Resolution by which R.S.S. was banned on 4-2-1948. My attention was also invited to the letters written by Sardar Vallabhbhai Patel and Dr. Shyama Prasad Mukherjee to the then R.S.S. Chief. As far as question of maintainability of the Petition under section 482 of Cr.PC. is concerned, learned senior counsel Mr. Cheema has submitted that alleged offending statement is to be read alongwith the preceding and succeeding portion of the said statement. It will be clear that intention was not to harm the reputation of R.S.S. It is submitted that if this can be concluded at this stage, why the Petitioner shall be relegated to the Trial Court to go through the ordeal of trial.

11. Learned senior counsel Mr. Kokaje appearing on behalf of the Respondent No.1 has submitted that if the Petitioner claims that his case was covered by any of the exception, he has to establish that before the Trial Court and not during the course of hearing under section 482 of Cr.P.C. It is contended by him that as to whether statement was made in good faith and whether it amounted to opinion regarding the conduct of R.S.S. with respect to a public question will have to be decided by the Trial Court and not by this Court.

12. Learned senior counsel Mr. Cheema has placed reliance on the judgment of Hon'ble Supreme Court reported at (1977) 2 Supreme Court Cases 699. My attention was invited to portion of para 7 of the judgment, which reads as under :

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a

criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

13. Learned senior counsel Mr. Kokaje, appearing on behalf of the Respondent No.1 has placed reliance on latest judgment of Supreme Court in the matter of **P.S. Meherhomji V/s. K.T. Vijay Kumar and Ors. reported at (2015) 1 Supreme Court Cases 788**. The Hon’ble Supreme Court after having considered the various judgments of the Supreme Court has come to the following conclusion :

“13.Indisputably, judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the

hands of private complainant as vendetta to harass the persons needlessly.

14. It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 of Code of Criminal Procedure empowers the High court to exercise its inherent powers to prevent abuse of the process of court and to quash the proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482.

15. So far as the complaint alleging the offence under Section 499 IPC is concerned, if on consideration of the allegations the complaint is supported by a statement of the complainant on oath and the necessary ingredients of the offence are disclosed, the High Court should not normally interfere with the order taking cognizance.”

14. In my view the recent judgment of the Hon’ble Supreme Court summarises the view of the Hon’ble Supreme Court on the issue of exercise of inherent powers of the High Court. After having gone

through the judgment cited by the learned senior counsel, I have come to the conclusion that in normal course, if the complaint makes out a prima facie case, High Court would not interfere in exercise of its powers under section 482 of Cr.P.C. However, no straitjacket formula can be laid down for the same and it may differ from case to case on the basis of facts and circumstances. It is possible that in a particular case it may be apparent on the face of record itself that the prosecution should not be continued and in that event High Court might give relief to the aggrieved person by resorting to section 482 of Cr.P.C. Some of the categories where the inherent powers could be exercised by the High Court have been cataloged in para 21 of the judgment of Hon'ble Supreme Court reported at **AIR 1960 SC 866 as in the matter of Jeffrey J. Diermeier V/s. State of West Bengal**, on which reliance has been placed by both the senior counsel. Para 21 of the said judgment can be reproduced as under :-

“21. In one of the earlier cases, in *R.P. Kapur v. State of Punjab* this Court had summarised some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g.

want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

15. As such it is abundantly clear that if the case is made out to demonstrate that the process of Court has been abused or interest of justice demand, then the Court may quash the proceeding in exercise of its powers under section 482 of Cr.P.C.

16. In the present case as already stated, the learned counsel for the Petitioner has invited my attention to the order banning R.S.S. and contents of letters addressed to the then R.S.S. Chief, Shri Golwalkar by Shri Sardar Vallabhbhai Patel and Dr. Shyama Prasad Mukherjee. In this regard I would not comment much in detail on the contents of the banning order and the letters as, if ultimately this Court dismisses the present petition, letters will have to be proved in accordance with law. Contents of the letters and the banning orders will have to be proved in accordance with law before the Trial Court. Suffice it to say that both

the letters and the banning order did not directly state that the assassins of Gandhiji were members of R.S.S. My attention was also invited to the statement made by the accused, who was part of the conspiracy to assassinate Mahatmaji. Statements are stated to be made before the Trial Court during the course of trial of the assassins. What can be stated in this regard also is that the same will have to be proved in accordance with law before the Trial Court. The next issue which may arise before the Trial Court is as to what is the effect of those statements. The issue which may need consideration before the Trial Court is as to whether R.S.S. had owned that the assassins were members of R.S.S. The complaint clearly states that R.S.S. did not own them and that the alleged offending statement made by the Petitioner was false within his knowledge.

17. Learned senior counsel Mr. Cheema invited my attention to the judgment of Punjab and Haryana High Court in the matter of **Aroon Purie & Ors. V/s. State of Haryana & Anr** where an article published in India Today issue of August 18, 2003 had come up for consideration. The relevant portion of the said article can be reproduced as under :-

“1948 One of the greatest ideas of the 20th century was

killed at 5.03 p.m. on January 30, 1948. Mohandas Karamchand Gandhi, the man who led India to freedom by redefining the very concept of protest, stepped out of the Birla House in Delhi and walked towards the garden to hold a prayer meeting. Among the 300 people who greeted him that evening was Nathuram Godse, an RSS worker, who fired three shots at close range from his automatic 9 mm Beretta into the fragile chest of the Mahatma.”(Emphasis supplied)

18. Learned single Judge of Punjab and Haryana High Court while dealing with the historical background had pointed out in para 32 of the said judgment as under :

“32. In the back-drop of the above, if the publication is seen and especially in the context that there is a raging debate attributed to the historians, who have tried to trace the pug-marks of such historical characters, any imputation which is made presumably on the basis of the material which if not even entirely true is near to the truth and inference as truthful as the truth itself; cannot be termed to be defamatory. The doctrine of “fair comment” encompasses that if a publication which broadly speaking true in fact and not made to satisfy any personal agenda or vendetta would seemingly be protected.” (Emphasis supplied)

19. Placing reliance on this judgment learned senior counsel Mr. Cheema has submitted that Court may take broad view of the matter and may consider that broadly speaking it is a fact that assassins, particularly Nathuram Godse, were members of R.S.S. and therefore, Petitioner has not committed any offence. There was no ulterior motive and therefore, it cannot be said that he had intention to harm reputation of R.S.S. With great respect to the learned single Judge I may not agree with the said observations. In my opinion unless it is established that statement was made in good faith, offence defined under section 499 and punishable under section 500 of the IPC would be made out. The *First Exception* to section 499 runs as under :

“First Exception- Imputation of truth which public good requires to be made or published. –It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.”

The *Ninth Exception* to the said section runs as under :

“Ninth Exception - Imputation made in good faith by person for protection of his or other’s interests.- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the

person making it, or of any other persons, or for the public good.”

20. Admittedly, the Petitioner was addressing a public rally for campaigning in favour of the I.N.C. If the statement made against R.S.S. was made in the said public rally, particularly when R.S.S. is not a political party and was not contesting any election from anywhere in India, the statement prima facie would indicate that it was intended to harm reputation of R.S.S. or the Petitioner at least knew or had reason to believe that he would be harming reputation of R.S.S. If the Petitioner is covered by any of the exceptions including third and ninth it is for him to prove the same before the Trial Court. This is not an exceptional case where this Court shall exercise powers under section 482 of Cr.P.C. for quashing the proceedings against the Petitioner. As already indicated, powers of section 482 of Cr.P.C. are required to be exercised sparingly. The High Court, in normal course, will not disturb the order of issuance of process if the averments made in the complaint and the enquiry made by the Magistrate or the police prima facie makes out a case for issuance of process.

21. In my considered opinion there is no substance in the petition. Petition therefore, deserves to be dismissed.

22. The petition is accordingly dismissed. Interim relief, if any, stands vacated. The learned Trial Judge shall not get influenced by any of the observations made by this Court.

(JUDGE)