

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5448 of 2014

ORDER :

The criminal petition is filed by the petitioners/A.1 to A.3(Bennett Coleman & Co. Ltd., rep. by its Manager(as authorised signatory), Kingshuk Nag-Chief Editor and Anil Kumar-Printer of Times of India, under Section 482 Cr.P.C., to quash the proceedings of C.C.No.849 of 2013 on the file of the XXIII Special Magistrate at Erramanzil Hyderabad, which is outcome of private complaint dated 18.10.2012 of the 1st respondent-Dr. K. Sarat Chandra, that was taken cognizance for the offence punishable under Section 500 of I.P.C., after recording the sworn statement of the complainant and with reference to the news item dt.27.11.2011.

2. The case of the Complainant in nutshell is that - he completed MBBS from Andhra Medical College and MD in Cardiology from PIME&S, Chandigarh,(during 1981-1989) and is working in NIMS in Cardiology Dept., w.e.f.14-11-2003, as faculty member till 13-03-2007 and later as Addl. Professor, also elected as president of Cardiological society of India in 2001, published about 30 scientific articles, served for Diplomat National Board and for D.M. as Examiner, organized National conference of Cardiological society of India, at Hyderabad in 2007, Chairman of National Interventional Council during 2008-09, attended as faculty in the Universities/Hospitals of Serbia, China, Vietnam, Singapore and as fellow of European society of Cardiology and American College of Cardiology, currently editor of Indian Heart Journal, earned good reputation in Cardiology and in society, discharging his duties sincerely with no complaints from any corner, even after resigned from NIMS by serving in Image Hospitals, Hyderabad. The Accused 1-3, Owner, Editor, Publisher and Printer of the News Paper-Times of India, responsible collectively for selection, printing and publishing news items as per Sections 1-7 of the Press and Regulation of Books Act,1897 (the Act), published the news item dt.27-11-2011, under the

caption 'Three NIMS Doctors suspended' alleging that the accused in the newspaper dated 27.11.2011 published a news item under the heading 'Three NIMS doctors suspended' interalia alleging that the complainant along with one Dr.Nimma Satyanarayana, medical Superintendent, and another Dr.Sharath Prasad, Deputy Medical Superintendent have been suspended for 'facilitating' the stay of an alleged under trial prisoner Sri Jairam Reddy, that the news item further alleges that the three doctors were suspended for 'criminal breach of trust' and that the doctors sheltered Jairam Reddy though he didn't require any treatment and that they allegedly prepared three discharge summaries on different days to show to the previous director Dr.P.V.Ramesh, that the murder accused was already discharged as per the orders and that despite the orders to discharge he was allowed to stay in the hospital for 20 days, that the news item further alleged that the enquiry conducted by the health department and NIMS found that the complainant who 'treated' Reddy got Rs.7.00 lakh, Dr.Nimma Satyanarayana got Rs.5.00 lakh and Dr.Sharath Prasad got Rs.3.75 lakh from him, that all the allegations in the news item dated 27.11.2011 are hereinafter collectively referred to as 'the news item' for brevity, that the complainant craves the leave of the Court to read the entire text of the news item as part and parcel of the complaint. That the allegation in the news item that the complainant was suspended for criminal breach of trust is false to the knowledge of the accused and has been made with an intention to defame the complainant, that the NIMS has not lodged any complaint to the police about the commission of the offence of criminal breach of trust against the complainant, that the news item itself alleges that the complainant was suspended for facilitating the stay of the under trial prisoner, that however, the complainant was suspended from service by the Director of NIMS by order dated 26.11.2011 pending enquiry into the allegations and the suspension was ordered based upon the letter received from the government dated 25.11.2011, that the complainant has challenged the suspension order before the High Court of A.P. by way of W.P. No.5817 of 2012 and the same is pending, that the complainant has

been reinstated into service by the Director of NIMS by order dated 09.05.2012, that the allegation in the news item that the doctors sheltered Jairam Reddy though he did not require any treatment and that they allegedly prepared three discharge summaries on different days to show to the previous director Dr.P.V.Ramesh that the murder accused was already discharged as per the orders and that despite the orders to discharge he was allowed to stay in the hospital for 20 days is false to the knowledge of the accused and the allegation is made with an intention to defame the complainant, that the complainant did not prepare three discharge summaries on different days to show that the murder accused has been discharged, that the complainant recommended that the patient be discharged from the hospital on 08.10.2010, 01.11.2010 and on 02.11.2010, however on each occasion the recommendation was over ruled at the instance of the Medical Superintendent Dr.N.Satyanarayana and the Deputy Medical Superintendent Dr.Sharath Prasad who were acting at the behest of the then Director Dr.Prasada Rao who had admitted the patient in the department headed by the complainant without the knowledge of the complainant, that the NIMS has issued charge memorandum dated 09.09.2011 to the complainant clearly stating that the patient was admitted by the former Director of NIMS Dr.Prasada Rao, that very charge against the complainant is that the complainant did not object to the admission of the patient by the former Director, that the allegation in the news item that the enquiry conducted by the health department and NIMS found that the complainant who 'treated' Reddy got Rs.7.00 lakh, Dr.Nimma Satyanarayana got Rs.5.00 lakh and Dr.Sharath Prasad got Rs.3.75 lakh from him is false to the knowledge of the accused and the allegation is made with an intention to defame the complainant and tarnish the image of the complainant in the eye of the society, that the Government of Andhra Pradesh vide G.O.Rt.No.249, dated 01.02.2011 constituted a four member committee to enquire into the treatment given to the said patient, that the four member committee conducted enquiry and submitted report on 05.02.2011, that the report dated 05.02.2011 exonerates the complainant of the charges

and there is no such allegation in the report that the complainant was paid Rs.7.00 lakh, that Dr.Prasanta Mahapatra, Director, NIMS had conducted an enquiry into the allegations and submitted report dated 12.09.2011 to the Government, that there is no allegation in the report dated 12.09.2011 that the complainant was paid Rs.7.00 lakh, that the news item has been published by the accused with a view to tarnish the image of the complainant in the society and among the medical fraternity and with an intention to defame the complainant, that the accused had complete knowledge that nowhere in the report dated 05.02.2011 and 12.09.2011 there is an allegation, leave alone a finding, that the complainant was paid Rs.7.00 lakh, that therefore, the news item published by the accused is defamatory in nature and has lowered the reputation of the complainant among the parties, members of the medical fraternity and the members of the general public, that the accused 1 to 4 were well aware that the reports dated 05.02.2011 and 12.09.2011 did not contain the allegations of payment of money to the complainant, that in spite of the same the accused made the allegations in the news item knowing that the news item will damage the reputation of the complainant, that the news paper contains the names of the accused 1 to 4 who are responsible for the news item under Section 7 and 1 of the Press and Registration of Books Act, 1897, that the accused No.1 is responsible for selection and publication of the false news as owner of the news paper, that the accused No.2 is responsible for selection and publication of the false news item as editor of the news paper, that the accused No.3 is responsible for publication of the news item as Publisher of the news paper and the accused No.4 is responsible for publication of the news item as Printer of the news paper, that the accused Nos.1 to 4 by words have published the imputation in the news item concerning the complainant with an intention to harm and knowing and having reason to believe that such imputation will harm the reputation of the complainant have defamed the complainant and therefore, the accused Nos.1 to 4 are liable for punishment for offence under Section 499 and 500 I.P.C, that on 28.11.2011 one Dr.Lingaiah and another Smt.Satguna, both patients of the

complainant, after reading the news item approached the complainant and enquired about the news item and informed the complainant that the news item has lowered the image of the complainant in their view and that the news item has deeply disturbed them, that the complainant informed the said Dr.Lingaiah and Smt.Satguna that there is no truth in the news item and that the news item has been published with a view to tarnish the image of the complainant in the eyes of the society and with an intention to defame the complainant, that the complainant further informed the said Dr.Lingaiah and Smt.Satguna that the complainant is taking appropriate legal remedies against the accused, that the complainant was unable to bear the humiliation of in view of the news item and the same has lead to the complainant tendering his resignation from the service of NIMS on 21.05.2012, that the complainant is currently practicing as consultant cardiologist at image hospitals, Hyderabad, that it has been recognized by the Supreme Court of India that the right to reputation is a facet of Article 21 of the Constitution of India as to a man his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession and guarantees the esteem of his clientele, that it is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry, it is the portrait of his professional honour, that in a world said to be notorious for its attitude towards the noble values of an earlier generation, mans' professional reputation is still his most sensitive pride, that a good name is better than great riches, that the accused have made statements in the news item without just cause or excuse without there being any truth in it which is calculated to injure the reputation of the complainant by exposing the complainant to hatred, ridicule and contempt, therefore the accused are liable to be punished for being party to the news item which is absolutely false to the knowledge of the accused, that the complainant has a good reputation as stated above and has several publications to his credit, that the complainant was recommended for awarding Padma Sri by the Governor of Andhra Pradesh on 23.09.2008 and the same was under active consideration of the

Government of India, that the complainant had a goal of excelling in the academic field of cardiology and was aspiring to be a vice chancellor of a university, that the news item has shattered the hopes of the complainant being awarded the Padma Sri by the Government of India and also the opportunity of becoming a vice chancellor of a university, that the complainant is entitled for general damages for loss of reputation, character and credit, inconvenience, annoyance, mental pain and anxiety, that the complainant is further entitled for special and exemplary damages for a sum of Rs.50.00 lakhs towards loss of practice of the complainant, that the news item tends to lower the image of the complainant among his present and future patients, as the reputation of the complainant is more the damage caused by the news item is also more, that as the complainant is a reputed Cardiologist, it has a bearing on the quantum of damages, that the newspaper has a circulation throughout the territory of India and therefore the damage caused to the complainant is much more due to the large circulation of the newspaper, that the circulation of the newspaper has a direct bearing on the damage to the reputation of the complainant and the effect is more mischievous, hence the complainant has filed O.S. No.714 of 2011 on the file of Chief Judge, City Civil Court, Hyderabad against the accused for damages and compensation amounting to Rs.1.00 Crore and same is pending.

3. The sworn statement of the Complainant reads that 'I am a cardiologist; I have filed this complaint against the accused for the offence under Section 499, 500 I.P.C. The accused have published a news item in the Times of India news paper dated 27.11.2011 published false information and news about the admission of a patient in NIMS according to the news item I have been suspended for criminal breach of trust which is false to the knowledge of accused, that the news item further alleges that I have sheltered Sri Jai Ram Reddy though he did not require any treatment. The said allegation is false to the knowledge of accused and made with intention to cause damage to my reputation and defame, the news

item further alleges according to inquiry conducted my Health Department and NIMS I have been found to have taken Rs.7.00 lacks. I have filed inquiry report conducted my Health Dept., and NIMS. There is no such finding in the inquiry reports that I have received the alleged amount of Rs.7.00 lacks. The alleged news item is false to the knowledge of the accused and made with a view to harm my reputation. Hence this complaint.'

4. The order taking cognizance for the offence by the learned Magistrate, dt.18-01-2013, reads that "Heard. On a perusal of sworn statement of the complainant, the averments in the complaint and other material available on record, a prima facie case is made out against the accused. **Therefore, it is a fit case to be taken on file since there is no whisper in the enquiry carried out by the authority concerned that the complainant had received bribe whereas such allegation is made in the News item published by the accused Newspaper. The case is taken on file for the offence under Section 500 I.P.C against the accused.** Issue summons to the accused on payment of process by the complainant. Call on 27.02.2013".

5. From the above, there is nothing to show, as to news item in toto is incorrect, but for to the extent of the complainant had received bribe is not born by enquiry report. Could it be the basis to say prima facie for the offence under Section 500 I.P.C to take cognizance is made out? As can be seen, the summons were served to somebody on security duty at the Hyderabad office including to 1st Accused of Mumbai, at Hyderabad on 26-04-2013 Friday at 5-39 P.M., for appearance on 29-04-2013 Monday morning, with no immediate intimation before, consequently there was no appearance, as a result NBWs were issued on 29-04-2013 and later same were recalled on 08-05-2013 subject to costs of Rs.5000/-by each accused.

6. The case of accused quash petitioners supra in nutshell is that: a). they are not even served with any copies of all material documents like sworn statement and cognizance order etc., but for

complaint before trial Court,

b). instead summons procedure and without even converting as warrant case U/S.259 Cr.P.C., learned Magistrate proceeds to record evidence for pre-charge enquiry as private warrant case is contrary to law and to the prejudice of accused.

c). the allegations on face value even no way attracts the alleged offence for the learned Magistrate to take cognizance, that too without even examining any of witnesses allegedly read the news and asked complainant, to say it lowered his reputation, which is outcome of non-application of judicial mind to the facts,

d). the learned Magistrate should have seen from the publication facts not in dispute, about lack of any bad intention to defame but for in good faith and as per information collected bonafide and in public good - and thereby sought for quashing of the case proceedings.

7. Heard both sides at length and perused the material on record with reference to the provisions and propositions.

8. To decide on further facts, coming to the scope of the law:

8(a). Defamation-introduction, meaning and definition:

8(a.i). The word defamation is derived from the Latin term '*Diffamare*'. Semantics or Etymology of the Latin word '*Diffamare*' provides that it means '**Spreading evil report about someone**'. Thus, defamation is nothing but spreading evil and causing damage to reputation of another. A man's reputation is the enjoyment of good opinion in the minds of other right thinking members of society generally. Self esteem is different from reputation, to say self esteem is not defamation. Jurist Blackstone has added that "**Every man is entitled to have his reputation preserved inviolate**". So, the right to have reputation involves right to have the reputation inviolate and intact. Thus, defamation is a catch-all term for any statement that hurts someone's reputation. Written defamation is called "libel," and spoken defamation is called "slander" under common law. In

common law, defamation is a civil wrong, rather than a criminal wrong.

Defamation is defined by **Parke B.** in ***Parmiter v. Coupland*** as *'A publication, without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule'*

The definition of defamation, so recommended by the **Faulks Committee in England** in 1975 is: *'Defamation shall consist of the publication to a third party of matter which in all the circumstances would be likely to affect a person adversely in the estimation of reasonable people generally'*.

As per **Salmond**, *'the wrong of defamation lies in the publication of a false and defamatory statement about another person without lawful justification'*.

According to **Underhills**, *'a statement becomes defamation, if it is made about another without just cause or excuse, whereby he suffers injury to his reputation and not to his self-esteem'*.

Underhills considers defamatory statement as *'one which imputes conduct or qualities tending to disparage or degrade any person, or to expose him to contempt, ridicule or public hatred or to prejudice him in the way of his office, profession or trade'*.

Blackburn and George defined defamation as *'the tort of publishing a statement which tends to bring a person into hatred, contempt or ridicule or to lower his reputation in the eyes of right thinking members of society generally'*.

Winfield defines defamation, as the publication of statement which tends to lower a person in the estimation of right thinking members of society, generally, or which tends to make them shun and avoid that person.

To quote **Mr.Odger** from his book on defamation, *"No man may disparage or destroy the reputation of another. Every man has a right*

*to have his good name maintained unimpaired. This right is a jus in rem, a right absolute and good against the entire world. Words which produce, in any given case, appreciable injury to the reputation of another are called defamatory, and **defamatory words if false are actionable.***”

In the English case-**Scot Vs Sampson**-Justice Cave has defined defamation in simplest way as ‘*a false statement about a man to his discredit*’. This definition is smaller yet it encompasses everything about the concept.

8(a.ii). Defamation law aims to strike a balance between allowing the distribution of information, ideas, and opinions, and protecting people from having lies told about them. It's a complicated area of law as on the one hand, people should not ruin others' lives by telling lies about them; but on the other hand, people should be able to speak freely without fear of litigation over every disagreement, insult or mistake. Political and social disagreement is important in a free society and we obviously don't all share the same opinions or beliefs. For instance, political opponents often reach opposite conclusions from the same facts, and editorial cartoonists often exaggerate facts to make their point.

As held in Khushwant Singh vs. Maneka Gandhi-there are two competing interests to be balanced as submitted by the learned counsel for the respondent, that of the author to write and publish and the right of an individual against invasion of privacy and the threat of defamation.

8(a.iii). To constitute "defamation" under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would

harm the reputation of complainant, irrespective of whether complainant actually suffered directly or indirectly from the imputation alleged-as held in Jeffrey J. Diermeier vs. State of West Bengal.

8(a.iv). What the victim must prove to establish defamation as per some generally accepted rules is, if you believe you are or have been "defamed," to prove it you usually have to show there's been a statement that is all of the following: published, false, injurious and unprivileged. Let's look at each of these elements in detail.

1.First, the "statement" can be spoken, written, pictured, or even gestured. Because written statements last longer than spoken statements, most courts, juries, and insurance companies consider libel more harmful than slander.

2."Published" means that a third party heard or saw the statement, i.e. someone other than the person who made the statement or the person the statement was about. "Published" doesn't necessarily mean that the statement was printed in a book. It just needs to have been made public through television, radio, speeches, gossip, or even loud conversation. Of course, it could also have been written in magazines, books, newspapers, leaflets, or on picket signs.

3. Defamatory statement must be false, otherwise it's not considered damaging. Even terribly mean or disparaging things are not defamatory if the shoe fits. Most opinions don't count as defamation because they can't be proved to be objectively false. For instance, when a reviewer says, "That was the worst book I've read all year," she's not defaming the author, because the statement can't be proven to be false.

4. The statement must be "injurious", since the whole point of defamation law is to take care of injuries to reputation, those suing for defamation must show how their reputations were hurt by the false statement. For example, the person lost work; was shunned by neighbours, friends, or family members; or was harassed by the

press. Someone who already had a terrible reputation most likely won't collect much in a defamation suit.

5. Finally, to qualify as a defamatory statement, the offending statement must be "unprivileged." Under some circumstances, you cannot sue someone for defamation even if they make a statement that can be proved false. Lawmakers have decided that in these and other situations, which are considered "privileged," free speech is so important that the speakers should not be constrained by worries that they will be sued for defamation. Lawmakers themselves also enjoy this privilege. They aren't liable for statements made in the legislative chamber or in official materials, even if they say or write things that would otherwise be defamatory.

8(a.v). Public officials and proof for defamation: The public has a right to criticize the people who govern them, so the least protection from defamation is given to public officials. When officials are accused of something that involves their behaviour in office, they have not only to prove all of the above elements of defamation, but also to prove that the defendant acted with "actual malice". "Actual malice" means that the person who made the statement knew it wasn't true.

8(a.vi). In the landmark case of *New York Times v. Sullivan*, the U.S. Supreme Court in 1964 held that certain defamatory statements were protected by the First Amendment. The case involved a newspaper article that said unflattering things about a public figure, a politician. The Court pointed to "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." The Court acknowledged that in public discussions -- especially about public figures like politicians -- mistakes can be made. If those mistakes are "honestly made," the Court said, they should be protected from defamation actions. The court made a rule that public officials could sue for statements made about their public conduct only if the statements were made with "actual malice."

8(b). Defamation is civil as well as criminal wrong in India. The

criminal law on the topic is contained in sections 499 to 502 of Chapter-XXI of the Indian Penal Code, 1860. Likewise the codified criminal law on the subject, the civil law of defamation is not codified. However, defamation as a civil wrong is covered under Common Law of Torts. It is purely based on precedential developments, i.e. through decisions pronounced by Courts. The rules and principles of civil liability that are applied by our courts are those borrowed from common law.

8(b.i). Types of defamation: Defamation may be committed in two ways viz., (i) speech, or (ii) by writing and its equivalent modes. The English common law describes the former as '**SLANDER**' and the latter as '**LIBEL**'. Slander is a false and defamatory statement by spoken words or gestures tending to injure the reputation of another. Apart from differences in form, the libel differs from slander in its procedure, remedy and seriousness. Slander may be the result of a sudden provocation uttered in the heat of the moment, while the libel implies grater deliberation and raises a suggestion of malice. Libel is likely to cause more harm to the person defamed than slander. Because there is a strong tendency everywhere on the part of most people to believe anything they see in print. In general slander is actionable only on proof of special damage, but in exceptional cases slander is actionable per se or without proof of special damage. Words which are not defamatory in their ordinary sense may, nevertheless, convey a defamatory meaning owing to the circumstances in which they are spoken. Such words are actionable if it is proved that would be understood as defamatory by the persons to whom they were published.

In common law, a libel is a criminal offence as well as a civil wrong. But slander is a civil wrong only; though the words may happen to come within the criminal law as being blasphemous, seditious, or obscene or as being a solicitation to commit a crime or being a contempt of court. Though under the common law of England distinction is made between the two in various aspects, but, in India no such distinction has been made. Under the Indian Penal Code,

both libel and slander are criminal offences.

8(b.ii). In English Common Law, reputation is the most clearly protected and is remedied almost exclusively in civil law by an award of damages after trial by a jury. However, the Law of Defamation like many other branches of tort law aims at balancing the interests of the parties concerned. These are the rights that a person has to his reputation *vis-a-vis* the right to freedom of speech. The Law of defamation provides defences to the wrong such as truth and privilege, protecting right of freedom of speech.

8(b.iii). Defamation is a ground on which a constitutional limitation on right of freedom of the expression, as mentioned Article 19(2), could be legally imposed. Thus the expression 'defamation' has been given constitutional status. **The law of defamation does not infringe the right of freedom of speech guaranteed by article 19(1) (a). It is saved by Article 19(2).** It is so saved, as it was included as one of the specific purposes for which a reasonable restriction can be imposed. The law relating to the tort of defamation, from the point of view of distribution of legislative power, would fall under '**Actionable wrongs**' mentioned in Entry 8 of the Concurrent List in the Seventh Schedule to the Constitution of India. Criminal law also falls under the Concurrent List.

8(c). **Essentials of Defamation:** An obvious question arises about essentials of defamation under Indian Law. Because, whenever defamation is agitated before any Civil Court, the proof has to travel around certain essentials. Therefore, it becomes necessary to try to enlist those essentials or requisites constituting defamation as civil wrong.

There are in general four essentials of the tort of defamation, namely-

- a. There must be a defamatory statement.
- b. The defamatory statement must be understood by right thinking or reasonable minded persons as referring to the plaintiff.

c. There must be publication of the defamatory statement, that is to say, it must be communicated to some person other than the plaintiff himself.

d. In case of slander either there must be proof of special damages or the slander must come within the serious classes of cases in which it is actionable per se.

Defences: With the proof of publication of defamatory material, plaintiff must be deemed to have established his case, unless the defendant pleads either of defences open to him.

Following are the defences available in an action of civil liability in the case of defamation-

a. **Defence of justification of truth:** The truth of a defamatory words is pleaded with a complete defence in Civil proceedings and for that reason even though the words were published spite to be and maliciously. A publication based on verifiable facts can extinguish liability for defamation. It negatives the charge of malice and it shows that plaintiff is not entitled to recover damages too.

b. **Defence of fair comment:** A fair and bona fide comment on a matter of public interest is not libel. For the purposes of the defence of fair comment on a matter of public interest such matters must be (a) in which the public in general have a legitimate interest, directly or indirectly, nationally or locally, e.g. matters connected with national and local government, public services and institutions and (b) matters which are at public theatres and performances of theatrical artists offered for public entertainment but not including the private lives of public performers.

In a recent case of Kokan Unnati Mitramandal and others vs. Bennett Coleman & Company Limited and Others-2012 (2) Maharashtra Law Journal 338, the Bombay High Court while dismissing suit for defamation filed by plaintiff has held that “defendants have shown and proved the fair comment made by them in public interest. The defamation of plaintiffs alleged by them is

therefore amply justified.”

c . **Defence of absolute privilege:** 'Privilege' means a person stands in such relations to the fact of the case that he is justified in saying or writing what would be slander or libel by anyone else. The general principle underlying the defence of privilege is the common convenience and welfare of society or the general interest of society.

Privileges can be absolute or qualified.

Absolute Privilege-a statement is said to have absolute privilege when no action lies whether against Judges, Counsel, Jury, Witnesses or Parties, for words spoken in the ordinary course of any proceedings before any Court or Tribunal recognized by law. It is manifest that the administration of justice would be paralyzed if those who were engaged in it were liable to actions of libel or slander upon the imputation that they had acted maliciously and not bonafide. Thus, all witnesses or parties speaking with reference to the matter before the Court have privilege for their evidence, whether oral or in writing, relevant or irrelevant, malicious or not. The privilege extends not only to words spoken but also to documents properly used and regularly prepared for in the proceedings.

Qualified Privilege-a statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice. There are occasions and circumstances when speaking ill of a person or uttering or writing words defamatory is not regarded as defamatory in law and for the reason that public interest demand it. It is regarded sometimes right and in the interest of the public that a person should plainly state what he honestly believes about a certain person and speak out his mind fully and freely about him. Such occasions are regarded as privileged and even when the statement is admitted or proved to be erroneous; its publication will be excused on that ground.

d . **Consent:** Where the defendant has communicated or published certain material with the consent of plaintiff or plaintiff himself has invited the defendant to repeat the defamatory words, the defendant can plead this defence of consent.

If a person telephones a newspaper with false information about himself, he would not be able to sue in defamation when the newspaper publishes it.

e. **Apology:** Apology is available as a defence in actions for libel against newspapers and another periodical publication, if the newspaper inserts a sufficient apology and adheres to certain other conditions. When there is an apology and an acceptance thereof, the defendant can resist plaintiff's claim for defamation. Nevertheless, there has been no similar legislation in India.

Newspaper libel: Newspapers are subject to the same rules as other critics. They have no special right or privilege. In spite of the latitude allowed to them, they have no special right to make unfair comments, or to make imputations upon a person's character, or imputations upon or in respect of a person's profession or calling.

If a libel appears in a newspaper, the proprietor, the editor, the printer and the publisher are liable to be sued either separately or together. Press and Registration of Books Act, 1867, [PRB Act] defines 'Editor' as the person who has control over selection of material, which is to be published. Further, there is presumption under section 7 of the PRB Act. The presumption is regarding awareness of contents of newspaper and it can be raised only against the Editor whose name appears on the copy of said newspaper. It cannot be raised against other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of said newspaper.

In case of Gambhirsinh R. Dekare versus Falgunibhai Chimanbhai Patel and others-2013 Cr.L.J.1757 (SC), the Apex Court has ruled down that the Editor whose name is published in said

newspaper [in view of section 7 of PRB Act] is liable for civil and criminal liability, if published matter is defamatory.

Damages and costs: Damages are of two kinds, general and special. General damages are such as the law will presume to be the natural and probable consequences of the defendant's words or conduct. They arise by inference of law and need not, therefore to be proved by evidence. Special damages, on the other hand, are such as the law will not infer from the nature of the words themselves; they must, therefore, be specially claimed on the pleadings and evidence of them must be given at the trial.

In India, if words have been proved to be defamatory of the plaintiff, general damages will always be presumed since all defamatory words are actionable per-se. Whether special damage has also been suffered, that will remain a matter of proof, and if so proved, the plaintiff will be entitled to recover on that score along with general damages.

The Court may come to the conclusion that although the action was well founded, the damages claimed were excessive or that it was extremely difficult for the plaintiff to have valued his claim at a particular figure. The damages are to be determined and quantified, depending upon various factors and circumstances. These factors cannot be found in any book or literal work.

But, this issue is addressed in case of Mr. Umar Abid Khan vs. Vincy Gonsalves@Vincent Gonsalves-2010(1) All Maharashtra Reporter 74 (Panaji Bench), defamation and freedom of speech is distinguished in words as-“Every person has a legal right to preserve his reputation inviolate. In law, it has been accepted as personal property and it is just in rem a right good against all the world. A man's reputation is property and degree of suffering occasioned by the loss of reputation as compared to that occasioned by loss of property, is greater. The Court therefore must draw a balance between freedom of speech and protecting the reputation of an individual.”

In paragraph 15 and 16 it was observed that the plaintiff in a defamation action is entitled to recover as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused.

Then number of factors are enlisted to determine amount of damages, which is to be awarded. Those factors are (i) the gravity of allegation, (ii) the size and influence of the circulation, (iii) the effect of publication, (iv) the extent and nature of claimant's reputation and (v) the behaviour of defendant and claimant plaintiff. These factors lend us upper hand to decide the perfect amount of damages and costs.

It is in fact subject to maintainability of civil suit for defamation based on common law principle and precedents in reference to it, for the same is not within the meaning of existing law defined in Article 366(10) of the Constitution of India which is being detailed hereunder.

The September, 2014-recommendation of the Law Commission of India, is not only the need to repeal [Sections 499 & 500](#) of the IPC, as per suggestions to it by the Amnesty International, on the ground that it violates the international norms, but also strongly recommended for codification of the civil defamation. **It might be the reason as appears that, the common law concept of the unwritten law of libel and slander must be deemed to have been invalidated after the enactment of [Article 19](#) of the Indian Constitution, since the same infringes the right of freedom of speech guaranteed under [Article 19\(1\)\(a\)](#) of the Constitution and is not saved by [Clause\(2\)](#) of the [Article 19](#).** To understand the same, it is necessary to consider the effect of the Constitution (First) Amendment Act, 1951, on the right of freedom of expression conferred by Clause(1) of [Article 19](#), the effect of which was to amend Clause(2) of the same Article, which reads(2) Nothing in Sub-clause(a) of Clause(1) shall affect the operation of **any existing law**, or prevent the **State from making any law**, in so far as such law

imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence."

As per Article 13, Laws inconsistent with or in derogation of the fundamental rights.—(1&2) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part-III-fundamental rights, shall, to the extent of such inconsistency, be void and the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

As per Article 13 (3&4) in this article, unless the context otherwise requires, (a) “**law**” **includes** any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas and nothing in this article shall apply to any amendment of this Constitution made under article 368.

However, Clause (10) of [Article 366](#) limits the phrase "existing law" only to statutes or Ordinances, orders, bye-laws, rules or regulations made under the statutory authority, but not to any unwritten law or custom or usage having the force of law under Article 13 (3).

Therefore, if any unwritten law (otherwise called common law or usage or custom) for maintaining a civil suit for defamation(for libel or slander) even it is a suit of civil nature under Section 9 CPC, taken as per Justice, equity and good conscience, even as existing at the commencement of the Constitution, since it infringes or restricts the

right of free speech, it is void irrespective of whether the restrictions imposed by it are reasonable or otherwise, but for to save the [Sections 499 & 500](#) of the IPC of criminal defamation, for prosecution. It is because the test of reasonableness is relevant for restrictions imposed by any "existing law" as defined by [Article 366\(10\)](#), but irrelevant for those imposed by a law not covered by the definition and, therefore, all existing restrictions, reasonable or unreasonable, imposed by a law which was not the "existing law" as defined by [Article 366\(10\)](#) became void under [Article 13](#) at the commencement of the Constitution. Hence, the unwritten law of civil defamation making a person liable in damages became invalid, in letter and spirit of the constitutional provisions supra. Thus, the law commission it appears therefrom strongly recommended for codification of the civil defamation.

8(c.i) . Test of defamatory statement, Rules and Principles:

There are certain established rules to determine whether statement is defamatory or not.

The first rule is that the whole of the statement complained of must be read and not- only a part or parts of it.

The second rule is that words are to be taken in the sense of their natural and ordinary meaning.

The Court must have regard to what the words would convey to the ordinary man.

The test to be applied for the determination of the question whether a statement is defamatory, the answer to the question is- 'would the words tend to lower the plaintiff in the estimation of right-thinking members of society?'

The test of defamatory nature of a statement is its tendency of excite against the plaintiff, adverse opinion/feeling of other persons.

The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful

conduct.

Whether defamation consists of libel or slander; the following requisites which are common to both have to be necessarily proved by the plaintiff:

- a. The words or the act must be defamatory,
- b. They must have reference to the plaintiff.
- c. They must have been published.
- d. They must have been published maliciously.

e. There can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is to a party other than the person defamed.

8(c.ii) . The test is the opinion of society as a whole: If it is proved that the statement in question tends to lower the plaintiff's reputation with a particular section of society, then the question that falls for determination is whether reasonable men would endorse that particular opinion, if their attention were directed to the matter. The test of the defamatory nature of a statement being its tendering to excite against the plaintiff the adverse opinions or feelings of other persons, a typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct, such as crime, dishonesty, untruthfulness, trickery, ingratitude or cruelty.

Similarly, a statement may be defamatory if it tends to bring the plaintiff into ridicule or contempt even though there is no suggestion of any form of misconduct. An action will therefore, lie for any statement or any visible representation made having a tendency to reflect adversely upon a person's reputation personal, professional or commercial, i.e., if it reflects upon the fitness or capacity of the plaintiff in his profession or trade or in any other undertaking assumed by

him. So also, it is defamatory to mention the plaintiff's name without his consent in connection with inferior goods, literary or other production.

8(c.iii). Publication is equally important and essential. Best example of its essentiality is the landmark judgment in *R.Rajagopal vs. State of Tamil Nadu* [famously known as the *Auto Shankar's Case*]-1995 Supreme Court 264. A Tamil sensational Weekly *Nakheeran* had proposed to publish autobiography of a condemned prisoner, by name Auto Shankar. He was convicted in six cases of murder and was sentenced to death penalty. His Advocate had delivered the autobiography to the news weekly, for publication as a serial. As it contained a narration about nexus between criminals and authorities, especially between the prisoner and several IAS, IPS and other officers, the newspaper decided to commence publication and announced that in advance. It was alleged that the police authorities extracted some letters from prisoner applying third degree methods, addressed to top authorities in the government requesting stoppage of publication of autobiography. The Inspector General of Prisons in a letter to the editor, asked to stop the publication as the prisoner denied that he had written any such autobiography. The IG termed it as a false autobiography. The Editor sought a direction from the Court to prevent the interference in the freedom of the editor to choose the contents of his newspaper as per his discretion.

The Division Bench consisting of Honourable Justice B. P. Jeevan Reddy and Honourable Justice Subhas C. Sen agreed with the petitioners and held that the newspaper had every right to publish the autobiography of Auto Shankar.

Honourable Supreme Court said that the newspaper could publish the life story so far as it appears from the public records even without the consent or authority. But if they go beyond the public record and publish, they may be invading the privacy and causing defamation of the officials named in the publication. However, Supreme Court said that even if the apprehensions of the officials

were true about the defamatory contents, they could not impose any prior restraint on the publication, though they had right to take to legal proceedings for defamation after publication.

It has been ruled that the Government has no authority to impose a prior restraint on publishing an autobiography, because that is going to be defamatory or violating right to privacy.

The Honourable Supreme Court in this case held that-

i. The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

ii. The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others.

We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

iii. There is yet another exception to the rule in (1) above -Indeed, this is not an exception but an independent rule. In the case of public

officials, it is obvious, right to privacy, or for that matter, 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. This is so even where the publication is based upon 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 that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true.*** Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages.

It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above.

It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

iv. So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

v. Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

vi. There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media".

However, in paragraph 28 of the said decision, the Honourable Supreme Court has observed as follows: "In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) and clause(2) thereof on Sections 499 read with 500 of the Indian Penal Code. That may have to await a proper

case.”

Later in **N. Ravi Vs. Union of India**-as the complaint case was withdrawn as settled, the prayer about validity of Section 499 IPC has also held become academic, but having regard to the importance of the question, ---- the validity aspect held deserves to be examined.

Very recently in Subramanian Swamy Vs. Union Of India, Ministry of Law and others, Hon’ble Supreme Court has accepted to adjudicate this contentious issue (referring to the expressions in Rajagopal(auto Shankar) and N.Ravi supra) and accordingly on 30/10/2014, the Honourable Supreme Court (by staying the calendar cases pending in the District & Sessions Court, Chennai) admitted the writ petition on the following issues:

It reads from para-4 that: While submitting that the issue requires to be examined, Dr.Swamy has raised certain contentions based on pleadings put forth in the writ petition. For the sake of clarity and regard had being to what is being pleaded in the writ petition, we would like to summarise the points that are likely to arise in this case. As submitted by Dr.Swamy, the issues that may crop up are:

- a. The provisions contained in Sections 499 and 500 IPC, travel beyond the restriction clause enshrined under Article 19(2) of the Constitution of India, for that really restricts the freedom of speech beyond reasonable limit.
- b. The very purpose of Article 19(2), as would be evident from the debate in the provisional Parliament, was not meant to put such restrictions and, therefore, such an enormous restriction cannot be thought of under Article 19(2) to support the constitutionality of the said provisions and further it will violate the concept of rule of law.
- c. In a democratic body polity, public opinion, public perception and

public criticism, are the three fundamental pillars to guide and control the executive action and, if they are scuttled or fettered or bound by launching criminal prosecution, it would affect the growth of a healthy and matured democracy.

d. The individual interest in the guise of reputation cannot have supremacy over the larger public interest, for the dominant interest in a democracy is the collective interest and not the perspective individualism.

(e) Liberty and free speech have their pedestal, though they are not absolute and controlled, but in the name of control, the freedom of speech that pertains to the realm of criticism of certain governmental actions, cannot be gagged.

(f) The Executive does not permit expression of public opinion by instituting cases of defamation through the public prosecutors by spending the sum from the State exchequer which is inconceivable.

(g) The concept of sanction, which is enshrined under Section 199(2) of the Code of Criminal Procedure, is a conferment of unfettered power by which the citizenry right to criticize, is gradually allowed to comatose.

Above aspects require and are pending adjudication before the Apex Court.

After holding extensive hearing over 19 days in the batch of 27 petitions filed by a TV channel, journalists and politicians including Congress vice-president Rahul Gandhi, BJP leader Subramanian Swamy and Delhi CM Arvind Kejriwal, the Hon'ble bench of justices Dipak Misra and Prafulla C. Pant in the Supreme Court recently reserved its verdict on the constitutional validity of criminal defamation law [as to Sections 499 and 500 of Indian Penal Code are to be removed from the Statute book](#) or the penal provisions should

remain as it is.

9) Further in the recent (3JB) expression of the Apex Court, in K.S.Puttaswamy Vs. Union of India (known as Adhar case), while seeking to refer the matter to a larger bench for decision, from conflicting expressions on right of privacy is a constitutional guarantee to form part of fundamental right to life, from observations in M.P.Sharma Vs. Satishchandra & Kartar Singh Vs. State of UP that right of privacy is not a guaranteed fundamental right by the Constitution, while the observations in the later expressions importantly in R.Rajagopal Vs. State of TN held that the right to privacy is implicit to form part of fundamental right to life & in Peoples Union for Civil Liberties Vs. Union of India held that the right to privacy in so far as it pertains to freedom of speech is part of fundamental rights under Articles 19(1)(a) & 21 of the Constitution.

10) In fact, Article 17 of the International Convention of Civil and Political rights (to which India is a party) speaks that, 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on the honour and reputation'.

11) Defamation as an offence: The criminal law on the topic is contained in sections 499 to 502 of the Indian Penal Code, 1860. Punishment and sentence about the offence of defamation is provided under section 500 of IPC.

“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”.

But, Section 499 I.P.C talks about ten exceptions about what can't be termed defamation.

“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 excepted, 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.

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.

Second Exception – Public conduct of public servants: It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception – Conduct of any person touching any public question: It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception - Publication of reports of proceedings of Courts: It is not defamation to publish

substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation: A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception – Merits of a case decided in Court or conduct of witnesses and others concerned: It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception – Merits of public performance: It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation: A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception – Censure passed in good faith by person having lawful authority over another: It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that others, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception – Accusation preferred in good faith to authorised person: It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

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 interest of the person making

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

Tenth Exception – Caution intended for good of person to whom conveyed or for public good: It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”

12) Defamation as per section 499 IPC is whoever by ---(i) words, spoken or intended to be read, or (ii) signs, or (iii) 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, subject to the exceptions to defame that person.**

13) The very wording says to say imputation is intending to harm or knowing or having reason to believe that it will harm the reputation of such person before saying it as defamation must be seen subject to the exception. The question therefrom is it to mean to decide whether it prima facie defamation or not for even taking cognizance or to reject the complaint as the case may be, from the pre-cognizance enquiry, Court has to consider whether the facts propounded by the complainant which includes a complaint by the public prosecutor comes or not within the exceptions provided by Section 499 I.P.C, for the exceptions are not solely meant by invoking Section 105 Indian Evidence Act as defence to the accused during trial? No doubt to arrive a conclusion in this regard, it requires to read the note under exceptions before going into each of the ten exceptions.

It is also provided that an imputation is said to harm a person's reputation ---

a) if it directly or indirectly, lowers in the estimation of others-

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i) the moral or intellectual character of that person , or

ii) the character of that person in respect of his caste or

calling or iii) the credit of the person, or

b) if it causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Explanations to Section 499 says that it may amount to defamation to impute anything –

1) to a deceased person, if the imputation–

i. would harm the reputation of that person, if living, and

ii. is intended to be hurtful to the feeling of his family or near relatives:

2) concerning a company or association or collection of persons as such:

3) in the form of an alternative, or expressed ironically.

4) it 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 .

Essential ingredients of the offence of defamation are:

1) making or publishing any imputation concerning any person,

2) such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and

3) such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation

of the person concerned .

Exceptions: An accused charged with the offence of defamation may take the resort of any of the ten exceptions as defence. These are the privileged occasions. These privileged occasions exempt a person from criminal liability. These exceptions are as follows:-

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.

Second Exception: **Public conduct of public servants:** It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct.

Example: In the case of Kartar Singh vs. State-2010(1) All Maharashtra Reporter 74, it was observed that public men should not be thin skinned with respect to comments made against them in discharge of their official functions. So, this exception is always raised in such kind of cases.

Third Exception: Conduct of any person touching any public question: It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Example: Where the death of a married woman gave rise to much suspicion and rumours and the public was keen to know as to whether her husband and some others including some family members were involved in it or not, and a news item to this effect was published in the newspaper of the accused which brought the appellant within the area of suspicion, it was held that the whole

matter having become a public question in the town, the accused was entitled to the benefit of the third exception.

Fourth Exception: Publication of reports of proceedings of Courts: It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Example: A correspondent of a newspaper made available material for publication to the editor of a newspaper, including a complaint made by a complainant against a person, the complainant in the aforesaid case, under sections 500 and 504 of the Code along with the allegations contained therein.

These were published in the newspaper. On a complaint made by the complainant in the present case, it was held that there was no liability for defamation since exception-4 is available to the accused persons. The Court made it clear that this exception is also applicable to complaints or pleadings made by the concerned parties to a dispute besides being applicable to the judgments or order of the courts.

Fifth Exception: Merits of case decided in Court or conduct of witnesses and others concerned: It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception: Merits of public performance: It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Seventh Exception: Censure passed in good faith by person having lawful authority over another: It is not defamation in a person

having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Example: Any confidential report about a public servant by his superior is protected by exceptions 2 and 7 of Section 499. So an adverse entry with respect to the ability, integrity and suitability of an Officer by his superior can be made without fear. If the Subordinate Officer has any grievance about the same, he is always entitled to get the same cancelled or get adverse remarks expunged from his confidential report.

Eighth Exception: Accusation preferred in good faith to authorised person: It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

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 person, or for the public good.

14) It can be said that the person alleging in good faith must establish the fact that before making any allegations he had made an inquiry and necessary reasons and facts given by him must indicate that he had acted with due care and attention and that he was satisfied about the truth of the allegation.

Five important considerations must be kept in mind while establishing good faith and bona fides.

a. the circumstances under which the letter was written or the words were uttered;

b. whether there was any malice;

c. whether the appellant made any inquiry before he made the allegations;

d. whether there are reasons to accept the version that he acted with care and caution; and

e. whether there is preponderance of probability that the appellant acted in good faith.

Tenth Exception: Caution intended for good of person to whom conveyed or for public good: It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Chapter XXI, Sections 500, 501, and 502 of the IPC deal with the punishment for defamation.

Defamation—intention and malice, how far considerable:

15) Malice is the intentional commission of a wrongful act, absent justification, with the intent to cause harm to others. The term does not necessarily imply personal hatred, a spiteful or malignant disposition or ill feelings of any nature. But rather, it focuses on the mental state which is in reckless disregard of the law in general and of the legal rights of others. Malice is essential for criminal defamation. Malice is present if the acts were done in the knowledge that the statement is invalid and with knowledge that it would cause or be likely to cause injury. Malice would also exist if the acts were done with reckless indifference or deliberate blindness to that invalidity and that likely injury. Law punishes those who are reckless in their act and by their recklessness cause harm or injury to another. Malice is presumed to exist, in law, when there is intention to bring disrepute or knowledge that the matter in question could bring disrepute to a person. Thus, to escape the charge of defamation one must show that there was no malice on his part. It is shown prima facie there is a malice from complainant's side in the prosecution.

199. Prosecution for defamation: The locus standi to file a complaint by a person aggrieved for the offence alleged to have been committed, for a public servant in connection with affairs of union or State and in respect of his conduct in the discharge of public functions, for complaint to be maintained by the public prosecutor with previous sanction of the Government where the public servant is employed; provided the complaint is maintained within six months, for the learned Magistrate or the learned Court of Session as the case may be as provided by Section 199 Cr.P.C.

From the above, coming to the scope in detail from Section 199 Cr.P.C the following points shall emerge.

16) Locus–standi for defamation cases: No court shall take cognizance of the offence except upon a complaint made by the person aggrieved as provided in section 199 read with (6) of the Code of Criminal Procedure. This is so because the words “person aggrieved” does not mean “person defamed”. The words “person aggrieved” has a wider connotation than the words “person defamed”. Section 499 of the IPC provides that any person whose reputation has been damaged (or was intended to be damaged) by the material in question can sue for defamation. ‘Any person’ refers to an individual, an association or collection of persons or a company.

Section 199 Cr.P.C.: (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 Government 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

17) In the very recent expression of the Apex Court of two Judges bench in ***Foundation for Media Professionals V. Union of India*** challenged Sections 499 and 500 I.P.C and Section 199(1) and (2) Cr.P.C as being violative of Article 14, 19 and 21 of the Constitution of India and also sought for reconciliation of Section 179, 204(1) and 205 Cr.P.C in consonance with the Articles supra; to say territorial applicability of Section 179 Cr.P.C may be limited to the proper location where journalish publication is made as per declaration under Press and Registration of Books Act, 1867 as opposed to where it is circulated read or video and in case of broad casts and online publications which are outside the purview of the P & R B Act, 1867. The territorial jurisdiction to vest in place where registration office of broadcaster/online publication is situated, postponement of process under Section 202 Cr.P.C mandatory in cases arising under Section 499 I.P.C and Court must consider the applicability of the exceptions under Section 499 I.P.C at the stage of issuance of process under Section 204 Cr.P.C. In the course of submissions supporting the relief reference made to the earlier expressions in ***S.Khusbu V. Kannaimmal*** and ***G.Narasimham V. T.V.Chokkappa*** and ***K.N.Khare V. State of Delhi***. In K.N.Khare supra at para No.5 observation was the law providing reasonable restriction on the exercise of the right conferred by Article 19 of the Constitution of India contained substantive provisions as well as procedural provisions while the reasonable things of restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from consideration of Court, the question of reasonable things of the procedural part of the law. In ***S.Khusbu*** supra which includes ***Narasimham*** supra para Nos.37 to 41 are extracted which reads:

“37. It may be reiterated here that in respect of the offence of defamation, [Section 199](#) Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to

be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of [Section 199\(1\)\(b\)](#) Cr.PC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people.

40. A complaint under [Sections 499, 500](#) and [501](#) IPC was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine [Section 198](#) of the Code of Criminal Procedure, 1898 (analogous to [Section 199](#) of the Cr.PC. 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

41. This Court in ***G.Narasimhan*** further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of [Section 198](#) CrPC, 1898. The Court also took note of Explanation 2 to [Section 499](#) IPC which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable 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 case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed."

18) Before Supreme Court for admission of the writ petition in Foundation for Media Professional supra, it was urged that a situation

has arisen where everyone is asserting himself to be the person aggrieved and clothing himself with the locus standi to launch prosecution under Section 499 and 500 I.P.C. It is urged that Section 199(1) Cr.P.C is also unreasonable unless it is read down. The matter is still pending from what is referred supra and what **Narasimham** supra specifically held is Section 199(1) Cr.P.C is mandatory and if a Magistrate were to take cognizance of an offence of defamation on a complaint filed by one who is not an aggrieved person the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

In Maulik Kotak Vs State of Maharashtra-2014 Cr.L.J.4235 (Bombay) it is held that complaint for defamation is to be lodged by person aggrieved and the person defamed and not by any other person by substituting the aggrieved person who was not defamed.

In [Pattabhirama China Govinda Charyulu vs. P.Seshagiri Rao-AIR 1941 Mad 860-Venkatamma Rao, J. points out that](#) "A certain act might give rise to a cause of action in tort and at the same time furnish a ground for a criminal complaint. One remedy is different from the other and any adjustment of the criminal complaint would not operate as an accord and satisfaction of the civil action for damages. In one case in the interests of the State the wrongdoer is punished whereas in the other compensation is awarded to the person who suffers by the injury.

19) Therefore, **unless at the time of giving the unconditional apology on which the criminal complaint is withdrawn it was specifically agreed between the parties that the acceptance of the apology should also operate as an accord and satisfaction of the civil action for damages for the libel, a civil action for damages is not barred**".

20) In **Rajdeep Sardesai V. State of Andhra Pradesh** it is by the Apex Court that the complainant-second respondent to the quash petition, during the relevant point of time was the Police Officer in the

services of the State Government and he cannot prosecute the appellants in a Court of law without obtaining previous sanction from the State Government as contemplated under the aforesaid provisions of Cr.P.C. On facts, no doubt held a common sanction order against several accused for permitting the prosecution through public prosecutor is sustainable without need of separate sanctions for each accused. The sum and substance of the expression is for the alleged defamation and loss of reputation of the public servant from the imputations by the accused, while the public servant who is in discharge of duties or those in connection with it, the sanction of the State Government is must for criminal defamation to be made by public prosecutor.

**In M.Nedunchezian Vs. The Bar Council Of Tamil Nadu–
Division Bench of the Madras High Court in Writ Petition
No.10673 of 2015, dt.21.7.2015- held that –**

21) While interpreting [Article 19](#) of the International Covenant on Civil and Political Rights, which guarantees freedom of expression, the United Nations Human Rights Committee appears to have urged the States to consider decriminalising defamation. The Committee had observed as follows: "Defamation laws must be crafted with care to ensure that they comply with paragraph 3 and they do not serve, in practice, to stifle freedom of expression. The Committee further stated in its authoritative interpretation of the right to freedom of expression under the ICCPR that defamation laws should "avoid excessively punitive measures and penalties".

22. In a Joint Declaration made in 2002 by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression have stated that: "Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws."

23. The European court of Human Rights appears to have held that "the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings" in defamation cases. Though it did not completely rule out criminal defamation, it advised States to act "in their capacity as guarantors of public order without a formulation in bad faith."

24. In September 2014, the Law Commission of India published a joint consultation paper on Media Law, in which it considered the need to repeal [Section 499](#) of the IPC on the ground that it violated international norms and also indicated that the penalty of incarceration up to two years was clearly disproportionate. The Amnesty International also made a series of suggestions to the Law Commission including the repeal of [Sections 499](#) and [500](#) of IPC. Further, it strongly recommended that civil defamation be codified and if it is retained as a criminal offence, the law should not use imprisonment as a punishment for those convicted of defamation, in line with international standards on freedom of expression.

25. In United Kingdom the Defamation Act of 2013, decriminalized libel and afforded protection to those publishing material on matters of public interest. A new process aimed at helping potential victims of defamation online was introduced, to facilitate the resolution of the dispute directly with the person who has posted the statement. -----

26. Therefore, the trend all over the world appears to be towards decriminalisation of defamation. The Supreme Court is also seized of the issue as detailed supra in ***Subrahmanya Swamy V. Union of India***. In such circumstances, it is not possible for us to convince ourselves that the filing of a private complaint of defamation against a person for writing articles in a magazine could make the respondent in the criminal case, a person with criminal background so as to dis-entitle him to enrol as an advocate.

From the above, coming to the expressions relied by both sides:

27. In Jawaharlal Darda vs. Manoharrao Ganpatrao Kapsikar

the news item was published on 4.2.84, the complaint in that behalf was filed by the complainant on 2.2.87 and the news item merely disclosed what happened during the debate which took place in the Assembly on 13.12.83. It stated that when a question regarding misappropriation of Government funds meant for Majalgaon and Jaikwadi was put to the Minister concerned, he had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons involved, he had stated the names of five persons, including that of the complainant. The said proceedings came to be published by the accused in its Daily on 4.2.84. Because the name of the complainant was mentioned as one of the persons involved and likely to be suspected, he filed a complaint before the learned CJM alleging that as a result of publications of the said report he had been defamed. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus, the facts and circumstances of the case disclose that the news items were published for public good, in holding not liable for criminal defamation.

28. In Rajendra Kumar Sitaram Pande vs. Uttam-The Apex Court observed that, the next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section(1) of [Section 201 Cr.P.C](#) can it be said that a prima facie case exist for trial for exception 8 to [Section 499 I.P.C](#) clearly applies and consequently in such a case, calling upon the accused to face

trial would be a travesty of justice. The principle thus laid down is before issuing a process and taking cognizance the Court has to consider from the existing material whether case falls within the exception and only if not, to say prima facie accusation on a complaint to take cognizance for criminal defamation if makes out. It is because a close reading of Section 499 I.P.C pre-exceptions and pre-explanations portion speaks as subject to exception for saying if the imputation is intended or knowing or having reasons to believe that harm the reputation to said to defame or not. It is something different of prima facie consideration at pre-cognizance stage to the post-cognizance defence available to the accused under any of the exceptions in detail to make out. In the said defence, the accused is entitled to participate and defend by placing material, whereas the pre-cognizance stage, the Court has to consider from the material placed by the complainant to come to a conclusion from that enquiry, whether that material benefits the accused not before to any of the exceptions and if not whether the imputation is to defame to take cognizance, if defamatory.

29. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office in the filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. ----- The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under [Section 500](#) or not. [Section 499](#) of the Indian Penal Code defines the offence of defamation and [Section 500](#) provides the punishment for such offence.

30. Exception 8 to [Section 499](#) I.P.C 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. The report of the Treasury Officer

clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental inquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to [Section 499](#) of the Indian Penal Code. The Apex Court held there from by perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand in our considered opinion this is a fit case for quashing the order of issuance of process and the proceedings itself.”

31. In order to attract the 9th Exception to Sec. 499 [of the Indian Penal Code](#), the imputations must be shown to have been made (1) in good faith, and (2) for the protection of the person making it or of any other person or for the public good. 'Good Faith' is defined, in a negative fashion, by Sec. 52 [Indian Penal Code](#) as follows: "Nothing is said to be done or believed in 'Good faith' which is done or believed without due care and attention". The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too the question whether an imputation was made for the public good. In fact the 1st Exception of Sec. 499 [Indian Penal Code](#) expressly states "Whether or not it is for

the public good is a question of fact". 'Public Good' like 'Good faith' is a matter for evidence and not conjecture.

32. [In Harbhajan Singh v. State of Punjab](#), it was observed - "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 any 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".

33. In [Chaman Lal Vs. The State of Punjab](#) the Court observed - "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"

34. In [Vadilal Panchal Vs. Dattatreya D.G.Digaonkar-AIR-1960-SC-1113-\(3JB\)](#)-the Apex Court at paras-11-15 observed referring to [Emperor v. Dhondu Bapu](#)(29 BLR-713); [Emperor v. Finan](#)(33 BLR-1182) and [Tulsidas v. Billimoria](#)(34 BLR 910), relied by the High Court, of which [in Emperor v. Dhondu Bapu](#)(1supra) a complaint charging defamation was dismissed by the Magistrate under [Section 203](#) CrPC without taking any evidence, on the ground that the accused was protected by exceptions to [Section 499](#) IPC, in saying none of the aforesaid decisions lay down as an absolute proposition

that self defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of Sections 200,202 &203 of CrPC in discharge of accused, before issue of process(rejection of complaint without taking cognizance).

35. The above expression of **Vadilal panchal** is a Three Judge Bench expression with unanimous conclusion. Subsequently in other Three Judge Bench expression of Apex Court in **Sewakram Sabhani V. R.K.Koranjia** the majority opinion of the opinion of Justice A.P.Sen conquered by Justice Chinnapareddy, whereas minority opinion was expressed by Justice Paharul Islam. From the majority opinion in dealing with the matter for the offence under Section 500 I.P.C and whether it comes within the 9th exception of Section 499 I.P.C read with Section 52 I.P.C as to accused to be protected under the exception is a question of fact and onus is on the accused to prove that he is so protected as a matter of evidence once the offending article published by the journalist in press is perse defamatory. Whereas the minority opinion is expressed at para No.28 of the judgment is that the truth or falsity of the imputation published in the news article is not material here. Even if the findings in the report be proved to be false, once the respondents/accused will be protected sending of the case to the Magistrate for trial after perusal of the enquiry report is an exercise in futility and abuse of process of the criminal Court. An order to prevent abuse of process of the Court or vexatious proceeding would be warranted under Section 482 Cr.P.C. if th merits of the case before the High Court justified it. In para No.40, it is observed that from the enquiry report when it cannot be said that the respondent published the report or its summary without due care and when it establishes good faith the publication obviously appears to be for public good within the 9th exception of Section 499 I.P.C for no offence to made out under Section 500 I.P.C.

36. In this context it is necessary to mention that in **Sewakram** supra the judgment of **Vadilal**, three judges bench unanimous expression supra not referred or considered. Apart from it as referred supra **Rajendra Kumar Sitaram Pande** supra it is a subsequent

expression of the apex Court when clearly speaks that from reading of the complaint and the report of the treasury officer when prima facie exists for application of exception 8 to Section 499 I.P.C, for no case made out under Section 500 I.P.C calling upon an accused to face trial would be a travesty of Justice. From this, earlier to mention from Three Judges Bench expression of the apex Court in ***Deena @ Deen Dayaland V. Union of India*** and batch of writ petitions and the doctrine of precedents, the apex Court at para No.66 observed that “we have given our anxious and respectively consideration to the passages extracted and the observations made by our learned brother Bhagawati, J, the fact that these are contained in a minority Judgment is of no justification for ignoring them. In a matter as socially sensitive as this, it is improper to overlook the opposing point of view, whether it is expressed in a minority judgment or elsewhere. Apart from it even in a subsequent expression of the Apex Court in ***Veerendra Kumar Sreevastava V. U.P.Rajya Karmachari Kalyan Nigam*** observed at para No.5 on the binding nature even of minority view that “we may also refer to the minority view expressed by learned Bother Lahoti, J. (as he then was) in the case of ***Pradeep Kumar Biswas*** because the examination of the nature of difference in opinion; between the majority and minority view, for the purpose of the present case, may be of some relevance. In the minority view, different tests are required to be applied in each particular case. The claim of a body as included within the definition of “State” based on it being a statutory body falling in the expression “other authorities” is to be considered differently from claim of a body based on the principles propounded in the case of ***Ajay Hasia*** that it is an “instrumentality or agency” of the State. In the opinion of the minority, the tests laid down in the case of ***Ajay Hasia*** are relevant only for the purpose of determining whether an entity is “an instrumentality or an agency of the State”. It is also to refer in this context a single Judge expression of this Court in ***Devireddy Venkat Reddy V. B.Padmavathi*** wherein dealing with petition sought for quashing of private complaint for defamation under Section 500 I.P.C against manager of Bank of India overseas branch, the Court observed by relying in Three Judges

bench in **Sewakram** and not placed reliance in **Rajendra Kumar Sitaram Pande** supra on the facts before it on good faith under ninth exception of Section 499 I.P.C can be looked into during trial and premature at the stage of pre-trial to quash. In fact it referred earlier single judge expression of this Court in **Vedurumudi Rama Rao V. Ch.Venkat Rao** in quashing the private complaint cognizance for the offence under Section 500 I.P.C saying nothing shown to support the allegation of accused/quash petitioner issued the circular with any malice against complaint or damage his reputation. It also referred in **S.Khushboo** supra para Nos.33 and 34 refused supra. It is also referred **Harbajan Singh** and **Chaman Lal** supra besides **M.M.Damai V. S.K.Sinhathat** referred **Sewak Ram, Satrugna Prasad Sinha V. Raj Bhai S.R** besides two more single judge expressions of this Court in **V.V.S.H.Prasad V. S.Ramesh** and **I.Venkateswarlu V. State**. However, none of the expressions including the expression **Devireddy Venkat Reddy** supra, considered the three judges bench expression in **Vadilal** which conclusion is supported by the expressions subsequent to **Sewak Ram** with majority and minority opinions and when minority opinion supports the **Vadilal** supra and same supports by expression subsequent to **Sewakram** by **Jawaharlal Darda** and **Rajendra Kumar Sitaram Pande** supra.

37. From the above, apart from **Vadilal** Three Judges Unanimous expression provides as a presidential authority of the exceptions to Section 499 I.P.C also must be taken into consideration from the material on record at the pre-cognizance stage in deciding whether offence under Section 500 I.P.C is made out or not and for that matter including in general exceptions provided in Chapter IV of I.P.C where the reference was particularly to Sections 76 to 79 I.P.C and in **Sewakram**, the minority opinion is in saying from very material when it shows the exceptions to Section 499 I.P.C applies, it is a fidelity to take cognizance for the offence under Section 500 I.P.C and abuse of process in asking to face trial before the Magistrate and the subsequent expression of **Sewakram** in **Rajendra Kumar**

Sitaram Pande also speaks the same therefrom suffice to say from the delivery later that when the material itself before the Court shows the accused is entitled to the protection from prosecution for the offences under Section 500 I.P.C from the case falls under any of the exceptions provided in Section 499 I.P.C in saying no offence made out. It is a fit case to quash the proceedings rather than asking to face the ordeal of trial. Apart from it, the Apex Court in **Amit Kapoor V. Ramesh Chander** at para No.27 observed that in exercising the powers under Section 482 Cr.P.C the uncontraverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not, to decide the Court show apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ulterior purpose. The Court where finds it would amount to abuse of process or interest of Justice favours otherwise it may quash the proceedings. The power is to be exercised *ex debito justia* that is to do real and substantial justice (Munniswamy) for administration of which alone the Courts exercise. In **Ajay Goswamy V. Union of India** it is observed with reference to the freedom of press and protection of minors and from harmful and disturbing materials and indecent representation of Women (Prohibition) Act, Press Council Act and the India Penal Code provisions at para No.71 that the test of judging a work should be that of an ordinary man of common sense and prudence and not out of the ordinary or hypersensitive man as observed by Justice Hidaytullah, CJ in **K.A.Abbas V. Union of India** at para No.49 that if the deprived begins to see in these things more than what an average person would, in large, the same way, as it is wrongly said, a Fresh man sees, a woman's legs in everything, it cannot be helped.

38. The Apex Court has held in the case of B.S.Joshi vs. State of Haryana-2003 CBC 393(SC) that it would not be expedient to allow a lame prosecution to continue and the ends of justice are higher than the ends of mere law.

39. It is held in Narshi Thakershi Vs. Pradyuman Singhji Arjun Singhji-1971(3)SCC-844 that 'it can not be denied that justice is a virtue which transcends all barriers and the rules of procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice'.

40. In State of Karnataka vs. L.Munnniswamy-1977 (3) SCR 113, considering the scope of inherent power of quashing under Section 482 Cr.P.C, this Court held that in the exercise of this wholesome power, the High court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that 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 and that **the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature.**

41. From the above facts, provisions and propositions, the crux on facts not in dispute is the complainant while accepting the entire but a portion of a publication regarding receiving of the amount from the so called under-trial prisoner for allowing to continue as inpatient even not entitled and could have been discharged. The continuation is not even in dispute but for saying at the instance of the ex-director Prasada Rao. It is also even admitted the ward under the control of the complainant while the complainant is discharging the duty as doctor in N.I.M.S. That is suffice to say for such piece of attribution even not find place in the inter-departmental enquiry, per se cannot be said false and per se when cannot be said intentionally or knowingly or by reason to believe to disrepute and when per se cannot be said with malice and when per se shows within exception 8 to Section 499 I.P.C for the conduct of the complainant a public servant, by such press statement to the public who got lawful authority being rulers of the State By the people, For the people and

Of the people and not even with sanction of the State Government through Public Prosecutor made the complaint when it is the conduct pointed out in the imputation while discharging public duty, when the Magistrate before taking cognizance from the material when supposed to consider as to the material on its face allows the case falls within the exceptions to Section 499 I.P.C, in not doing so in taking cognizance, same is nothing but a lame prosecution that cannot be allowed to continue in futility to make the accused to face the ordeal despite ends of Justice requires to quash the subserve.

42. In the result, the criminal petition is allowed and the proceedings in C.C. No.849 of 2013 on the file of XXIII Special Magistrate, Hyderabad at Erramanzil are hereby quashed. The bail bonds of the petitioners, if any, shall stand cancelled. The miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.11.2015

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