

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-3448 of 2012 (O&M)
Date of decision : 09.10.2015**

Pathfinder Publishing Pvt. Ltd. and others

.....Petitioner(s)

Versus

Indian Institute of Planning & Management & another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anup J. Bhambani, Sr. Advocate with
Mr. Manish Jain, Advocate
for the petitioners.

Mr. Samir Rathur, Advocate
for respondent no.1.

ANITA CHAUDHRY, J.

This petition seeks quashing of the criminal complaint No.430/2009 dated 25.07.2009 (Annexure B) filed by the Indian Institute of Planning and Management against the petitioners under Section 500 IPC. Petitioners are also impugning the order dated 17.01.2011 (Annexure A), passed by the Additional Chief Judicial Magistrate, Gurgaon vide which the petitioners have been summoned.

Culling out the facts as disclosed in the complaint first;
A complaint was filed by Indian Institute of Planning and

Management (in short IIPM) pleading that M/s. Pathfinder Publishing Pvt. Ltd. publisher and printer of monthly magazine "Careers 360" had published articles which were false & defamatory and imputations have been made against them with a *mala fide* intention and it had harmed their (complainant's) reputation. They had pleaded that the imputations were false and had been circulated & published with a view to damage their reputation and standing in the education sector. It was pleaded that accused no. 1 was the publisher and printer while accused no.2 was the editor, accused no. 3 was the publisher of the monthly magazine while accused no.4 was the Data Software Research Company which had entered into legal conspiracy for financial benefit. Accused no. 6 to 9 were stated to be the Directors, Manager, Share Holders, persons incharge of day-to-day control of DSRC-accused no.5. Accused no.4 was stated to be financing the magazine and was directly responsible for motivating and publishing the impugned defamatory articles for financial gain.

The complainant had alleged that accused no. 3 in connivance with other accused was running a media campaign and had published an article in the monthly magazine issued in June, 2009 which was patently false, incorrect, defamatory, libelous and intended to damage their reputation and good-will. It was pleaded that selective e-mails had been referred to create

false impression against the complainant and the accused knew that the complainant group would not be able to give their counter view so as to reach other persons and false impression had been created by the accused.

Preliminary evidence was led by the complainant. The Additional Chief Judicial Magistrate, Gurgaon vide order dated 17.01.2011 summoned accused nos.1 to 3 only for standing trial under Sections 500, 501, 502 IPC read with Section 34 IPC. The complaint as against accused nos. 4 to 9 was dismissed. The complainant had conceded that no case against accused no.4 to 9 was made out. The relevant paragraphs of the order read as under:-

"In case titled as Mohinder Singh Vs. Gulwant Singh and others 1992(2) Recent Criminal Reports 134 (S.C.), it has been held by the Hon'ble Supreme Court of India that at the time of passing of summoning order in a criminal complaint the Court has not to go into the question of sufficiency of evidence for conviction. The Court has to see whether a prima facie case has been made out so as to put the accused on regular trial. No detailed enquiry is called for. The question whether evidence is adequate for supporting conviction, can be determined only at the trial and not at the state of enquiry under Section 202 Cr.P.C.

In case titled as Parkash Kaur and others Vs. Smt. Hardeep Kaur, 1993(1) RCR 380 (P&H) it has been held by the Hon'ble Punjab & Haryana High Court at the stage of summoning of accused magistrate is not required to meticulously examine and evaluate the

evidence. The Magistrate is also not required to record reasons. A brief order indicating that Magistrate applied his mind is all that is expected at this stage."

The petitioners have claimed that in the normal and usual performance of the duty as journalist in their magazine published in June, 2009 carried an article titled 'Investigation : IIPM-BEST ONLY IN CLAIMS ?'. Petitioners claim that their article was based upon credible information derived from certain inquiries conducted by the petitioners and this article was published after collecting information and after an inquiry and it was in no way intended to harm any person or entity but was meant only to provide information to the public at large and in the best interest of young students for whom this information was most relevant. The photocopy of the article was annexed as Annexure-D. The petitioner had also placed the photocopies of some of the e-mails exchanged by them with universities with whom respondent claimed partnerships and the copies of the advertisements placed in leading newspapers by respondent no.1, Annexure-E.

The petitioners had pleaded that the article had carried a headline that the claim made by IIPM that they were awarding MBA/BBA degrees from Universities of Buckingham but the University had denied any arrangement with IIPM as of date and the false claims are continuing and this article was published in

their July magazine which was annexed as Annexure-F. It was pleaded that the complaint was filed with respect to the article published in their June issue and they had raised no question in relation to the July article though it had been published by then. It was pleaded that on 15.09.2009, the complainant had filed a complaint Annexure-G before ACJM, Dehradun against the petitioners for the alleged offence under Sections 500/501/502 IPC read with Sections 34 & 35 of Indian Penal Code for publication of the July article. It was pleaded that the complainant was aware of the July article at the time of filing of the complaint, at Gurgaon and the complainant had deliberately and intentionally resorted to forum shopping tactics and had initiated multiple litigations to harass, coerce and pressurise the petitioners and thereby to stop the *bona fide* publication of information, news and views. It was pleaded that the petitioners had challenged the complaint by filing a petition under Section 482 Cr.P.C. and the Complaint was dismissed by Uttarakhand High Court. The petitioners had annexed the copy of the judgment dated 08.10.2010 as Annexure-H. It was pleaded that the complainants in their complaint filed before ACJM, Gurgaon had chosen selected extracts of the articles to give a false impression of *mala fide* and they had carefully and deliberately chosen to omit reference to the detailed authentic inquiries made and the e-mails received & published by the petitioners on the basis of the

subject article. It was pleaded that they had published fair and objective article including the e-mails received by the petitioners from various foreign universities with an intention to apprise the readers about the result of the inquiries so made by the petitioners, leaving the decision making on the readers whether they want to study at IIPM. It was pleaded that the article was not aimed to bring disrepute to the complainant or any other person. It was pleaded that the witnesses examined by the complainant were convenient witnesses and CW1 held the position of Dean Academics while CW-2 claimed to be alumnus of the complainant though he failed to state the year when he had attended the courses at the complainant's institute.

It was pleaded that the complaint had been filed by concealing facts about similar proceedings with respect to the July article which was in continuation of the subject article and had been challenged by the complainant before the Uttarakhand High Court which was quashed in October, 2010. It was pleaded that the impugned order had been passed in a mechanical and perfunctory manner without giving any reasons and the ingredients of Section 499, 501 and 502 IPC were not made out. It was pleaded that the article did not give any final opinion and had left it to the readers to decide and there were no false imputations which were defamatory.

Respondent no.1 in its reply had pleaded that the petitioners have approached this Court and had not revealed the material facts and the petition suffered from gross suppression of material facts. It was pleaded that the petitioners were running a vindictive media campaign with an intention to damage their reputation and good-will. It was pleaded that the petitioners had published in their magazine an article criticising ICFAI in August, 2009 addition and thereafter, they started accepting advertisement from ICFAI which was published in the January and March, 2010 additions and it was an illustrative case of pick and choose policy and they were not acting *bona fide* nor they were interested in public good. It was pleaded that the petitioners were acting in connivance with certain competitors.

It was further pleaded that the magazine "Careers 360" is printed and published by Mr. Maheshwar Peri on behalf of M/s Pathfinder Publishing Pvt. Ltd. which was the sister concern of Outlook Publishing India Print Ltd. which was publishing the weekly magazine for "Outlook". It was pleaded that Mr. Maheshwar Peri in the "Outlook" issue of June, 2008 had published an article and had made defamatory imputations and they had filed a suit before the Delhi High Court and the Single Judge of the Delhi High Court had passed an ex parte order restraining them from publishing any defamatory article against the respondent. It was pleaded that subsequently the order was

modified that in case any further publication is to be made then the counter view of the respondent should also published in the next issue with the same prominence in their magazine.

In para no. 12 of the reply, the respondent had given the number of cases which were pending between the parties in different Courts.

The respondent had further pleaded that the petitioners had not written or pointed the names of other institutes who were running in violation of law unlike the respondent who were pursuing its name in a legitimate manner with full disclosure in their prospectus and on their website. It was pleaded that the petition was pre-mature and the merits of the complaint was to be judged by the trial Court. It was pleaded that the petitioners were pleading Exceptions to Section 499 IPC which is a matter of defence and the journalist did not enjoy any special privilege nor they had greater freedom to make any imputations sufficient to ruin their reputation. It was pleaded that the trial Court after examining the complaint under Section 200 Cr.P.C., postponed the issue of process and proceeded under Section 202 Cr.P.C., thereafter, ordered issuance of summons.

I have heard both the sides at length and have gone through the paper book.

The submission on behalf of the petitioners was that the article was published in the magazine after a detailed inquiry

and response from various institutes had been taken and they had even published the e-mails received by them. The counsel had referred to Annexure D-46. It was urged that false claims had been made by the complainant regarding the arrangement with foreign universities and IMI Belgium and e-mails were sent to verify the facts and they had received responses that IIPM did not have any arrangement with Judge Business School, University of Cambridge. The counsel had referred to the various e-mails sent to different institutes placed on file from page nos. 63 to 79 of the paper book. It was urged that the University Grants Commission had issued a public notice in July, 2010 that IIPM was not a University within the meaning of Section 2(f) of the University Grants Commission and they were not entitled to award BA/BBA/BCA degree nor they were recognized by UGC, MHRD and AICTE. It was urged that the complainant was proclaiming that they were granting MBA and BBA degrees in their article published in June and July issue and they were only bringing out the truth. It was urged that in the reply submitted by the respondent not a word had been said about the proclamations made by them and they have not asserted that they could grant any degree or that their institute were associated with foreign universities or could award degrees. It was urged that the subject article included information available after inquiries and they had in no way intended to harm any person or entity and it was only

to provide information to the public at large and to apprise the young students about the claims made by the complainant. It was urged that a complaint was filed before CJM, Dehradun and they had filed a quashing petition before the Uttarakhand High Court and the complaint was quashed vide order Annexure-H on 08.10.2010. It was urged that the interim order referred to by the respondent had been modified vide Annexure R-5 available at page 156. Reliance was placed upon ***Dhariwal Tobacco Products Ltd. and others Vs. State of Maharashtra and another (2009) 2 SCC 370 and B. Mahesh Sharma Vs. Union of India and others in W.P.(C) 5937/2010, decided on 26th September, 2014.***

On behalf of the respondents it was submitted that the power under Section 482 Cr.P.C. should not be exercised when an efficacious remedy of revision is available and it is a matter of trial and the accused will have to prove at the trial that their case would fall under any of the exceptions. It was urged that petitioners have failed to avail the remedy of revision and law was settled. Reliance was placed upon ***Harsh Kapoor and others Vs. Komal Kapoor 2013(2) U.D. 349, Mohit alias Sonu and another Vs. State of U.P. and another 2013 (3) RCR (Criminal) 673, Palwinder Raj Singh Vs. The State of Punjab 2003(1) RCR (Crl.) 198 and V.K. Jain Vs. Pratap V. Padode 2005(3) Mh.LJ 778.***

The article which was published in the magazine "Careers 360" in June, 2009 is as follows:-

Investigation I

IIPM—BEST ONLY

A superior course, global exposure, international faculty and dollar salaries, so claims IIPM. Careers360 investigates

by B Mahesh Sarma

This started off as a normal investigation, into the malaise affecting the education system and the checks and balances that need to be brought in. After all, we all know that the government cannot be a sole participant in making the youth employable and the country a prosperous one.

Everyone that we spoke to was of the unanimous opinion — while a systemic overhaul is essential to improve the quality of many bad institutions in the country, the least we could do is to protect students and parents from being misguided and misled by willful wrong-doers. There are institutes where students walk in with their eyes open and know what to expect. And there are those where they walk in, blinded — misled, misguided and misinformed, by a campaign where media, regulatory agencies and academia become willing accomplices. While we can't do much about the informed decisions, we have to take up the cause of those who were cheated, an act that robs students of their career and in a way, their life.

As we scanned the ads, spoke to experts, affected parties and counselors, we realised that one name cropped up the most — IIPM. We decided to investigate. We sent mails to all those that IIPM draws upon to validate its claims in its advertisements, namely — journalists, editors, foreign universities, employers. We spoke to current and former students and their parents. What our investigation unravelled left us cold. Here is an institution that enjoys all the privileges of an academic institution (according to IT authorities, it claimed exemptions citing Section 10(23C)(VII) of the Income Tax act, 1961) with zero responsibility and accountability. Here is an institution that brazenly uses its power and reach to make unsubstantiated claims that play with the lives of students and parents alike. We know we are opening a Pandora's Box, but are prepared for the repercussions, knowing fully well that you, our readers are with us. We were shocked by our findings, and what you are reading is just a part of it. We await your verdict.

BBA/MBA degrees

IIPM/CLAIMS to award PG + UG degrees from IMH Belgium. We checked with NVAO, the accreditation organization of Netherlands and Flanders (Belgium) about IMH Belgium. The response from them is given below. This implies that the degree that students earn would be useless for higher education or employment anywhere in the world, where formal degrees are required.

-----Original Message-----

From: [REDACTED]@nvao.net]
Sent: Thursday, March 19, 2009 8:14 PM
To: [REDACTED] info@nvao.net
Subject: RE: Kind attn: [REDACTED], as per telecon yesterday

Dear [REDACTED]

To answer your first question, I would refer to our official register of recognised institutions and degrees: <http://www.hogeronderwijsregister.be>. Please read two items in our section FAQ:- <http://www.hogeronderwijsregister.be/faq/117/48> - <http://www.hogeronderwijsregister.be/faq/117/49>
IMH Belgium is not a recognised higher education institution (neither in the Dutch nor the French speaking part of Belgium). Since it is not recognised it cannot award recognised degrees.

In our position it is difficult to answer your second question. For us only registered institutions with accredited programmes are considered credible.

Best regards

Campus placement

BASED ON some of the claims about MNC employers participating in the campus recruitments at IIPM, we checked with a few of them. We are listing a few responses, of employers, who have denied having recruited from the IIPM campus from the class of 2008, though IIPM claims otherwise. There have been a few more, who did not respond and we did not pursue, as we already got a sample of what is in store. Some gave us information but refused to come on record.

STANDARD CHARTERED BANK, s.d.

We have hired 9 students from IIPM this year, though this was not through the campus recruitment process. These are all freshmen.

BARCLAYS, DUBAI

I have looked into the below and we at Barclays, UAE, Dubai have not done any campus placement with this institute.

DEUTSCHE BANK (sms response)

Deutsche bank has no association with IIPM in terms of campus placements. We may have one or two employees from IIPM at the junior level but that's about it.

IN CLAIMS ?

at the prestigious DNA innovative B-School awards 2009...
IIPM AWARDED THE BEST B-SCHOOL IN INDIA!
In the two B-School category

IIPM Delhi awarded B-School with best international placements!
OR 10% IIPM Delhi's international placements have stood ahead of all the B-Schools in India for the class of '06

India's Global B-School... Welcome the new Leader!

***ZEE Business '08: Ranked No.1 in Global Exposure (Ahead of all IIMs)**
ZEE Business '08: Ranked No.7 Overall (Ahead of 2 IIMs)

BUSINESS TODAY '06: Ranked No.5 by MBA students (Ahead of 3 IIMs)
BUSINESS TODAY '06: Ranked No.8 Most recommended (Ahead of 3 IIMs)

1200 STUDENTS PLACED ALREADY
for the class of '09!!

Never say that Institute placed 1200 students in this year of reduced growth forecasts! Call it the IIPM magic... that's how the reality in IIPM is!
Oh yes! IIPM placement office is being flooded by requests for help from students of other institutes at a time when their institutes have raised their hands... No do with we could help. Right choice of the right B-School makes all the difference.

BEFORE JOINING ANY B-SCHOOL, DO SPEAK TO ITS EXISTING STUDENTS TO KNOW THE REALITY OF THE B-SCHOOL!

Spring Summer Admissions (Starting May 2009)

FOR GRADUATES
Full Time Programme in Planning and Entrepreneurship making students eligible for an additional
MBA DEGREE*
The most intellectually Stimulating Course Content Globally
Most rigorous Course with Widest Coverage Globally

WORKING EXECUTIVES
One Year Global Programme in Planning and Entrepreneurship making students eligible for an additional
MBA DEGREE*
Students must compare IIPM's course contents with those of IIS, IIMs and other leading Global B-Schools to realise the superiority of the IIPM programme!

AFTER 10+2
DON'T WASTE 3/4 YEARS DOING ENGINEERING/BA/B.COM etc.
IF DOING AN MBA IS YOUR ULTIMATE GOAL
DO IIPM'S UNIQUE COURSE & SAVE 2 PRECIOUS YEARS!!
and become eligible for a
BBA DEGREE & MBA DEGREE
in only 3 years!!

*Post Graduate/Under Graduate Degree in Management from IMT Belgium and a FREE STUDY TOUR TO EUROPE/USA etc. for two weeks
Leading to CERTIFICATION IN GLOBAL MANAGEMENT from one of the Top 20 Global B-School/University

Berkeley
University of California

CAMBRIDGE
Judge Business School

UNIVERSITY OF VIRGINIA
School of Business

Visit to the nearest IIPM campus and a university abroad would be pleased to explore

LAST date of registration: 07-03-2009

COLLECT YOUR FREE PROSPECTUS (ON PERSON OR BY POST) FROM IIPM OFFICE TODAY ITSELF.
 DELHI: IIPM, MKCC Plaza, Sector 5, Pushpa Market, BAFEE, New Delhi-110002
 GURGAON: IIPM Tower-3, Building No.79, Sector 12, Gurgaon-122001
 NOIDA: C-56/30, Sector-62, NOIDA-201301

FREE LAPTOPS
are provided to all IIPM students

International collaborations

From: David Platt [mailto:David.Platt@mccombs.utexas.edu]
Sent: 26 February 2009 21:42
To: [REDACTED]
Cc: David Wenger
Subject: RE: Query regarding your Institute's association with IIPM, Delhi

I'm sorry, but I am unaware of any association between the McCombs School of Business and IIPM. It is possible that they have a connection I am unaware of with a particular professor, but in any case they are not an official partner school.

I should caution that I am only responding for the McCombs School of Business. While McCombs is the only business school at the University of Texas at Austin, it is possible that they have a relationship with another college at UT Austin. If that were the case I would not be aware of it.

Best regards,

David E. Platt, Ph.D., Director, CIBER,
 McCombs School of Business

Hello [REDACTED]

Thanks for your enquiry about the programme Judge Business School is delivering to IIPM participants.

This is a full day, non-degree executive education programme delivered in Cambridge by Judge Business School.

IIPM have engaged us to deliver and the first group will commence in July 2009. There are no university qualifications awarded from Cambridge University or Judge Business School. The only certificate is a certificate of attendance which is what we provide to participants on all our programmes.

Very best

Ashlin Ryan, Communications Manager,
 Judge Business School

Dear [REDACTED]

Thanks again for your e-mail. The University of Virginia's Darden School of Business has agreed to provide a series of week-long Executive Education programs (i.e., a contracted teaching arrangement) for IIPM. Darden has no partnership agreement or tie up with IIPM.

Along with Cambridge, Judge and UC Berkeley (Haas), Darden will host IIPM's Executive Education program participants and deliver to them a high quality mix of general business class sessions. No course credits at Darden or UVA are associated with this program, as IIPM is not a partner school and their participants are not taking Darden courses.

Best regards,

Julie Baum, Director of Communication,
 Darden School of Business, University of Virginia

Haas gave us a series of three responses.
 See box in the next page

The publishers claim that their effort was to address the issue of the false claims made by IIPM and the article had been published in the magazine merely to fulfil their professional duty after they had checked and cross-checked with the various universities and after receiving their responses and those were printed along with the article. The contention of the counsel also was that the University Grants Commission in its public notice had proclaimed that IIPM could not confer any degree nor had any arrangement with any University.

In the reply filed by IIPM, except for stating that the article was malicious and defamatory, the respondents have not justified the claim made in the article.

Having noted the averments, the Court has to now examine whether the article was *prima facie* defamatory and whether the summons could be issued to the petitioners.

It would be necessary to refer to Sections 499 and Section 500 IPC which reads as under:

Section 499 in The Indian Penal Code-

499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. Illustrations

Section 500 in The Indian Penal Code-

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.

The Court is to now examine whether under the present facts and circumstances of the present case the inherent and extra ordinary power under Section 482 Cr.P.C. can be invoked and the summoning order can be set aside.

The submission on behalf of the petitioners was that they should not be subjected to a criminal process as it would cause immense hardship to them and in the light of the fact that the publication made was true and also in public good, it would be covered by the exceptions to Section 499 IPC and the proceedings should not be allowed to go on as it was an abuse of the process of law. The submission was that in such

circumstances when the cognizance has been wrongly taken, the Court can use its inherent powers under Section 482 Cr.P.C.

In **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, the Hon'ble Apex Court had examined the extra ordinary and inherent powers of the Court under Article 226 of the Constitution of India as well as under Section 482 Cr.P.C. and has clearly stated that these powers have to be exercised either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. Guidelines in this regard were laid down which are as under:-

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

1. *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no*

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The Hon'ble Apex Court in ***Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others*** (1998) 5 SCC 749, after considering several judgments including ***Bhajan Lal's*** case (supra) had stated that where the Court comes to the conclusion that *inter alia* summoning of the accused has not been done properly, the Court must exercise its powers under Section 482 Cr.P.C. Para 28 of the judgment reads under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complaint to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The main submission on behalf of the respondent/complainant was that whether it was for public good and whether the article which was published is true, is a question of fact which can only be examined by the trial Court and whether it would fall under the exception, is a matter of defence.

The argument though is attractive and in the circumstances the accused should be asked to present himself and demonstrate at the trial if his case is covered under the exceptions but the petitioners are not only relying upon to Section 499 IPC, they have submitted that the main thrust of the article was to caution the students and they had no intention to harm the reputation of the respondent and the purpose was to caution gullible students. I have gone through the e-mails appended along with the petition and I find that the article cannot be said to be defamatory. The magazine had extensively quoted their emails and responses they had received in their article. It is not disputed that the UGC, in a public notice issued on 31.07.2010, available on record, had notified the general public that the claim of IIPM that they can grant or confer degrees was a wrong claim as they had no arrangement with any university nor they were authorized to grant any degree or diploma under the law. The notice reads as follows:-

"It is hereby informed to the public at large and students that Indian Institute of Planning and

Management (IIPM), New Delhi is not a University within the meaning of Section 2(f) of the University Grants Commission Act, 1956, the Indian Institute of Planning and Management (IIPM), New Delhi does not have right of conferring or granting degrees as specified by the University Grants Commission under Section 22(3) of the University Grants Commission. It is further clarified or informa that Indian Institute of Planning and Management is neither entitle to award BA/BBA/BCA degree nor it is recognized by UGC, MHRD and AICTE.

The public and students are also hereby informed that the Universities established either by a Central Act or a State Act or an Institutions deemed to the University under Section 3 of the University Grants Commission Act can confer or grant only those degrees which are specified by the University Grants Commission is available on the University Grants Commission website www.ugc.ac.in for information of all concerned.”

It is necessary to mention that a public interest litigation was filed by B. Mahesh Sharma against the Union of India and others including IIPM before the Delhi High Court WP(C)5937/2010 calling upon the UGC and the AICTE to take action against IIPM for fraudulently using MBA/BBA in relation to the courses offered by it, as it was misleading and exploiting the students attached to the institute as they were led to believe that they would acquire the qualification of MBA/BBA. UGC therein had filed a counter affidavit. It is necessary to reproduce para no. 4 of the judgment rendered on 26.09.2014 and it reads as under:-

"4. The respondent UGC in its counter affidavit filed in October, 2010 to the petition has inter alia stated:

(i) that the respondent No.4 IIPM is neither a University within the meaning of Section 2(f) of the University Grants Commission Act, 1956 (UGC Act) nor is it a Deemed University declared by the Central Government under Section 3 of the said Act;

(ii) that the respondent No.4 IIPM is not entitled to confer, or grant, or hold itself out as entitled to confer or grant any Degree;

(iii) that the respondent No.4 IIPM however in the advertisements being published by it was using the nomenclature of Degree (as defined in Section 22 of the UGC Act) such as BBA Degree and MBA Degree in relation to its Courses / programmes and misleading the students and public at large;

(iv) that UGC had issued a show cause notice dated 17th October, 2007 under Section 24 of the UGC Act to the respondent No.4 IIPM, as to why action should not be initiated against it;

(v) that the respondent No.4 IIPM in its reply dated 14th February, 2008 thereto, informed that it does not award any Degree and is conducting a course which is non-technical and non-professional Certificate Programme in National Economic Planning and Entrepreneurship and though does not have any collaboration with International Management Institute (IMI), Belgium but the said Institute awards its Degrees to IIPM students in recognition of the Course undertaken by them at IIPM;

(vi) that UGC had included the name of the respondent No.4 IIPM in the list of fake Universities, posted and maintained by the UGC on its website with the objective of informing the students and public at large of the status of the IIPM;

(vii) however pursuant to order dated 27th June, 2008 in W.P.

(C) No.4567/2008, UGC removed the name of the respondent No.4 IIPM from the list of fake Universities and issued advertisements informing students / public at large in terms of the said order;

(viii) that the respondent No.5 M.S. University, Tamil Nadu is a State University and could not have approved the respondent No.4 IIPM as an onside academic partner Institution to confer MBA, BBA and BCA Degrees;

(ix) that in accordance with the judgment in Prof. Yashpal (supra) also, the State Universities or the Private Universities established by the State Governments are not entitled to establish or open off-campus study centres or to create franchises in the name of Distant Education Programme outside the State.”

Before the Delhi High Court, AICTE had contended that prior approval of AICTE is compulsory and mandatory for conduct of a technical course including MBA and Management Course and IIPM had not obtained approval of AICTE and they were not entitled to conduct MBA or management course or claim of doing so.

The petition was disposed of by the Delhi High Court since the counsel for IIPM had admitted that they were not entitled to confer any degree. A finding was recorded that the prospectus showing IIPM as conferring degree was evidently found to be false and misleading and IIPM was restrained from using the word MBA, BBA, Management Course, Management School, Business School or B. School in relation to their

courses/programmes and they were asked to prominently display on their website that they were not recognized by any statutory body/authority.

Under these circumstances, it would be wholly unjustified and in fact, it will be an abuse of the process of the Court, if the petitioners are subjected to undergo trial. The respondents could not place any document on record even to show what the petitioner had published was wrong. They have no proof to support the claims made by them.

The Magistrate while summoning the accused should have made some enquiry as to the foundation of the allegations and should have questioned the complainant asking them to place on record proof with respect to their claim. It accepted the oral statements and issued notice. This Court is of the view that the proceedings pending against the petitioners are nothing but an abuse of the process and in order to meet the ends of justice, the summoning order and the complaint are quashed. The petition is allowed.

Copy of this order be sent to the Court concerned.

09.10.2015
sunil

(ANITA CHAUDHRY)
JUDGE