

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.187 of 2002**

1. Ashok Kumar Agrawal, son of Nand Kishor Agrawal, R/o Khaparganj, District Bilaspur, Chhattisgarh, Printer and Publisher of "Dainik Lokswar" (Newspaper)
2. Gendlal, son of Munnalal Shukla, R/o Transport Nagar, District Korba, Chhattisgarh, Press Reporter of "Dainik Lokswar"

---- Petitioners**versus**

1. State of Chhattisgarh through District Magistrate, District Korba, Chhattisgarh
2. Banwarilal Agrawal, son of Shridhar Agrawal, R/o Purani Basti, Durpa Road, District Korba, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Rajeev Shrivastava, Advocate
For State/Respondent No.1	:	None
For Respondent No.2	:	Shri Anup Majumdar, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**C.A.V. ORDER****Per Deepak Gupta, Chief Justice****15-7-2016**

1. This revision is directed against the judgment dated 24.1.2002 passed by the Additional Sessions Judge, Korba in Criminal Appeal No.170 of 2001 arising out of judgment of conviction dated 25.7.2000 passed by the Judicial Magistrate First Class, Korba in Criminal Case No.598 of 2000.

2. Revision Petitioner No.1 is the printer and publisher of a newspaper called "Dainik Lokswar". Revision Petitioner No.2 is a Press Reporter of the said newspaper. A complaint under Section 500 IPC was filed against these two Revision Petitioners by Respondent No.2, Shri Banwarilal Agrawal, who was, at the relevant time, the Chairman of the Special Area Development Authority, Korba that a total defamatory news was published in the aforesaid newspaper and by this publication they harmed the reputation of the complainant and defamed him. The allegations levelled against the complainant are of such a nature that the accused should have been aware that by levelling such allegations they would harm the reputation of the

complainant.

3. The publication in question is Ex.D-3, which has been exhibited both by the complainant as well as by the Petitioners. It is a front page news in which it is alleged that there is embezzlement of crores of rupees in Korba Special Area Development Authority. Within this main news, there is another box news titled as “Banwari and many others are big fish in the net of corruption”. In this box news item, it has been mentioned that there is misappropriation of crores of rupees in Korba Special Area Development Authority and it is not only Judicial Officers and Contractors who are involved, amongst others the name of complainant Banwarilal Agrawal, who was a member of the Legislative Assembly, has also been mentioned. It has been mentioned that the Chief Executive Officer of Korba Special Area Development Authority Shri Amarjeet Singh has admitted that some more cases of corruption in the Special Area Development Authority could be investigated by the police. The most defamatory part of the news is as follows:

“The maximum corruption and misappropriation of Rupees
14 Crores took place when BJP Leader Banwarilal Agrawal
was the head of the Special Area Development Authority.”

4. It is alleged that though Banwarilal Agrawal always claims that he is a very principled person and also tom-toms that he is a very honest person, but maximum corruption took place during his tenure. Other allegations have also been levelled him. Photograph of Banwarilal Agrawal has also been published in the newspaper.

5. There can be no matter of doubt that the news item is clearly defamatory and harms the reputation of Shri Banwarilal Agrawal. The defence of the Revision Petitioners is that this publication was made in the public good and is, therefore, covered by the first three Exceptions to Section

499 IPC. As far as the first exception is concerned, to take benefit of such exception, the accused must show that the imputation is true and to highlight and disclose corruption, which is definitely required in the public good. However, even a person, who acts in the public good, must make some efforts to find out whether the allegations which he is making are true or not. In the present case, before making the publication in question, no attempt was made to get the reaction of Shri Banwarilal Agrawal to the allegations levelled against him. No defence has been set out that the allegations are true and factual because if the allegations are factual and correct then no proceeding of defamation would lie.

6. It is contended on behalf of the Petitioners that on the very next day after the publication in question was made the reaction of Shri Banwarilal Agrawal was printed and published in the said newspaper. However, this material has not been placed on record.

7. As far as the second and third Exceptions to Section 499 IPC are concerned, a newspaper is fully entitled to raise questions with regard to functioning of any public servant in the discharge of his public duties. Therefore, if allegation of corruption has been made, the newspaper could question whether Shri Banwarilal Agrawal had discharged his duties properly or not to prevent corruption and that would fall within the realm of the conduct of a person discharging public duties. To take benefit of second and third Exceptions to Section 499 IPC, the accused must show that he acted in good faith. Good faith does not mean giving the version of only one side. Good faith itself implies that there is some verification of the allegation. It is only the conduct of the person which can be assailed and not his character.

8. In Halsbury's Laws of England, Third Edition, Volume 24, it is mentioned as follows:

“The doctrine of fair comment is based on the hypothesis that

publication in question is one which broadly speaking is true and fact, and is not made to satisfy a personal vendetta; and further that the facts stated therein are such as would go to serve the purpose of public newspaper.”

9. It would be important to note that a Journalist possesses no higher right than an ordinary citizen in respect of freedom of speech. However, by virtue of being a special character for prevention of corruption, a Journalist owes certain duties to the public. One of the most important duties of a Journalist is to disseminate news and views to the public through its publication. At the same time, a duty is cast upon the Journalist to disseminate the news and views fully and truly on a matter effecting the public good. Even if there be some exaggeration or unfair comment that may not amount to defamation as long as the material published is substantially true for the public benefit.

10. On going through the articles published in the newspaper, it is apparent that the box news items, which were highlighted, served no other purpose, but to allege that Shri Banwarilal Agrawal was also involved in the corruption. This part of the publication is neither for the public good nor is a fair comment. Therefore, I am of the considered view that the Courts below have rightly convicted the accused/Revision Petitioners. The sentence awarded is only till rising of the Court and the sentence of payment of fine calls for no interference.

11. In view of the above discussion, the criminal revision is dismissed.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE