

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.16 OF 2009

1. Pratap s/o Govind Pawar,
age 64 yrs, Occ. Managing Editor,
Sakal Papers Ltd.,
R/o 595, Budhwar Peth, Pune – 2.
2. Abhijit s/o Pratap Pawar,
age 36 yrs, Occ. Printer and Publisher,
R/o 595, Budhwar Peth, Pune-2. ...Petitioners

VERSUS

1. The State of Maharashtra.
2. Shri Sayyad Mustaq Ahmed Sayyad
Rajasaheb, age 27 yrs, Occ. Education,
R/o House No.7328/5180, Juna Bazar,
Panchpir Chawadi, Ahmednagar. ...Respondents

...
Mr V D Sapkal Advocate for petitioners.
Mr. S.W.Munde APP for Respondent No.1 State
Respondent No.2 Served (absent).
...

WITH
CRIMINAL WRIT PETITION NO.18 OF 2009

Yamaji Balaji Malkar,
age 50 yrs, Occ. Editor (Daily Sakal),
R/o Sakal Papers Ltd.,
595, Budhwarpeth, Pune -2. ...Petitioner

VERSUS

1. The State of Maharashtra.
2. Shri Sayyad Mustaq Ahmed Sayyad
Rajasaheb, age 27 yrs, Occ. Education,
R/o House No.7328/5180, Juna Bazar,
Rajasab Nalwale Wada, Panchpir Chawadi,
Ahmednagar Dist. Ahmednagar. ...Respondents

...
Mr S.G.Chapalgaonkar Advocate for petitioner.
Mr. S.W.Munde APP for Respondent No.1 State
Respondent No.2 – Served absent.
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 05.12.2016**

**Date of pronouncing
the Order: 23.12.2016**

JUDGMENT:-

1. Being aggrieved by the order dated 12.6.2006 passed by the Chief Judicial Magistrate, Ahmednagar issuing process thereby against the petitioners under section 500 and 501 of IPC and the judgment and order dated 13.10.2008 passed by the Additional Sessions Judge, Ahmednagar in criminal revision No.135 of 2006, the petitioners-original accused approached to this Court by filing present criminal writ petitions.

2. Brief facts, giving rise to the present writ petitions are as follows :-

a) Respondent No.2-original complainant is a student of New Law College, Ahmednagar and he was taking education in final year of LL.B degree course. In the Parliamentary election, 2004 he had contested the election from southern Ahmednagar, constituency. On

20.8.2005, the students of New Law College Ahmednagar submitted a representation to the Principal of New Law College Ahmednagar stating therein that respondent no.2 – original complainant is harassing the students and he had also abused and assaulted professor Sunil Jadhav on 18.8.2005 at about 10.30 a.m. It has also contended in the said representation that, respondent no.2 – original complainant is making noise in the corridor of the college when classes are going and when questioned, he used to abuse the students and threatened them. It has also alleged in the said representation that, respondent no.2-original complainant is teasing the girl students. It has further stated in the representation that, it has become difficult for the students to take education. Thus, by the said representation, it was requested to take proper action and expel respondent no.2-complainant from the college. Said representation was signed by the law students of the said college with a request to take appropriate action against respondent no.2-original complainant. It has also contended in the said representation that, till the action is taken against respondent no.2-complainant, the students of law college will resort to the agitation by not attending the classes.

b) On 21.8.2005, a news was published in daily newspaper 'Sakal' at page no.9 that student of law college had resorted to agitation and decided to close the college. On 23.8.2005 another

news item was published to the effect that said agitation was called off.

c) On 29.9.2005, respondent no.2 original complainant had issued the notice to the petitioners alleging therein that the aforesaid news published in the daily news paper "Sakal" are defamatory. On 7.12.2005 petitioners replied the said notice. The petitioners had denied all allegations made in the notice on the ground that factual aspect after verification of the correctness of the incident was published.

d) Respondent No.2-original complainant had thereafter filed a complaint bearing S.T.C. No.124 of 2006 before the Chief Judicial Magistrate, Ahmednagar against those law students, who signed the said representation, office bearers of management, Principal and present petitioners. The learned C.J.M. Ahmednagar, by its impugned judgment and order dated 12.6.2006, after recording verification statement of the complainant and on perusal of the documents placed on record, more particularly, daily news paper 'Sakal' dated 21.8.2005, 23.8.2005, notice and reply thereto and after hearing the complainant, issued process against the present petitioners-original accused nos. 45 to 47 for the offences punishable under sections 500 and 501 of IPC. Being aggrieved by the same,

the present petitioners preferred a criminal revision petition No.135 of 2006 and the learned Additional Sessions Judge-2 Ahmednagar, by its impugned judgment and order dated 13.10.2008 dismissed the said revision petition. Hence, these two writ petitions.

3. Petitioner no.1 in Criminal Writ Petition No.16 of 2009 is the Managing Editor of Sakal papers Limited and petitioner No.2 is Printer and Publisher. The petitioner in writ petition No.18 of 2009 is the Editor of Newspaper daily 'Sakal' published in the State of Maharashtra.

4. The learned counsel for the petitioners in writ petition No.16 of 2009 submits that, the petitioners have no any role in selecting and editing the news. The petitioners have no personal knowledge about various news items published in the daily newspaper Sakal. In view of Section 7 of Press and Registration of Books Act, 1867 (hereinafter referred to as 'Act of 1867') there is official declaration to the effect that for any legal proceeding whatever it may be, civil as well as criminal, that editor is liable for printing and publishing every portion of newspaper.

Learned counsel for the petitioners submits that, students of New Law College, Ahmednagar submitted representation to the

Principal of New Law College on 20.8.2005 and allegations, which are made in the said representation satisfy the requirement of 'ragging' as defined under section 2 (1) of Maharashtra Prohibition of Ragging Act, 1999 (for short hereinafter referred to as 'Act of 1999'). In view of section 6 of Act of 1999, the Management is empowered to suspend the students. The Principal, being head of the educational institution, is competent to take action as contemplated in the Act of 1999. Even on 20.8.2005, respondent no.2-original complainant was served with a notice by the Principal calling upon his explanation to the contentions made in the representation. Further, when the assurance was given by the Management to the students for taking appropriate action, the law students had stopped their agitations and said news was also published in the daily newspaper 'Sakal' on 23.8.2005. Learned counsel for the petitioners submits that, Management is entitled to conduct an inquiry as per the provisions of Act of 1999 and to take appropriate action against respondent no.2-original complainant. There cannot be defamation if the accusations have been made against the persons to the lawful authority with respect to the subject matter of accusation.

5. Learned counsel submits that, there are no specific allegations about the role played by the petitioners. In absence of such positive averments in the complaint in relation to the knowledge of aforesaid

news, there cannot be any criminal liability of the petitioners. Learned counsel submits that, said news item was published on the basis of the grievance made by the law students to the head of the institution, with a request to take appropriate action against the respondent no.2-original complainant.

6. The learned counsel for the petitioners submits that copy of the said representation was marked to the Editor of daily Sakal. Further, the reporter of the newspaper personally visited the college campus and noticed that law students went on strike in pursuance of their demands and college was almost closed on account of said agitation launched by the law students. Further, Management had also discussed the issue in their meeting and decision was taken to authorize the Principal of the said Law College to conduct the enquiry. Accordingly, the Principal had issued show cause notice to respondent no.2 complainant in pursuance of the allegations made in the representation submitted by the students. Thus, news paper dated 21.8.2005 had published true and correct report of the facts based on the documents. Thus, said report does not amount to defamation within the meaning of Section 499 of I.P.C. In the given set of facts, the allegations made in the complaint cannot be subject to prosecution.

7. Learned counsel submits that respondent no.2-original complainant had filed private complaint bearing S.T.C. No.124 of 2006 not only against the law students, who have submitted said representation but also members of the Management and Principal of the Law College, who is supposed to conduct an inquiry as per the provisions of the Act of 1999. Learned counsel submits that, learned C.J.M. has not considered that the said news item was published the true facts without making any addition or deletion in good faith. The learned Additional Sessions Judge has made observations in the impugned judgment and order which are contrary to the provisions of Section 7 of the Act of 1867. Learned counsel submits that, the learned Additional Sessions Judge has erroneously observed that, news item is defamatory per-se, as the said representation was not signed by the girl students and thus there cannot be any substance that respondent no.2-original complainant had teased the girl students. It has specifically alleged in the said representation, made by the law students, that respondent no.2-original complainant also teased girl students in the law college. The learned counsel submits that the impugned orders thus call for interference and the order of issuance of process against the petitioners is thus liable to be quashed and set aside.

8. The learned counsel for the petitioners submits that it has

alleged in the legal notice issued by respondent no.2 original complainant and also in the complaint that the newspaper or the publication has a duty to objectively verify the facts and ascertain the version of the person, who is likely to be affected by the publication or against whom imputations, which are defamatory, are being published. Learned counsel submits that the Press Council of India has evolved the norms for right of reply based on number of its decisions and precedents. The norms, as noted, are based on the doctrine of fair play and in case there has been lapse in pre-verification of the facts or the publication, which does not contain the view point or version of the aggrieved person. The Press Council of India may initiate the proceeding under the relevant provisions of Press Council Act, 1978 and a mechanism is provided to an aggrieved person of filing a suit for damages or defamation or a criminal complaint under sections 499/500 of IPC.

9. Learned counsel submits that, in the instant case, the reporter of daily newspaper Sakal had visited the college campus and after ascertaining the fact of submission of representation by the students of law college and further taking note of their agitations published a news item without any addition or deletion in good faith to bring the aforesaid facts to the notice of public at large. Since the law students had preferred to make a representation to the head of the Institution,

with a request to take an appropriate action against respondent no.2 original complainant, it was for the institution to take an appropriate action after conducting an inquiry, as contemplated in the Act of 1999 and in that event, there is no reason to verify the facts objectively and ascertain the version of the person, who is likely to be affected by such publication before the news item is published. The Principal of the said law College had already issued a show cause notice to the respondent-original complainant and after verifying the allegations made in the said representation and considering the explanation tendered by respondent no.2 original complainant, it was for the institute to take an appropriate action in the matter. Learned counsel submits that, in view of the same, the allegations made in the complaint are required to be examined under the four corners of section 499 of IPC. Learned counsel submits that, no case is made out against the petitioners even though accepting the allegations made in the complaint as it is.

Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the following judgments :-

- i) V.S. Achuthanandan vs. G. Kamalamma and Anr, reported in 2008 Cri. L.J. 4221,
- ii) C.B. Solanki, Major, Proprietor, Fancy Silk Centre vs.

Srikanta Parashar and others, reported in 1997 Cri. LJ 3050,

- iii) T. Satish U. Pai vs. Narayan Nagapa Nayak, reported in 2002 Cri. L.J.4416,
- iv) Jawaharlal Darda and others vs. Manoharrao Ganpatrao Kapsikar and another, reported in AIR 1998 SC 2117.
- v) Voluntary Health Association of Tripura and others vs. Press Council of India and others, reported in AIR 2003 Delhi 76
- vi) S. Sudin vs. The Union of India and others, reported in AIR 2015 Kerala, 49
- vii) Life Insurance Corporation of India vs. Prof. Manubhai D. Shah, reported in AIR 1993 SC 171.

Learned counsel also placed his reliance on the Press Council of India's Norms of Journalistic Conduct, issued by the Press Council of India from time to time.

10. The learned counsel for the petitioner in writ petition No.18 of 2009 submits that news item published in the daily newspaper Sakal represents mere reporting of the proceeding initiated by the students and action taken by the Management against respondent no.2-original complainant. Thus publication of the true facts, proceeding

before the lawful authority does not amount to defamation. Therefore, no offence could be made out under the provisions of sections 499, 500, 501 of IPC. Learned counsel submits that 8th exception of section 499 of IPC protects the accusations preferred in good faith to the authorized person. Therefore, representation made by the law students to the Principal of Law College against illegal and mischievous acts of respondent no.2, with a prayer to initiate appropriate action, cannot be termed as defamatory. The Principal is appropriate authority to complain about such acts committed by the students in the college premises. Learned counsel submits that the complaint was filed against 47 accused persons and accused no. 1 to 44 are the representatives of the College Management, Principal, Professors and students. Therefore, once the prosecution is dropped against the original accused nos. 1 to 44 for the reason that there is no case made out against them, no cause of action survives against the present petitioners for issuance of process and continuation of prosecution.

11. Learned counsel submits that on receipt of the said copy of the representation, a reporter of the daily newspaper Sakal visited the new Law college campus and collected further information. On inquiry, it was revealed that the students went on strike and college was closed. It was also noticed that college Management had

discussed the issue in the meeting and a show cause notice was also given to respondent no.2 complainant on the basis of the representation made by the students. It was further revealed that law college students went on strike in pursuance of their demand to take action against respondent no.2 original complainant. On 22.8.2005, it was informed by the University representative of the New Law College that students have decided to withdraw their strike since college management had assured to take appropriate action against respondent no.2-original complainant. On the basis of the said information, a further news item was published in daily Sakal dated 23.8.2005. The petitioner is only responsible for publication of news item thereby reporting the true and correct news. The aforesaid news item is not based on personal knowledge of the petitioner nor it is his self creation. The learned CJM and learned Additional Sessions Judge has not considered the factual aspects as well as legal position in its correct perspectives. Learned counsel submits that, in the news item dated 21.8.2005, it has reported that there are accusations in the representation about teasing to the girl students, despite the fact that in the representation there are specific allegations that respondent no.2 original complainant was teasing girl students of the law college and the said reference of accusations about teasing of girl students in the news item itself indicates that said news item was published in a good faith without any intention to

defame respondent no.2. Learned counsel submits that there is no substance in the complaint and order of issuance of process is thus liable to be quashed and set aside.

Learned counsel also relies on the cases cited and relied upon by the learned counsel for the petitioners in criminal writ petition no.16 of 2009.

12. Though respondent no.2 original complainant has filed his affidavit in reply, none appears for respondent no.2 when the matter was called out. It has contended in the reply that the complaint filed against accused nos. 1 to 47 with the allegations that all the accused with common intention to destroy the political future and would be lawyer professional career of the complainant has maliciously published defamatory alleged matter in the Marathi newspaper of present petitioners as Dainik Sakal on 21.8.2005 and 23.8.2005. The petitioners commonly intending to lower down the public image and reputation of respondent no.2.

13. It has further contended in the affidavit of reply that the petitioners published declaration on oath 1.3.2009 in daily Sakal under Rule 8 of the Registration of News Paper (Central) Rules, 1956 in respect of the name of owner, share holder, Management,

Printer, Publisher, Editor, Managing Editor, etc, who have control and exercise of their powers about the publication of matter in the Marathi Daily Sakal in which names of the present petitioners are shown as they have total control and exercise over the publication in the daily news paper Sakal. In view of the same, objection raised by the petitioners in view of sections 5 and 7 of the Act of 1867 does not survive and hence, the printer, publisher are also responsible for the prosecution alongwith editor, Managing Editor, Resident Editor and Chief Editor of newspaper. Thus, the present petitioners are not immune from prosecution for libelous matter published in their respective news paper.

14. It has further contended in the affidavit of reply that as respondent No.2-original complainant is not helpful to the close political friends of the petitioners and as respondent no.2 original complainant has earned handsome voting in the Parliamentary and Assembly Election 2004, the petitioners had published alleged defamatory news items maliciously.

15. It has also contended in the affidavit in reply that the petitioners does not add any editorial line while alleged defamatory news item was published. The allegations of the ragging made as against respondent no.2 complainant are not true and correct. Though, the

Principal of New Law College, Ahmednagar under the instructions of the College Authority had issued a notice to respondent no.2 and called his explanation but after inquiring into the matter, the Principal of New Law College Ahmednagar and authority has not found *prima facie* case and truth in the complaint and therefore, no action has been taken. It has also contended in the affidavit that, there are no verification of the facts before publication of the news item and even the petitioners did not verify that none of the signatories is a girl student. None of the girl student ever made any allegations of eve teasing to the Principal against respondent no.2. Further, no specific instances mentioned in the representation about the alleged eve teasing. It was thus incumbent upon the petitioners to verify the facts before publication of the news items. It has further contended in the affidavit of reply that in case of ***Sukra Mahto Vs. Basudeo Kumar Mahto and another reported in 1971 Supreme Court 1567*** it has been held that in order to claim good faith in prosecution for defamation, the accused must show that before making alleged imputation he had made inquiry with due care and attention and that he was satisfied about the truth of that imputation. In this backdrop, whether case of the present petitioners falls under Exception 4,8 9 of Section 499 of IPC will be considered only after commencement of the trial and at this stage a *prima facie* case is made out or not is required to be ascertained only. It has also contended in the affidavit

in reply that there is no evidence that reporter of the present petitioners had visited the college campus on receipt of the complaint. There is also no evidence that law students went on strike and also closed the college in pursuance of demand made by them in the said representation. There are near about 2000 students in the law college apart from minimum 500 are the girl students and out of them only 43 students are having grievance about the present respondent-original complainant. There is no evidence to show that, the college authority or the students invited petitioners for covering the alleged matter or for publication of the news items in the light of the representation made to the Principal of Law College Ahmednagar.

16. It has further contended in the affidavit in reply that there is no error of law nor process is to be called as abuse of process of law. The learned Judge of the Trial Court has rightly appreciated the allegations made in the complaint and held that prima facie case is made out by the respondent no.2 – original complainant as against the present petitioners. The learned Sessions Judge has also delivered the judgment on merits and held that the evidence on record prima facie shows that present petitioners are responsible for publication of the defamatory news item. In the light of the above cited facts and circumstances, both the criminal writ petitions are

liable to be dismissed with costs.

17. On 20.8.2005, the students of New College College, Ahmednagar submitted representation to the Principal of New Law College, Ahmednagar. It has stated in the said representation that on 18.8.2005, the respondent No.2 original complainant had abused the Physical Instructor professor Sunil Jadhav and also assaulted and beaten him at about 10.30 a.m. on that day. It has also stated in the said representation that respondent original complainant used to harass other students and was making noise in the passage when the class was going on, on questioning, he used to abuse and threatened the students. It has also stated in the representation that he was also teasing the girl students. It has further contended in the said representation that respondent No.2 original complainant was giving trouble to the students, teachers and staff members of the college and he may be expelled from the college. The said representation is signed by 30 students and one of them is University representative. On the same day, the said University representative, under his signature, informed the Principal that pursuant to the said representation, action may be taken against respondent No.2 original complainant forthwith and till the action is taken, the law students would not attend the classes.

18. On careful perusal of the news item dated 21.8.2005, published in Daily Newspaper "Sakal", it appears that the said news item in verbatim reproduced the representation submitted by the law students to the Principal of Law College. It further appears from the contents of the said news item that the said news was published on receipt of the copy of representation after visiting the premises of the college. The same is evident from the news itself that as the name of Principal and also office bearers of the management of the institution, to whom the law students approached on that day, seeking redressal of their grievance in terms of the said representation are mentioned.

19. Learned counsel for the petitioners has taken me through the relevant provisions of the Act of 1999. Section 2 of the Act of 1999, defines important terms of the Act, which read as under:-

"2. In this Act, unless the context otherwise requires,-

(a) "educational institution" means and includes a college, or other institution by whatever name called, carrying on the activity or imparting education therein (either exclusively or among other activities); and includes an orphanage or a boarding home or hostel or a tutorial institution or any other premises attached thereto;

(b) "head of the educational institutions" means by Vice Chancellor of the University, Dean of Medical Faculty, Director of the Institution or the Principal, Headmaster or the person

responsible for the management of the educational institution;

(c) "ragging" means display of disorderly conduct, doing of any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution and includes-

(I) teasing, abusing, threatening or playing practical jokes on, or causing hurt, such student ; or

(ii) asking a student to do any act or perform something which such student will not, in the ordinary course, willingly, do."

Section 6 of the Act of 1999 prescribes the procedure of receipt of the complaint in writing about ragging by the head of the educational institution. Section 6 of the Act reads as under:-

"6. (1) Whenever any student or, as the case may be, the parent or guardian, or a teacher of an educational institution complains, in writing, of ragging to the head of the educational institution, the head of that educational institution shall, without prejudice to the forgoing provisions, within seven days of the receipt of the complaint, enquire into the matter mentioned in the complaint and if, prima facie, it is found true, suspend the student who is accused of the offence, and shall, immediately forward the complaint to the Police Station having jurisdiction over the area in which the educational institution is situated, for further action.

(2) Whether, on enquiry by the head of the educational

institution, it is proved that there is no substance, prima facie, the complaint received under sub-section (1) he shall intimate the fact, in writing, to the complainant.

(3) The decision of the head of the educational institution that the student has indulged in ragging under sub-section (1), shall be final.

20. On conjoint reading of the above provisions, it is clear that “ragging” means display of disorderly conduct, doing of any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution, includes teasing, abusing, threatening etc. In terms of the provisions of section 6 of the Act of 1999, on receipt of such complaint in writing from the student or as the case may be parent or guardian or teacher, head of the institution shall, within 7 days, enquire into the matter mentioned in the complaint and if, prima facie, it is found true, suspend the student, who is accused of the offence.

21. In the instant case, on 20.8.2005 itself, respondent No.2 original complainant was served with a notice by the Principal of New Law College, Ahmednagar calling upon his explanation. It is a matter of record that the management had given assurance to the students for taking proper action in the matter and consequently, the law

student, stopped their agitation. It further appears that the Daily newspaper "Sakal" had also collected the said news and published it on 23.8.2005. However, the respondent original complainant had approached the learned Chief Judicial Magistrate, Ahmednagar and lodged the complaint against the office bearers of the management, Principal and the students of Law College, who had made such representation and also present petitioners.

22. In the case of ***Life Insurance Corporation of India vs. Prof. Manubhai D. Shah, (supra)***, relied upon by learned counsel for the petitioners, in paras 5 and 8 of the judgment, the Supreme Court has made following observations:-

"5. Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The People of India declared in the Preamble of the Constitution which they gave into themselves their resolve to secure to all citizens liberty of thought and expression. This resolve is reflected in Article 19(1)(a) which is one of the articles found in Part III of the Constitution which enumerates the Fundamental Rights. That article reads as under :

"19(1). All citizens shall have the right-

(a) to freedom of speech and expression;"

Article 19(2) which has relevance may also be reproduced:

"19(2). Nothing sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law impose reasonable restrictions on the exercise of the right conferred by the said sub- clause in the interests of [the sovereignty and integrity of India,] 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."

8. The words 'freedom of speech and expression' must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's view is the life line of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set up, more so in a democratic set up like ours, dissemination of news and views for

popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagations of ideas, there can be no doubt that the right extends to the citizen being permitted to use the media to answer the criticism levelled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) is subject to imposition of reasonable restrictions in the interest of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is, therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a)."

23. In the instant case, under the provisions of Act of 1999, the law students resorted to redress their grievance by submitting representation to the head of the institution. It is also a part of record

that the members of the management of new College College assigned enquiry into the allegations made in the representation to the Principal of Law College and accordingly Principal of the Law College on the same day, had also issued notice to respondent No.2 original complainant calling upon him to tender his explanation to the allegations made in the complaint. Thus, the question arises if the correct news item in respect of the proceeding is published by the newspaper whether it amounting to a defamation, as contemplated under Section 499 of I.P.C.

24. It is manifest that the newspaper or the publication has a duty to objectively verify the facts and ascertain the version of the person, who is likely to be affected by the publication or against whom imputations, which are defamatory, are being published. In case, there has been a lapse in pre-verification of facts or the publication, which does not contain the view point or version aggrieved, the Press Council under the provisions of Press Council Act of 1978, directs the publication/newspaper to publish the reply/version of the aggrieved person. The aforesaid mechanism is available besides the legal remedy available to an aggrieved person of filing a suit for damages for defamation or a criminal complaint under Sections 499/500 of I.P.C. It is not out of place to mention that the Press Council of India has evolved the norms for right of reply and the said norms are

based on doctrine of fair play.

25. In the instant case, as repeatedly stated in the forgoing paras, the Law College students have resorted the remedy under the Act of 1999 by filing representation to the head of the institution for taking appropriate action against respondent No.2 original complainant and the Principal of New Law Law College, who is empowered by the management to enquire into the allegations made in the representation, had also issued notice to respondent No.2 original complainant, thereby calling upon him to tender his explanation. It was for the Principal of Law college to make an enquiry into the allegations made in the representation after considering the said allegations made in the representation as well as explanation tendered by the aggrieved person. In such eventuality, in my humble opinion, it would be inappropriate to expect from the newspaper or the publication to enquire into or carry out the parallel investigation into the allegations made in the representation and also to ascertain the version of the person, who is likely to be affected by the said publication. If such course is expected from the newspaper or the publisher, as the case may be, that would create many unforeseen complications.

26. In the case of ***T. Satish U. Pai vs. Narayan Nagappa Yanak,***

(supra), the Karnataka High Court had an occasion to deal with such an issue, though in the facts of the said case, in para 6, 7 and 8 of the judgment, the Karnataka High Court has made the following observations:-

“6. Evidently, the petitioner is a journalist, The fourth exception envisaged in Section 499, IPC exonerates the publication of reports if they substantially make a true report of the proceedings of the Court of justice or any result of such proceedings. In the instant case, the contents of the FIR registered by the police have been published. Under the provisions of code of Criminal procedure, any FIR registered by the police is to be submitted to the jurisdictional Magistrate forthwith and such a report to the Court becomes a matter of record in a judicial proceedings. Therefore, the news item published touching the conduct of the respondent being a subject-matter of a criminal proceedings in respect of which the police have registered a case and the same submitted to the Court.

7. It is the contention of the respondent that the allegation made against the respondent is false. However, from the stand point of law in case of journalist reporting, the law insists that the reports published should bear an element of truth and before publication, reasonable efforts should have been made by the journalist to find out the truth and correctness of the fact reported.

8. In the instant case, based on the contents of the FIR news item has been published whether or not the allegations made is true or false need not concern the journalist while publishing the same. Since the public authorities have taken cognizance of the complaint filed by Subbaiah against the respondent, they have initiated necessary legal action and any of the proceedings relating to the

crime that occurred in society if report is published in the newspaper, it would not amount to defamation and squarely falls within the fourth exception of section 499, IPC."

27. In the instant case, the contents of the representation have been published in daily newspaper "Sakal" in verbatim. Therefore, the news item published touching the conduct of respondent No.2 original complainant being subject matter of the said representation in respect of which the management and the Principal of New Law College have taken cognizance thereof, it would not amount to defamation within the meaning of Section 499 of I.P.C. It is the contention of respondent No.2 original complainant that the allegations made in the representation are false, however, it appears that the report published in daily newspaper about said agitations pursuant to the said representation, submitted before the Head of the Institution, bears an element of truth and before publication it is evident from the news item itself that the reporter had taken care to find out the truth and correctness of the facts reported. Even though there are direct allegations in the representation made by the Law students to the effect that respondent No.2 original complainant used to tease the girl students, in the aforesaid news item a care has been taken to mention to the effect that accusations have been made against respondent No.2 original complainant about teasing of girl students in the law college. The learned Additional Sessions Judge

has observed that the said statement in the news item would amount to defamation *per-se*, as none of the girl students signed the said representation. I do not approve the said observations for the reason that in such contingency, the girl students may not come forward to sign the representation and further the news item simply reported the true facts appearing in the representation in good faith without making any addition or deletion. It is for the head of the institution to enquire into the allegations made in the representation and to find out the truth. However, respondent No.2 original complainant, who is law student, had approached the learned Chief Judicial Magistrate by filing complaint against the office bearers of the management, principal, law students and also the present petitioners. Further, it appears from the impugned order passed by the learned Chief Judicial Magistrate that the learned Chief Judicial Magistrate has exonerated other persons, including the office bearers of the management, Principal and the law students and proceeded against the present petitioners on the ground that the news item published in the news papers is defamatory.

28. In the instant case, respondent No.2 original complainant in his affidavit in reply has stated about the outcome of the aforesaid enquiry conducted by the Principal of New Law College, Ahmednagar. However, the same would be irrelevant for the issue

involved in the present case. I understand that respondent No.2 original complainant was the law student at the relevant time and his entire career was at stake. In such a case, it would be desirable for the press to observe self restraint in hastily publishing such news before the enquiry undertaken by the competent authority is concluded. However, in the present set of the facts and circumstances, no case is made out against the petitioners for issuance of process under Sections 500 and 501 of I.P.C.

29. In the instant case, I do not find that the petitioners are having personal animosity against the respondent complainant. The contents of the complaint and the verification statement nowhere alleges about the role of the petitioners in criminal writ petition No. 16 of 2009. There are no allegations in the complaint that the petitioners in said criminal writ petition are responsible for selection of aforesaid news item. There cannot be a presumption about vicarious liability of the managing editor, printer and the publisher.

30. The learned counsel for the petitioners in writ petition No. 16 of 2009 has rightly placed reliance on the judgment in the case of ***Shri Shekhar Gupta vs. State of Maharashtra and Anr, reported in 2008 ALL MR (Cri) 2690.*** The learned Single Judge of this Court by placing reliance on the judgments in the cases of ***K.M. Mathew vs.***

State of Kerala, reported in 1992 SC 2206 and Haji C.H. Mohammad Koya vs. T.K.S.M.A. Muthukoya, reported in AIR 1979 SC 154. The learned Single Judge of this Court, in paras 9 and 10 of the judgment, has made following observations:-

"9. Section 7 of the Press and Registration of Books Act, 1867 provides for presumption as regards vicarious liability of the persons whose name appeared in the declaration printed on the newspaper itself. Unless a person is concerned with publication of news items, being Editor or Sub-Editor, as the case may be, it is difficult to fasten criminal liability on the person named as Executive Managing Editor. Normally, the Executive Managing Editor is required to supervise the administrative work and manage the affairs related to running of the Organization. The designation of the applicant as Executive Managing Editor will not per se warrant an inference that he was, in any way, responsible for the selection of the news items in question. The applicant has no personal animosity against the complainant. Nor there is such averment in the complaint. There is no shred of evidence on record to warrant an inference of guilty intention and knowledge on part of the present applicant. The verified statement of the complainant purports to show that he did not state anything about role of the applicant and his vicarious liability in the publication of the alleged defamatory news items.

10. *In similar fact situation, relying upon "K.M. Mathew v. State of Kerala" (supra), Karnataka High Court in "Prabhu*

Chawla and others v. A.U. Sheriff, 1995 CRI.L.J.1922", CRI.L.J.1922" held that in the absence of positive averments against the petitioners therein, who were described as "Executive Editor", "Managing Editor" and "Residential Editor" and in the absence of presumption available under section 7 of the Press and Registration of Books Act (25 of 1867), the process could not have been issued by the Magistrate for offence under section 500 of the I.P. Code. It was held that to ask the Executive Editor, Managing Editor and Residential Editor to undergo the trial because of issuing process against them would be oppressive. Therefore, the order of issuance of process was quashed. With due respect, I am in agreement with the view taken by the learned Single Judge of the Karnataka High Court. The same is the fact situation obtained in the present case. There cannot be any presumption about vicarious liability of the applicant who is described as "Executive Managing Editor".

31. Learned counsel for the petitioners also placed reliance on the judgment of Karnataka High Court in the case of **C.B. Solanki, Major, Proprietor, Fancy Silk Center vs. Shrikanta Parashar and others, reported in 1997 Cri.L.J. 3050**. In para 8 of the judgment, the Karnataka High Court has made the following observations:-

"8. In the instant case in hand also when the respondent/accused No.1 had been described as 'Chief Editor', the respondent-accused No.2 had been described as 'Managing Director' and there are no specific allegations against them in the complaint. Even otherwise Section 1(1) and 7 of the Press and Registration of Books Act, 1867 refers to 'Editor' who controls the selection of the matter that is published. That being the position in

law, I have got no hesitation to accept the argument of the learned counsel for the respondent/accused that in law there cannot be charges as against the respondent/accused Nos. 1 and 2 herein."

32. It is clear that the petitioner in criminal writ petition No. 18 of 2009 had no personal animosity against respondent No.2 original complainant . In the light of above discussion, I find that learned Chief Judicial Magistrate has acted contrary to the law in taking cognizance and in issuing process against the petitioners ignoring the provisions of section 499 of I.P.C.

33. In view of the above discussion, writ petitions succeed and the same are hereby allowed. Hence, I proceed to pass the following order:-

ORDER

- I. Criminal writ petition No. 16 of 2009 is allowed in terms of prayer clauses "B", "C" and "D" and Criminal writ petition No. 18 of 2009 is allowed in terms of prayer clauses "B" and "C".
- II. Rule made absolute in the above terms.
- III. Criminal writ petitions are disposed of accordingly.

(V. K. JADHAV, J.)