

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CRIMINAL PETITION No.5798 OF 2016

% Dated 22.12.2016

M/s Bajaj Finance Ltd
Corporate office: 4th Floor
Bajaj Finserv Corporate Office
Ahmed Nagar Road, Viman Nagar
Pune-411 014, Maharashtra
Rep by M. Aravind, Asst. Manager-Legal & 3 others

..... Petitioners

Vs.

\$ State of Andhra Pradesh
Rep. by Public Prosecutor
High Court of Judicature
For the State of Telangana and
For the State of Andhra Pradesh & 5 others

.... Respondents

! Counsel for the petitioner : Sri Valluri Mohan Srinivas

^ Counsel for the respondent : Government Pleader for Appeals (TG)
Party-in-person Sri N. Satyanarayana

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> HEAD NOTE:

? Cases referred

1. 1982 CrI.J 1717
2. AIR 1978 SUPREME COURT 986
3. AIR 2007 SUPREME COURT 2762
4. AIR 1970 SC 962
5. 1995 CrI.L.J 2508
6. (2008) 2 SCC 668
7. (2015) 4 SCC 609
8. (1989) 4 SCC 630
9. (2003) 5 SCC 257
10. 1998 (2) ALT (CrI) 458 Kerala
11. 1944 (46) BOMBLR, page 4171910 (21) MLJ, page 85
12. 1942 (1) MLJ page 247
13. AIR 1951 page 34
14. 1992 Supp (1) SCC 335

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION NO.5798 OF 2016****ORDER:**

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.180 of 2016 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada.

Petitioners 1 to 4 filed this criminal petition on the ground that the Court ought not to have taken cognizance for the offence punishable under Section 500 IPC, as it is barred by limitation and that the Directors of the company are not vicariously liable even if the alleged act of A-4 is accepted, for the offence punishable under Section 500 IPC.

Sri L. Ravichander, learned Senior Counsel appearing for petitioners 1 to 3 submitted that the complaint is hopelessly barred by limitation, in view of Section 468 of Cr.P.C. That apart, the accused 1 to 3 are not liable for any offence and thereby filing such complaint is nothing but abuse of process of the Court and prayed to quash the proceedings in C.C.No.180 of 2016.

Sri C. Raghu, learned counsel appearing for the fourth petitioner reiterated the same contentions which the senior counsel has raised.

Sri N. Satyanarayana, party-in-person contended that the limitation starts from the date of acquittal for filing the complaint for the offence punishable under Section 500 IPC and the

complaint was dismissed on 30.06.2015 and private complaint was lodged in the month of October, 2015. Thereby, the complaint is within limitation. Party-in-person has also further contended that when the entire proceedings were conducted in CC.No.706 of 2010 on behalf of the Directors, the Directors are also liable for the offence punishable under Section 500 IPC and that there exists sufficient ground to proceed against the petitioners for the offence punishable under Section 500 IPC.

At this stage, it is relevant to advert to few facts in C.C.No.180 of 2016 pending of the file of IV Additional Chief Metropolitan Magistrate at Vijayawada. The second respondent filed private complaint before the Court alleging that the first petitioner representing the company who is looking after the business affairs of the company filed earlier complaint C.C.No.706 of 2010 on the file of IV Additional Chief Metropolitan Magistrate at Vijayawada for various offences and the petitioners 2 to 7 (petitioners in C.C.No.180 of 2016) are responsible for filing such complaint. It is also contended that after due persuasion of the matter, by sending complaints to this Court and to the Inspector General of Police, the trial in the case was completed and he was found not guilty for various offences and he was made to attend the Court for about 60 times.

It is also alleged that the accused 2 to 9 in C.C.No.180 of 2016 made a paper publication in Andhra Jyothi Telugu daily newspaper on 04.08.2010 making defamatory statements against the second respondent herein, which caused substantial damage to the fame of the second respondent herein in the society, both in

the family and in the business circle and due to publication of such news item on 04.08.2010, he sustained irreparable loss to his personality, which he cannot regain his position in the society. He also alleged that Accused 1 to 11 ((petitioners in C.C.No.180 of 2016), without following the rules, filed complaint and it has damaged his reputation not only before the business community, but also before the relatives and also within the family members in the society. Finally, it is alleged that, on account of filing complaint against him, the complaint itself is false and that all the petitioners are liable for the offence punishable under Section 500 IPC.

The IV Additional Chief Metropolitan Magistrate at Vijayawada by order dated 04.03.2016 took cognizance of the offence punishable under Section 500 IPC against all the petitioners (accused no 1 to 7 in C.C.No.180 of 2016) while declining to take cognizance for the offences punishable under Sections 109, 193, 195, 499, 500, 506 & 102-B of IPC, as no *prima facie* case is made out against A-1 to A-7 and issued summons returnable by 12.05.2016.

Considering the rival submissions, the points that arise for consideration are as follows:

- (1) *Whether the private complaint is within limitation?*
- (2) *Whether the petitioners Nos.1 to 4 are liable for prosecution based on doctrine of vicarious liability?*
- (3) *Whether the accused be proceeded to try in C.C.No. 180 of 2016 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada in the absence of specific allegation in the complaint amounting to defamatory statement?*

(4) Whether a step to initiate legal proceedings and the statements made during legal proceedings amounts to defamatory, if so, their exist any ground to proceed against the petitioner Nos.1 to 4 for the offence punishable under Section 500 of IPC?

POINT NO.1

The order passed by IV Additional Chief Metropolitan Magistrate at Vijayawada by order dated 04.03.2016, taking cognizance of the offence punishable under Section 500 IPC against all the petitioners and the entire proceedings in C.C.No.180 of 2016 are now under challenge on the two grounds referred above.

Section 468 is incorporated with a view to put a bar of limitation on prosecution and to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of process of the Court by filing vexatious and belated, prosecutions long after the date of offence.

The Court is duty bound on presentation of charge sheet to consider the question of limitation and to see as to whether it is competent to take cognizance and whether limitation has expired or not. In case limitation has expired, when it has no jurisdiction to take cognizance and in disregard of the provision, if the Court takes cognizance, the order of taking cognizance would be without jurisdiction. The Court must decide the question of limitation before taking cognizance of the offence, thus the Court cannot take cognizance and on later date decide the question of limitation, as

the bar of limitation applies not on the filing of complaint but on taking cognizance.

The prohibition put by section on the Court taking cognizance filed after the expiry of limitation period is absolute. When the Court fails to apply its mind to the question of limitation at the cognizance stage, all the proceedings against the accused are without jurisdiction and are liable to be quashed (vide **Ghanshyam Das v. Sham Sunder**¹. In the present facts of the case, the offence of defamation had allegedly taken place where news item is published in daily newspaper but filed complaint for the offence punishable under Section 500 of C.P.C after long lapse of limitation prescribed under Section 469 of Cr.P.C, but the Court without applying its mind to the aspect of limitation took cognizance of the case, which is contrary to law, in such case the proceedings are liable to be quashed by exercising inherent power under Section 482 of Cr.P.C.

In view of the rival contentions, it is appropriate to advert to Section 468 of Cr.P.C which deals with limitation for prosecution. Section 468 Cr.P.C created an interdict of bar to take cognizance after lapse of the period of limitation, which reads as under:

“Section 468 - Bar to taking cognizance after lapse of the period of Limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

¹ 1982 CrI.J 1717

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is Punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

The offence allegedly committed by the petitioners (petitioners in C.C.No.180 of 2016) is punishable under Section 500 IPC and the Magistrate also took cognizance of the offence punishable under Section 500 IPC against the petitioners. The punishment prescribed therein is three years, if the offence is Punishable with imprisonment for a term exceeding one year but not exceeding three years. Therefore, the present case would fall within Section 468(2)(c) of Cr.P.C.

Now, the question is with regard to the date of commencement of limitation.

According to the learned counsel for the petitioner, the limitation starts from the date of making defamatory statement, as publication of news item on 04.08.2010 and not the date of acquittal of the second respondent herein for the offence in C.C.No.706 of 2010. Whereas, the second respondent herein as a party-in-person would contend that the limitation starts from the date of acquittal, but not from the date of publication.

Section 469 deals with the commencement of the period of

limitation and it reads as follows:

“469. Commencement of the period of limitation—

(1) The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

If Clauses (1) & (2) of Section 469 are read together, the limitation starts from the date of offence that has been committed and computing the said period, the commission has to be excluded.

It is the case of the second respondent herein that the commission of offence came to his knowledge on subsequent date. Therefore, the limitation commenced on the date when the publication was made on 04.03.2010.

An identical question came up before the Supreme Court in **Surinder Mohan Vikal v. Ascharj Lal Chopra**², where the Apex Court while referring to Section 468 and 469 Cr.P.C with regard to commencement of limitation, held that, the respondent can file petition for condonation of delay under Section 470(1) Cr.P.C. But, no such application is filed in the present case. In the facts of the

² AIR 1978 SUPREME COURT 986

above judgment, the complainant filed a complaint for the offences punishable under Section 500 IPC on 15.03.1972 alleging that a defamatory statement was made and according to the complaint, the offence under Section 500 IPC was committed on 15.03.1972 which was the date of offence within the meaning of Section 469(1)(a) and the period of limitation cannot be calculated for the purpose of the bar provided under Section 468 Cr.P.C. But, as has been stated, the complaint under Section 500 IPC was filed on 11.02.1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation.

Thus, the complaint filed after expiry of limitation of three years prescribed under Section 468(2)(c) is barred by limitation and the Court is not supposed to take cognizance of such offence.

Similarly, in **Japani Sahoo v. Chandra Sekhar Mohanty**³ the Supreme Court held that for the purpose of computing the period of limitation regarding bar as to taking of cognizance of offence by Magistrate, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. The Apex Court further held that in the instant case, the complaint was filed within a period of three years from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the Magistrate after a period of one year.

³ AIR 2007 SUPREME COURT 2762

In the facts of the above case, the High Court while deciding the period of limitation, the date of cognizance was considered and held that it was beyond limitation, as limitation shall be calculated from the date of commission till the date of taking cognizance. But the Supreme Court did not accept it.

In **Assistant Collector of Customs, Bombay v. L.R.Melwani**⁴ the Supreme Court held as follows:

“This takes us to the contention whether the prosecution must be quashed because of the delay in instituting the same. It is urged on behalf of the accused that because of the delay in launching the same, the present prosecution amounts to an abuse of the process of the Court. The High Court has repelled that contention. It has come to the conclusion that the delay in filing the complaint is satisfactorily explained. That apart, it is not the case of the accused that any period of limitation is prescribed for filing the complaint. Hence the Court before which the complaint was filed could not have thrown out the same on the sole ground that there has been delay in filing it. The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint”

The facts of the above judgment are totally different from the facts of the above case and it is of no use.

In **P.M. Kathiresan v. Shanmugham Retired Captain**⁵ the Madras High Court considered the limitation for filing a complaint punishable under Section 500 IPC with reference to various provisions of Cr.P.C and held in paragraph 12 as follows:

‘If an offence is made out in a complaint under Section 500 for defamation, Section 468(2) is attracted and the cognizance of offence should be taken within a period of three years from the date of occurrence. Thus, where the date of offence under Section 500 was identified in as much as the defamation remarks were made against the applicant in a complaint filed before police by the accused, the starting point of limitation would be the date of complaint given to the police and not the date on which the evidence

⁴ AIR 1970 SC 962

⁵ 1995 Cr.L.J 2508

was given by the party before the Magistrate nor the date of knowledge of the applicant about filing of such complaint when no such date of knowledge had been spelt out by the applicant in a private complaint filed by him for defamation. Two sub-clauses to Section 469 provide only to the authorities under the law to investigate and not to the private persons.”

In paragraph 15 of the same judgment, the Madras High Court further held as follows:

“There is no bar to the accused person raising the issue of limitation in the High Court in proceedings under Section 482 and the same would be done at the earliest and if raised, ought to be adjudicated upon as a preliminary issue, and it cannot also be said that cognizance having originally been taken by one Court and thereafter the case having been transferred to another Court, the issue of limitation cannot be raised. The question of limitation can be raised not only at the earliest point of time before the trial court but also even before this High Court to have the matter adjudicated in full.”

Thus, in view of the law declared by the Apex Court and persuaded by Madras High Court (referred supra), the limitation starts from the date of offence i.e. publication of alleged defamatory statement in Andhra Jyothi Telugu daily newspaper on 04.08.2010, but not from the date of acquittal of the second respondent for various offences after full-fledged trial, extending benefit of doubt in C.C.No.706 of 2010. The second respondent is also not entitled to claim benefit under Section 469(2) & (3) Cr.P.C, as, such, benefit is available to the investigating officers, but not to private individuals, as held by the Madras High Court in **Kathiresan** case.

Though the second respondent filed private complaint against the petitioners for various other offences punishable under Sections 109, 193, 195, 499, 500, 506 & 102-B of IPC, but the Court refused to take cognizance of the above offences except the offence punishable under Section 500 of IPC and the order passed

by the IV Additional Chief Metropolitan Magistrate, Vijayawada remained unchallenged and attained finality. Therefore, this Court need not look into the other allegations as the IV Additional Chief Metropolitan Magistrate, Vijayawada refused to take cognizance of the offences.

At best, the commencement of limitation from the date of acquittal would arise only, in case, the Court takes cognizance for malicious prosecution. But the Court did not take cognizance for the said offences. In such a case, it can safely be concluded without any hesitation that the complaint filed by the petitioners against the respondents is beyond three years, as prescribed under Section 482 (2)(c) of Cr.P.C, but the IV Additional Chief Metropolitan Magistrate, Vijayawada did not apply his mind while taking cognizance for the offence punishable under Section 500 IPC and committed an error. Therefore, taking cognizance of the offence against the petitioners is erroneous and this Court can exercise jurisdiction under Section 482 Cr.P.C in view of the judgments of Supreme Court and Madras High Court.

POINT NO.2

The other ground urged before this Court by the learned counsel for the petitioner is that, the question of vicarious liability does not arise for the offence punishable under Section 500 IPC, as IPC did not provide such vicarious liability.

In **Maksud Saiyed v. State of Gujarat**⁶, an identical question came up before the Apex Court and considered the

⁶ (2008) 2 SCC 668

tenability of vicarious liability for the charges leveled against the company for the offence punishable under Section 500 of IPC and the Apex Court held as follows:

“Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

In **Sunil Bharti Mittal v. Central Bureau of Investigation**⁷, the Apex Court after analyzing the entire law, held in paragraph 43 as follows:

“.....Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”

In **Sham Sunder v. State of Haryana**⁸, the Apex Court held that the penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

⁷ (2015) 4 SCC 609

⁸ (1989) 4 SCC 630

In **Hira Lal Hari Lal Bhawati v. Central Bureau of Investigation**⁹, the Supreme Court held that under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field i.e. the Customs Act, 1962 the appellants have been therein under wholly discharged and the GCS granted immunity from prosecution."

In the instant case, a paper publication was made in Andhra Jyothi Telugu daily newspaper on 04.08.2010 on the basis of information furnished by A-5, the complainant in C.C.No.706 of 2010 and at best, if the complaint is within limitation, A-5 would be liable. But no vicarious liability can be attached to the petitioners for the said offences.

POINT NO.3

One of the other contentions is that the complaint is bereft of the defamatory allegations so as to enable the petitioners to verify the same without going into the oral or documentary evidence and in the absence of such details the complaint cannot be continued

In view of the law declared by Apex Court petitioners are not liable either as employers or as directions of the first petitioner. Hence, the petitioners 2 to 4 are not vicariously liable for the offences punishable under Section 500 of IPC. Moreover, the allegations made in the complaint would not fall within Section 499 IPC and if any defamatory statement is made in the private complaint or the complaint lodged with the police and any

⁹ (2003) 5 SCC 257

statement made during trial, in evidence, which is totally unsustainable and thereby such statements would not fall within the meaning of defamation and on the basis of such statements, they cannot be tried for the said offences. In any view of the matter, when a complaint is filed for the offence punishable under Section 500 IPC, the complaint must disclose the details of defamatory statements in detail to proceed further against the petitioners.

When the complaint does not contain any statement which can be said to be defamatory it cannot be proceeded. The accused is entitled to know what are the allegations raised against them. For that purpose, they cannot be asked to look into the evidence, oral or documentary. Absence of extractions of the words which constitute defamation in the complaint or production of defamatory matters in its entirety is a defect in the complaint which cannot be cured at any subsequent stage in the course of trial. Hence, it could very well be said that the accused will be prejudiced in the defence. So, the complaint should not have been taken cognizance of, for that reason (vide **Sasikumar B. Menon v. Vijayani**¹⁰). Persuaded by law declared in Kerala High Court, it must be held that very taking cognizance is illegal, since the complaint failed to mention the alleged defamatory statement or material along with the complaint, on the ground the complaint is liable to be rejected.

When a complaint is filed under Section 500 IPC, it must disclose each and every detail of such statements. But here, except making bald allegations that a defamatory statement was

¹⁰ 1998 (2) ALT (Crl) 458 Kerala

published as news item in Andhra Jyothi Newspaper on 04.08.2010, no other material is brought on record to proceed further against the petitioners for the said offences. When the allegations in complaint, on its face value would not constitute an offence accepting in its entirety, the Court can exercise its inherent jurisdiction under Section 482 Cr.P.C to quash such proceedings, since, the inherent power under Section 482 Cr.P.C can be exercised only to give effect to the orders passed under the code or to prevent abuse of process of the Court, to meet the ends of justice.

POINT NO.4

One of the contentions raised by the petitioner is that not only publishing news item, the petitioner made several false allegations during trial which are defamatory. Consequently, the limitation starts from the date of acquittal, then contention is without any basis as the respondent did not disclose any date as to where the petitioner made such false and defamatory statement before the Court during trial, in the absence of any details it is difficult to accept the contention. Yet, the statement made during judicial proceedings would not constitute an offence punishable under Section 500 of IPC, such statements are attached with absolute privilege.

There are exceptions for construing a particular statement is defamatory. It is always subject to privileges laid down under common law. 'Privilege' means that a person stands in such relation to the facts of the case that he is justified in saying or

writing what would be slanderous or libelous in any one else. The general principle underlying the defence of privilege is the common convenience and welfare of society or the general interest of society. Privilege is of two kinds: the first is absolute and the second is qualified.

When a statement is absolutely privileged, no action lies for it even though it is false and defamatory and made with express malice. On certain occasions the interest of society require that a man should speak out his mind fully and frankly, without thought of fear of consequences, e.g., in Parliamentary proceedings or in the course of judicial, military, naval proceedings. To such occasions, when a statement is given, such statement is an absolute privilege. A statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory, unless the plaintiff proves express malice. They are 1) communications made (a) in the course of legal, social or moral duty, (b) for self-protection, (c) for protection of common interest, (d) for public good; and 2) reports of Parliamentary and judicial proceedings, and proceedings at public meetings. Here, the judicial proceedings the action for libel or slander is not maintainable. According to settled law laid down by various High Courts in India following the common law principles when a statement is made in judicial proceedings like affidavits and pleadings, no action lies for a statement made by him in the affidavit in the course of judicial proceedings, even though it be alleged to have been made falsely and maliciously, and without any reasonable or probable cause.

In a decision reported in **Goviind Ramachandra Vs. Gangadhar Mahadeveo**¹¹, Bombay High Court held in para 3 that it is quite clear, and it is also conceded, that by virtue of these provisions all proceedings before the Tribunal of the Bar Council are judicial proceedings. It is, however, urged that in the present case the High Court did not forward the complaint to the Bar Council on the ground that suitable action had been taken by itself, and as no judicial proceedings had been started against the plaintiff, the petition cannot be deemed to be absolutely privileged under the law. We are unable to accept this argument. It is no doubt true that if the High Court so chose it may not forward the complaint to the Bar Council. But if the High Court is satisfied that there are prima facie grounds for proceeding against an advocate, it sends the same complaint to the Bar Council on which the proceedings start. The complaint or the application to the High Court must, therefore, in our opinion, be regarded as an essential step for taking judicial proceedings. The law is summarized in Halsbury's Laws of England, Hailsham Edition, Vol. XX, p. 465', para. 564; that the privilege attaches not merely to proceedings at the trial, but to proceedings which are essential steps in judicial proceedings, including statements in pleadings and communications passing between a solicitor and his client on the subject on which the client has retained the solicitor and which are relevant to the matter.

Therefore, the steps in a judicial proceedings making complaint to police and all other proceedings in calendar case

¹¹ 1944 (46) BOMLR, page 417

attaches the absolute privilege and thereby the action for libelous statement not maintainable.

In another Judgment reported in **Adivaramma Vs. Ramachandra Reddy**¹², wherein his Lordship Justice 'Wallis' held that "When the statement made in the counter affidavit which is defamatory in appeal filed against the order passed by the Court, no civil action will lie, basing on the judgment of Privy Council in **Ganesh Dutt Singh Vs. Mugneeram Chowdary** [(1872) 11, B.L.R page 321, 328], and finally concluded that the suit is not maintainable and dismissed the suit.

Similarly in another judgment reported in **Rao Saheb Sedimbi Hanumantha Raw Vs. Nidumolu Seetaramayya**¹³, his lordship Justice 'Burn' of High Court of Madras held in para No.5 as follows:-

"The authorities establish beyond all question this: that neither party,, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any Court recognised by law, and this though the words written or spoken were written or spoken maliciously without any justification or excuse, and from personal ill will and anger; against the person defamed."

And finally allowed the appeals filed by the person who allegedly defamed by applying the doctrine of absolute privilege.

As there is lot of controversy in the decisions rendered by Madras High Court and other Courts, the Full bench of Madras High Court in a decision reported in **Narayana Ayyar Vs. G. Veerappa Pillai**¹⁴, wherein the Division Bench of Madras High

¹² 1910 (21) MLJ, page 85

¹³ 1942 (1) MLJ page 247

¹⁴ AIR 1951 page 34

Court reviewed the entire law with regard to doctrine of absolute privilege and qualified privilege in a civil action for libelous statement which is defamatory. On thorough review of the law laid down in various Judgments in para No.37 held as follows:

“But the question which is referred to us for decision is whether any statement or averment made in the course of judicial proceedings, whether false or true, could be made the subject-matter of a criminal prosecution by the person aggrieved, when the said statement or averment or evidence is also capable of being brought within the scope of Section 193, Penal Code, without a complaint being given by the Court before which the statement or averment was made or evidence given. This point has been elaborately dealt with by my learned brother Govinda Menon J., and I think, in view of the authorities discussed by him, the only safe conclusion to arrive at is to give an answer to the question in the affirmative. The answer has to be in the affirmative notwithstanding the fact that this is likely to give enough room for abuse of the process of law by parties to litigation such abuse tending not merely to harass opposing parties and their witnesses but also to defeat and delay the ends of justice. My learned brother, Balakrishna Aiyar J. however thinks that there is sufficient protection afforded to witnesses and parties by the provisions contained in Section 132, Evidence Act, and other provisions of the criminal law, and that if witnesses seek to avail of these there need be no difficulty in securing immunity from harassment by criminal prosecution.

In view of the law declared by various Courts, the statements made in the steps taken to initiate judicial proceedings and statements during judicial proceedings would fall within absolute privileged statement. In view of immunity attached to such statements no prosecution for the offence punishable under Section 500 of IPC is maintainable, thereby the prosecution is groundless and liable to be quashed in view of the law declared in the **State of Haryana v. Bhajan Lal**¹⁵, wherein, the Apex Court laid down certain guidelines as to when the Court can exercise inherent power under Section 482 of Cr.PC to quash the proceedings, which are as follows:

¹⁵ 1992 Supp. (1) SCC 335

“(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 FIR 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 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 FIR 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.”

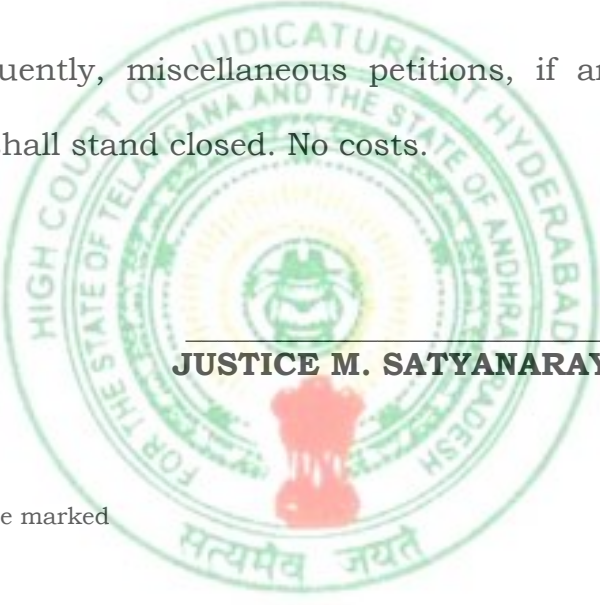
The present case would fall under guidelines Nos.1, 6 & 7, as the complaint is hopelessly barred by limitation. Therefore, this Court can quash the proceedings by exercising power under Section 482 of Cr.P.C.

The party-in-person/second respondent contended that he was made to suffer by filing complaint attended for 60 adjournments and thereby he was subjected to untold harassment. But, that is not sufficient to proceed against the petitioners for the

offence punishable under Section 500 IPC and if the IV Additional Chief Metropolitan Magistrate, Vijayawada had taken cognizance for the offence of malicious prosecution, such contention can be considered. Hence, I find no substance in the contention raised by the second respondent/party-in-person and consequently the proceedings in C.C.No.180 of 2016 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.180 of 2016 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand closed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

22.12.2016

SP

Note: LR copy to be marked
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