

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.9541 of 2017

ORDER

This petition under Section 482 Cr.P.C., is filed to quash the proceedings in C.C.No.321 of 2017 on the file of Special Judicial First Class Magistrate (Excise), Eluru, West Godavari District, registered for the offences punishable under Section 500 read with Section 34 IPC.

Petitioners herein are the Accused Nos. 1 & 2 in C.C.No.321 of 2017 and Respondent No.2 is the complainant, who filed a private complaint under Sections 190 and 200 Cr.P.C., against A1 and A2 for the offence punishable under Section 500 read with Section 34 IPC.

It is the case of the complainant that the management of ASRAM Medical College is also running ASRAM Hospital, which is affiliated to the Medical College and when the College and hospital resorting to illegal activities, such as, cheating the Government and Medical Council of India by showing fake Professors, Associate Professors, Assistant Professors, Resident Doctors, Non-teaching and technical staff, he allegedly made a complaint against the College. It is also alleged that the management also grabbed the Government irrigation land and also illegally constructed permanent flyover across the Godavari Canal without permission of the Government. They also drawing Godavari water illegally and caused loss to the State to an extent of hundreds of crores. When the complainant questioned the illegal and highhanded acts of the

management of ASRAM, he was removed from service by the management from the post of Administrative Supervisor on 16.09.2014. The complainant filed two private complaints in (SR) Nos.25 and 1349 of 2016 on the file of this Court. As the management apprehended penal liability, they have entered into compromise with the complainant by promising to run the institutions properly and offered to take him back into service. The deed of compromise was executed on 05.05.2016. Accordingly, the complainant had withdrawn the two complaints and also the petitions filed against the management to various authorities. The management, in fact, had an internal idea of making the complainant to withdraw the complaints and providing him job for short period and later to neck him out. The CAO of the management of ASRAM appeared before the Judicial First Class Magistrate (Excise) and confirmed the compromise and execution of deed of understanding-cum-compromise dated 05.05.2016. The management entered into compromise with the complainant as the contents of the complaints made by the complainant were true and correct and the management was at fault. Even though the complainant discharged his duties diligently, the management in furtherance of criminal conspiracy and pre-meditated design necked out the complainant unceremoniously on 01.01.2017. The complainant is legally fighting against the illegal activities of management of ASRAM by making representations and filing necessary cases before the authorities concerned.

It is alleged that the complainant had acquired good reputation in the society. He is one of the leaders of the employees of ASRAM Medical College and ASRAM Hospital. Petitioners 1 and

2 are well bent upon tarnishing the image and reputation of the complainant at any cost with a malicious mind.

It is further alleged that the General Secretary of Indian Federation of Trade Unions (IFTU), Eluru, Sri U. Venkateswar Rao, made a complaint against the illegal activities and fraudulent practices of petitioners 1 and 2 in running the Medical College and affiliated Hospital, to the Medical Council of India, New Delhi, on 07.11.2016 with a request to take legal action against the management of ASRAM, which is earning Rs.300 crores per annum by illegal means and to close the institutions and handover the same to the Government. Basing on the complaint of IFTU, Smt S. Savita, Assistant Secretary of Medical Council of India, New Delhi, invited remarks of the accused vide letter No.MXI-34 (1) UG (Com.) 2016-Med/146489 dated 23.11.2016.

The second accused submitted his remarks through the first accused on behalf of ASRAM Medical College to the Medical Council of India, New Delhi, by addressing letter dated 28.11.2016 to Smt. S. Savita, Assistant Secretary, Medical Council of India, New Delhi. In the said remarks, A2 through A1 had intentionally and wilfully made highly defamatory and malicious allegations against the complainant even though the complainant has nothing to do with the complaint lodged by IFTU and with a malicious intention to damage the reputation of the complainant in the esteem of the employees of ASRAM Medical College and ASRAM Hospital and among the officials of Medical Council of India with whom the complainant has been corresponding by posting

complaints with the Medical Council of India regarding the illegal activities of the management of ASRAM from time to time. A1 and A2 have also displayed the reply letter dated 28.11.2016 in the notice boards of the ASRAM Medical College and ASRAM Hospital, with a malicious intention to publicize the same and to circulate the same among the staff members of ASRAM Medical College and ASRAM Hospital. On account of smear campaign unleashed by the accused, the reputation of the complainant has been badly damaged. Thus, A1 and A2 are allegedly damaged the image and reputation of the complainant by publishing the letter on the notice boards of ASRAM Medical College and ASRAM Hospital and addressing the same to Smt S. Savita, Assistant Secretary of Medical Council of India, New Delhi. Therefore, the petitioners/A1 and A2 are liable for punishment for the offence punishable under Section 500 IPC.

The present petition is filed to quash the proceedings in C.C.No.321 of 2017 on the file of Special Judicial First Class Magistrate (Excise), Eluru, on the ground that the letter addressed to Smt. S. Savita, Assistant Secretary, Medical Council of India, would not amount to publication of defamatory matter and thereby it would not constitute the offence punishable under Section 500 IPC and requested this Court to quash the proceedings. It is also submitted that there is any amount o improvement in the complaint after notice, in view of improvement, it can safely be considered that the complaint was filed abusing process of Court to wreck vengeance.

During hearing, Sri S. Niranjan Reddy, learned senior counsel appearing on behalf of Sri N. Naveen Kumar, learned counsel for petitioners, reiterated the contentions and drawn the attention of this Court to the judgment of the Apex Court in **M.C.Verghese v. T.J.Poonan and another**¹ and requested this Court to quash the proceedings.

The main reason for quashment of the complaint in C.C.No.321 of 2007 is that the letter addressed to the Assistant Secretary of Medical Council of India, would not amount to publication and the allegations made in the letter or reply addressed to the Medical Council of India would not amount to defamation as defined under Section 499 IPC and requested this Court to quash the proceedings.

The learned counsel for the second respondent Sri Chidambaram supported the allegations in the complaint and sending reply and affixture of reply in notice board would constitute offence under Section 560 IPC.

At this stage, it is relevant to refer the allegations made in the letter dated 28.11.2016 as a reply to the notice based on the complaint dated 07.11.2016 from Sri U. Venkateswara Rao, General Secretary, Indian Federation of Trade Union (IFTU), Eluru. Adverting to the letter addressed by IFTU to the Chairman of Medical Council of India, there is a clear reference about the submission of a letter by Kantheti Kishore Raju, the complainant, with detailed report and proof against the management when the management was about to be arrested due to fear, made an

¹ 1969 (1) SCC 37

attempt to kill him and sent compromise letters to the Medical Council of India with false facts about the compromise with Kantheti Kishore Raju. On the strength of the said letter, the Medical Counsel of India annexing a copy of letter of Sri U. Venkateswara Rao, General Secretary, Indian Federation of Trade Union, by letter dated 23.11.2016, called for comments on the letter. Accordingly, A2 through A1 sent a notice dated 28.11.2016 making the following allegations:

“Mr. Kanteti Kishore Raju is a highly undisciplined individual and resorts to blackmailing others. Several police complaints and criminal cases are pending against Mr. K. Kishore Raju. He frequently makes false allegations with an intention of blackmailing and extorting money. Mr. Kanteti Kishore Raju had made certain allegations against this medical college in the past and later he tendered apology and withdrew his allegations. A copy of his letter withdrawing all his allegations and notarized affidavit is herewith enclosed”.

As seen from the above allegations, the complainant Mr. Kantheti Kishore Raju, was highly undisciplined and resorting to blackmailing others and filed complaints etc., and they were withdrawn by submitting notarized affidavit etc. Whether the complainant is highly undisciplined or not is a different question and it was communicated to the Medical Council of India through Smt S. Savita, Assistant Secretary of Medical Council of India. Taking advantage of these allegations, he contended that the allegations made in the comments dated 28.11.2016 addressed to the Assistant Secretary of Medical Council of India, would amount to publication and thereby the allegations tarnished the image of the complainant. It is relevant to consider the allegations made in paragraph No.13 of the complaint, where it is made clear that he applied for a copy of letter dated 28.11.2016 addressed by

petitioners to the Medical Council of India through Secretary under RTI Act and obtained copy of the same and on coming to know about the contents, he was shocked and thereby, the acts of the accused would constitute the offence punishable under Section 500 IPC.

Before deciding the controversy involved in this petition, it is apposite to advert to the definition of defamation.

Section 499 of I.P.C. defines offence of defamation and it is as follows:

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

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

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

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

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

Halsburys Laws of England, Fourth Edition, Vol. 28, defines 'defamatory statement' as under:

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.”

While speaking about reputation, William Hazlitt observed *that a man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.*

The word “defamation”, general term for words spoken (slander) or written (libel) to the prejudice of a person’s character, in such way as to support an action by such person against the speaker or writer.

Thus, any statement published, if affects reputation of any person, it would amount to defamation (libel).

Defamation may contained either slander or libel.

In common law the origins of defamation lie in the torts of “slander” (harmful statement in a transient form, especially speech), each of which gives a common law right of action. Defamation is the general terms used internationally, libel is in written form. Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words of sounds, sign language, gestures or the like, then it is slander.

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Thus, criminal defamation may contain either “libel” or “slander”.

In **Gopinathan vs. Ramakrishnan**², the Kerala High Court held that, the act of any one who brings to the notice of another the libellous matter can be taken as publication. Therefore, a publication is to be construed in the contextual meaning to constitute an offence punishable under Section 500 I.P.C.

The word ‘defamation’, general term for words spoken (slander) or written (libel) to the prejudice of a person’s character, in such case as to support an action by such person against the speaker or writer. The term ‘publication’ is not specifically in Section 499 I.P.C.

In **SNM Abdi vs. Prafulla Kr. Mahanta and Ors.**³, the Gauhati High Court held that the law regarding defamation is already settled. The law is that in order to be defamatory a publication must tend to lower the plaintiff in the opinion of men whose standard of opinion, the Court can properly recognise, or tend to induce them to entertain an ill opinion of him. However, the plaintiff need not show a tendency of the imputation to prejudice him in the eye of every one in the community or all of his associates, but it is suffice to establish that the publication tends to lower him in the estimation of a substantial, respectable group, even though they are minority of the total community or of the plaintiffs associates. The law relating to defamation is a limitation upon the Constitutional guarantee of freedom of speech and of the press, and the vagaries and complex structure of such law, as it

² 2002 (1) Cur Cri R 26 (Ker.)

³ AIR 2002 Gau 75 at 76

exists today, is to a large extent a direct result of the friction between them, as a restriction on untrammelled freedom of expression, and the highly cherished rights of freedom of speech and of the press.

Yet, another circumstance came up for consideration before the Supreme Court in **M.C. Verghese v. T.J. Poonan and another**⁴. In the facts of the above judgment, the respondent wrote three letters to his wife containing defamatory notes against appellant-father-in-law. The appellant filed complaint in Court of District Magistrate and District Magistrate discharged the respondent on grounds that communication by husband to wife does not amount to 'publication' in law. The High Court stated that writing of defamatory matter contained in said three letters were not 'publication' in law and no charge under Section 500 be made out and discharged respondent. The appellant preferred revision before the Apex Court and claimed three letters to be admissible in evidence under Section 122. The Supreme Court observed prima facie case was set up in complaint made by respondent and that letters available for being tendered in evidence. Apex Court stated that Section 122 prohibits married person to disclose any communication made to him or her during marriage by his or her spouse except with consent of spouse and nowhere said Section prohibits admissibility of evidence in any other manner and held that, bar of inadmissibility to be adjudged in light of whether marriage subsisting or not at date of communication through letters and remanded the matter back, by setting-aside the order of

⁴ AIR 1970 SC 1876

the High Court. This principle was considered in **C.H. Kadar and another**¹⁸ case, but the facts are totally different.

Learned counsel for the second respondent contended that, addressing letter to the Medical Council of India and affixing the copies on the notice board of the Medical College against the second respondent by the petitioners herein would attract offence under publication and therefore, the alleged act of the second respondent would attract offence punishable under Section 500 IPC.

Learned counsel for the second respondent Sri Chidambaram placed reliance on the judgment of the Apex Court in **P.S. Meherhomji v. K.T. Vijay Kumar and others**⁵, wherein the Apex Court in paragraphs 20 & 21 of the judgment discussed about publication of defamatory statement by addressing letters. In the facts of the above judgment, the complainant's company Chemical Biotech Ltd., with an intention to go on with public issue engaged Ashika Capital Limited, a company based in Mumbai as Lead Managers to handle their public issue and in the course of their due diligence act, they have sought for certain clarifications and information in respect of the complainant Company's credentials so as to go ahead with the publication of the prospectus, as the first accused earlier made a representation against the complainants to SEBI. The 2nd accused representing the 1st Accused Company through a letter dated 14.12.2006 addressed to Mr. Hari Surya, Manager-MBD, Ashika Capital Limited, Nariman Point, Mumbai, have made very wild false

⁵ (2015) 1 Supreme Court Cases 788

and absolutely baseless allegations against the complainants 1 and 2 only with a malicious intention to cause wrongful loss to the complainant's company for the simple reason and fact that it has become a strong competitor in the State of Andhra Pradesh to the business of the Accused Company. The said letter is also forwarded by the 2nd Accused by marking a copy of the same to 1) Managing Director, Ashika Capital Limited, 2) The Secretary, Indian Banks Association, Mumbai, 3) The Chairman, Securities and Exchange Board of India, 5) Finance Minister, Government of India, New Delhi, 6) State Minister of Finance (Banking), Govt. of India, New Delhi, 7) Secretary, Ministry of Finance, New Delhi, 8) Secretary (Banking) Government of India, New Delhi, 9) Joint Secretary Banking, Government of India, New Delhi and 10) Joint Secretary (CM), Department of Economic Affairs, New Delhi. That the said letter is in turn forwarded by Ashika Capital Limited, Mumbai to the complainants to their Registered Office at Vijayawada, Andhra Pradesh on 21.12.2006 and the Complainants were shocked and surprised to read the contents of the same at Vijayawada. The allegations contained in the said letter in so far as it refers to the Complainants are absolutely false and baseless and are written with intent to defame the complainants and malign their reputation. The impugned words "Cheat and Dupe the common man via the I.P.O. mode and finally to embezzle crores of rupee" and "These habitual cheats had been made part of the conspiracy in the proposed initial public offer" referring to the complaints directly or per-se defamatory and derogatory and the very letter dated 14.12.2006 on the face of it is calculated to harm the reputation of the complainants without any valid foundation.

The said letter is couched in a wild and unrestrained language and written in scurrilous imputing dishonest character to the complaints would attract an offence punishable under Section 500 IPC. But, the matter went up to the Supreme Court and the Apex Court upheld the order passed by the Magistrate for taking cognizance of the offence, while permitting the accused therein to raise all pleas regarding exceptions contained under Section 500 IPC.

The facts of the present case are distinguishable, as in the said judgment, as a letter dated 14.12.2006 addressed to Mr. Hari Surya, Manager-MBD, Ashika Capital Limited, Nariman Point, Mumbai, and the said letter is also forwarded to the second accused, by marking copy of the same to the marking a copy of the same to the 1) Managing Director, Ashika Capital Limited, 2) The Secretary, Indian Banks Association, Mumbai, 3) The Chairman, Securities and Exchange Board of India, 5) Finance Minister, Government of India, New Delhi, 6) State Minister of Finance (Banking), Govt. of India, New Delhi, 7) Secretary, Ministry of Finance, New Delhi, 8) Secretary (Banking) Government of India, New Delhi, 9) Joint Secretary Banking, Government of India, New Delhi and 10) Joint Secretary (CM), Department of Economic Affairs, New Delhi.

The said letter is in turn forwarded by Ashika Capital Limited, Mumbai to the complainants to their Registered Office at Vijayawada and on verifying the allegations, the complainant was asked and the Complainants were shocked and surprised to read the contents of the same at Vijayawada. But, in the case on hand, a letter was addressed to the Medical Council of India by the

petitioners herein making certain allegations, which I extracted in the earlier paragraphs. Though, the allegations are defamatory in nature, a letter was not marked to any third party other than the Medical Council of India. Therefore, addressing letter to Medical Council of India does not amount to publication. The principle laid down in the above judgment has no application, for the reason that, a letter was addressed to Ashika Capital Limited, while marking copies to nine others, as stated supra. Such marking copies to various other persons would amount to publication of defamatory or scandalous statement which disrepute the name and fame of the complainant. Therefore, the principle laid down in the above judgment cannot be applied to the present facts of the case.

Learned counsel for the petitioners further placed reliance on the judgment of the Delhi High Court in **R.K. Mishra & ors. v. State & another**⁶, wherein, the Delhi High Court considered the power of the Court to issue summons under Section 202 Cr.P.C, since the contention of the learned counsel for the petitioner was that the Magistrate acted in a careless and cavalier fashion to direct summoning of the accused for the offence and the said order was quashed by filing a petition under Articles 226 & 227 of the Constitution of India, read with Section 482 Cr.P.C before the Delhi High Court. But, the Court, in paragraph 19 of the said judgment held that the words 'sufficient ground' used in Section 202 of the Cr.P.C. have to be construed to mean that the Magistrate has satisfied himself that a prima facie case is made out against the accused to summon him in the case. However, if after

⁶ 2010 CriL J 1292

taking into consideration the allegations made in the complaint, evidence adduced by the complainant and enquiry if any, conducted by the police, the Magistrate prima facie finds that no offence is made out or the allegations based on such material the Magistrate finds that there are inherent contradictions and improbabilities, then in a such like case, process if issued would be illegal, unjust and capricious.

In the present facts of the case, it is alleged that the petitioners not only addressed a letter to the Medical Council of India, consisting of a defamatory statement against the second respondent, but also affixed the letter containing defamatory allegations in the notice board of the ASRAM Medical College. If, this allegation of affixing the letter in the notice board of ASRAM Medical College is true, it amounts to publication. But, the learned counsel for the petitioners contended that the allegations made in the complaint is preceded by a legal notice dated 25.03.2017 (document no.2 is filed along with the complaint). The legal notice dated 25.03.2017 is bereft of such allegation about affixture of the letter in the notice board of ASRAM Medical College. It is an improvement subsequent to issue of legal notice. Thus, in the absence of any allegation in the legal notice dated 25.03.2017 regarding affixture of the letter in the notice board, on such improvement in the complaint filed before the Court, it is difficult to hold that there was a publication of defamatory statement. It is contended that, in such case, the Court can quash the proceedings if the allegations made in the complaint are inconsistent with the earlier stand of the petitioners in the notice.

Similarly, in **Birendra Kumar s/o Mathura Prasad, R/o Village/Mohalla-Giriyak, P.S. Giriyak, District-Nalanda v. State of Bihar & Another**⁷, the learned single Judge of Patna High Court held that, Courts will ordinarily not interfere at the stage when cognizance has been taken and a *prima facie* case is found on the uncontroverted allegations contained in a complaint, yet in the present case there are material conflicts and contradictions in the very complaint itself which do not inspire confidence in its genuineness as far as concerns the present petitioner. This is most apparent from the statement on oath of the complainant, when the complainant herself has categorically made a statement contrary to the allegations made in the statement. Therefore, basing on such inconsistency in the allegations in the complaint, the Court quashed the order passed by the Magistrate, taking cognizance of the offence.

In **E. Gokulakrishnan vs. The Inspector of Police**⁸, the Madras High Court relied on the judgment of the Apex Court in **State of Haryana and Ors. v. Bajanlal and Ors**⁹ referred the guidelines laid down in the leading case under Section 482 Cr.P.C, and based on the guidelines nos. 5 & 6, the Court held as follows:

“12. The case, as propounded by the Petitioners do not fall under any one of the categories 1 to 4 and 6. The learned Counsel for the Petitioners would contend that the cases registered against the Petitioners and others squarely fall under categories 5 and 7 in so far as the first information reports contain inbuilt contradictions which make it inherently improbable for any prudent person to reach a just conclusion that there is sufficient ground for proceeding against the accused and that the criminal proceedings initiated were manifestly attended with malafide as they had been instituted maliciously with an ulterior motive to wreck vengeance due to private and personal grudge and to coerce Dr. Jayanthi to withdraw the complaint given by her against Kannian, the Sub-Inspector

⁷ 2012 (2) PLJR 439

⁸ 2010-1-LW(Crl)56

⁹ AIR 1992 SC 604

of Police and others.

13. Let us now consider whether the cases, which are sought to be quashed can fit in the cases categorised as 5th and 7th categories by the Hon'ble Supreme Court in Bajanlal's case. The 5th category comprises cases wherein the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is a sufficient ground for proceeding against the accused. In the case on hand the inherent absurdity pointed out by the learned Counsel for the Petitioners in each cases are as follows:

In Cr. No. 559/2008 the occurrence allegedly took place on 07.07.2008 between 2.00 p.m and 5.00 p.m. However, the FIR reads that the information regarding the occurrence reached the police station at 10.00 a.m on 12.07.2008. However, it has also been stated therein that the said complaint was lodged with the Inspector of Police, Saravananpatti Police Station at 4.00 p.m on 09.07.2008 and the same was treated as a petition assigning CSR No. 82/2008. It is also stated therein that, after conducting enquiry on the petition, a case was registered at 7.00 p.m (19.00 Hrs) on 12.07.2008. The learned Counsel for the Petitioners rightly pointed out that, if at all it could be true that the complaint lodged by Srikala was received by the Inspector of Police at 4.00 p.m on 09.07.2008 even though the same was kept as a petition initially and later on registered as a criminal case in the column meant for noting the date and time of receipt of information by the police, the original date and time of receipt of the complaint should have been mentioned, which has not been done in the said case. The learned Counsel also pointed out the fact that the complaint could not have been given on 09.07.2008 because referring to the occurrence that took place on 07.07.2008, the date of occurrence stated in the complaint was referred to as 'yesterday?'. The vernacular allegation is as under:

In yet another place in the complaint, a second occurrence was said to have taken place on 08.07.2008. The date of 08.07.2008 was referred to as 'today?'. The vernacular allegation is as follows:

If it is so, the complaint should have been lodged on 08.07.2008 and not on 09.07.2008. When the dates differ according to the learned Counsel for the Petitioners, the very date of occurrence itself will be doubtful. The same is an absurd allegation according to the learned Counsel for the Petitioners, which will bring the case within the ambit of the 5th class of cases cited in the judgment of the Hon'ble Supreme Court in Bajanlal's case.

17. Upon considering the submissions made on either side in this regard, this Court is of the considered view that the allegations found in the FIR in Cr. No. 559/2008 is tainted with inherent discrepancies and absurdities, which will make it improbable for any reasonable person to arrive at a conclusion that there are materials for proceeding against the accused therein. So far as Cr. No. 560/2008 is concerned, the mere absence of the registration number of the vehicle used for the commission of the offence will not make it absurd or inherently defective to show that no reasonable person would arrive at a conclusion that there

are grounds for proceeding against the accused. However, it is also the contention of the Petitioners that both the cases fall under category 7 of the cases enumerated by the Hon'ble Supreme Court in Bajanlal's case which can be quashed using the inherent powers of the High Court under Section 482 Code of Criminal Procedure. The cases coming under category 7 described in the said judgment as follows:

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

18. In this case, the Petitioners have made out a clear case that there was private and personal grudge for the de-facto complainant in both the cases against Dr. Jayanthi and the Petitioners herein, who are the brothers of Dr. Jayanthi. Dr. Jayanthi is residing in one of the apartments in Government Employees' Quarters, a three-storied building. The water supply to her flat was disrupted by providing a block to the nozzle. According to the Petitioners, it was done by Narasimhan, the Secretary of the association of Ganapathy Housing Unit and his henchmen when Dr. Jayanthi refused to make payment of a sum of Rs. 2,500/- towards contribution for the association as demanded by him. It has also been made clear that there was an altercation between the de-facto complainant in Cr. No. 559/2008 and Dr. Jayanthi when the later removed the block provided at the nozzle of the pipeline in order to restore water supply to her flat. There are also clear materials to show that the said Srikala, de-facto complainant in Cr. No. 559/2008 and others were demanding an apology from Dr. Jayanthi and her brothers. Therefore, it is quite obvious that the de-facto complainant in the said case did have a grudge and personal vendetta against the accused persons therein, especially Dr. Jayanthi."

Based on the principles laid down in the above judgment, learned counsel for the petitioners contended that the Court can exercise inherent jurisdiction under Section 482 Cr.P.C, when the allegations made in the complaint are inconsistent with one another and there is a clear improvement in the allegations of the notice issued by the petitioner prior to filing of a complaint.

Even, as per the guideline no.5 of **Bhajan Lal**⁹ case, where the allegations made in the First Information Report 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 a sufficient ground for proceeding against the accused and as per

guideline no.7, where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

Per contra, learned counsel for the second respondent raised a specific ground that the allegations made in the complaint would constitute an offence punishable under Section 500 IPC and in case, the petitioners are entitled to claim exemption contained under Section 499 IPC, the petitioner is disentitled to claim quashment of the proceedings under Section 482 Cr.P.C, since the petitioners have to prove such plea by adducing evidence to claim exemption contained under Section 499 IPC, but, at the stage of taking cognizance, the proceedings cannot be quashed.

Learned counsel for the second respondent placed reliance on the judgment of this Court in **E. Laxmi Reddy v. State of Andhra Pradesh and another**¹⁰, wherein, single Judge of this Court while deciding a petition for quashment, held that, when the petitioner raised an exemption under Section 499 Cr.P.C, since the allegations were published in the public interest and in good faith and in such case, exceptions 1, 2 & 9 of Section 499 IPC, so as to claim exemption under Sections 1, 2 & 9 of Section 499 IPC and it is purely a question of fact, under Section 482 Cr.P.C, the burden of proof lies on the petitioner to establish that he addressed the said letter in good faith and public interest. Therefore, such disputed question of fact to claim exemption under Sections 1,2 &

¹⁰ 2015 (1) ALD (Crl.) 697

9 of Section 499 IPC, the Court cannot question the proceedings at this stage.

Learned counsel for the second respondent has drawn attention of this Court to the judgment in **Devireddy Venkat Reddy v. Bankarupanda Padmavathi and another**¹¹, to contend that, when the petitioner is claiming exemption under any of the exceptions contained under Section 499 IPC, the Court cannot exercise its jurisdiction under Section 482 Cr.P.C, since such exemptions shall be decided only after trial, as the evidentiary burden is on the petitioner/accused to claim exception to Section 499 IPC. Hence, the principle laid down in the above two judgments is to the same effect.

In the facts of the judgment in **Devireddy Venkat Reddy**¹¹, the petitioners before the Court claimed exceptions to Section 499 IPC. But, in the present case, the consistent case of the petitioner is that, the allegations made in the notice which is the basis for filing the complaint and the allegations in the complaint are inconsistent. If, the allegations made in the notice are taken on its face value, there was absolutely no publication, either libel or slander, but because of improvement regarding affixture of letter addressed to the Medical Council of India by the petitioner, on the notice board of ASRAM Medical College, the respondent cannot proceed against this petitioner for the offences mentioned supra.

In such case, this Court can exercise its inherent power to secure the ends of justice or to prevent abuse of process of the Court, the learned counsel for the petitioner would draw attention of this Court to **Ajit T. Mirchandani of Pune v. Chandra**

¹¹ 2015 (2) ALD (Crl.) 873

Indersen Mirchandani and another¹², wherein, the Apex Court while placing reliance on **Madhavrao Jiwajirao Scindia and others v. Sambhajirao Chandroji rao Angre and others**¹³ held when the authorities refer to "recitals appearing in the complaint" it is not to be understood as saying that the High Court is precluded from looking into the substance cloaked by verbiage. The recitals in the complaint do constitute the basic material to appraise an "issue process" order. While quashing petitions cannot substitute for the Magistrate's power of discharge, it should not be assumed that a mere splashing of pejoratives or insinuations in a complaint suffice to justify an order taking cognisance. The material placed before the Magistrate has to be scrutinised to see that strong words have not swayed a real enquiry into the substance, which alone is the basis warranting the giving of a call to an individual to face an accusation. Many a times recitals in the complaint are forth to cloak vacuity. The material on which the complaint really rests cannot therefore be ignored for it may be at a variance with the recitals therein. Inconsistencies of this nature would justify the quashing of a prosecution. This is because the inherent power of the High Court under section 482 of the Code is to secure the ends of justice, and, as has been held in the **State of Karnataka v. L. Muniswamy and others**¹⁴, these are far wider than the ends of law, though of course justice has to be administered in accordance with the law. In other words, the recitals in the complaint means the substance thereof and this includes material referred to though not wholly tendered before the

¹² 1988 (3) Bom CR 179

¹³ 1988 CriLJ 853

¹⁴ 1977 Cri L J 1125

Magistrate at the stage at which he is called upon to take cognizance. This is not to be understood as a usurpation of the Magistrate's power to appraise material for framing of a charge or passing of an order of discharge. The inherent power has to be used cautiously and sparingly, but not so rarely as to allow prosecutions actuated by ulterior motives to flourish unchecked. Tested in this light, it is not possible to restrict the assessment in the present case to what complainant has chosen to disclose of the documents, correspondence and the happenings in the civil litigation between the parties. The unrevealed material of course from the above sources only cannot be ignored it was submitted that if there be any material which is inconsistent with the case put forth before the Magistrate, the same can be used to contradict the complainant and her witnesses when they testify before him. In other words, the same cannot be looked into at this stage for that would be in violation of section 145 of the Evidence Act. A contrary view has been taken in **Biswanath Prasad & others v. Dwarka Prasad and others**¹⁵. In that case it was held that section 145 of the Evidence Act does not apply vis-à-vis a party to the lis. Section 145 applies to a witness and not to a party to the action, albeit the said party may appear as a witness in the proceedings. If the prior statements made in writing or reduced to writing constitute admissions or contradictions vis- a- vis what is alleged in the lis in which they are sought to be used, their mere existence is enough for being used against the party. This is because such previously recorded material is evidence proprio vigour. Thus understood it will be permissible to look into the material to assess the

¹⁵ [1974] 2 SCR 124

substance of what the complainant has alleged in the complaint itself.

In view of the principle laid down in the above judgment, if the Courts find that the allegations made in the complaint are not based on any material and inconsistent with the earlier version and without any basis, the Court can exercise inherent jurisdiction under Section 482 Cr.P.C to quash the proceedings.

Turning to the facts of the present case, in the legal notice dated 25.03.2017 issued by the second respondent, there was absolutely nothing amounting to publication which is *sine quo non* for proceeding against the petitioners/A-1 & 2 for the offence punishable under Section 500 IPC. The petitioners are not claiming benefit under any of the exceptions under Section 499 IPC, but the consistent case is that, the petitioners improved their case from stage to stage and made serious allegations against the second respondent, which is inconsistent with the earlier contentions in the legal notice. When such allegation is made only to constitute an offence punishable under Section 500 IPC, it is difficult to continue such proceedings.

In **Queen-Empress v. Taki Hussain**¹⁶ wherein, the Full Bench of Allahabad High Court decided an identical issue and laid down certain requirements to constitute an offence punishable under Section 500 I.P.C and held that sending of the letter was not "making" or "publishing" an imputation within the meaning of Section 499 I.P.C. Here, in the present case, information was sent to the Assistant Secretary, Medical Council of India, as the petitioners were called upon to explain the allegations made in the

¹⁶ (1884) ILR 7 All 205

complaint lodged against the petitioners by the second respondent. But, copy of the letter was obtained from the Medical Council of India under Right to Information Act and therefore, it would not fall within the meaning of 'publication' to constitute an offence punishable under Section 500 I.P.C. If, these principles laid down by various High Courts are applied to the present facts of the case, the allegations made in the letter addressed to Medical Council of India, would not constitute publication to conclude that the petitioner made publication to defame the second respondent in the eye of society which harshly effected his reputation.

In view of the above discussion, there is absolutely no publication and publication by way of affixture of letter on the notice board of ASRAM Medical College is an invention, subsequent to issue of legal notice dated 25.03.2017. Therefore, the allegations made in the complaint, evidently weaved by the second respondent somehow to wreck vengeance against the petitioners and in such case, by applying guideline no.7 of **Bhajan Lal⁹** case, the proceedings in C.C.No.321 of 2017 on the file of Special Judicial First Class Magistrate (Excise), Eluru, West Godavari District, are liable to be quashed.

In the result, criminal petition is allowed.

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

JUSTICE M. SATYANARAYANA MURTHY

Dated:21.12.2017

SJ/SP