

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.6068 of 2008

ORDER:

The petitioner is the sole accused of C.C.No.7 of 2008 on the file of V Additional Metropolitan Sessions Judge, Hyderabad, for the offences punishable under Sections 500, 501 & 502 IPC. It is from the complaint of the learned Public Prosecutor on behalf of the 2nd respondent, Collector, Mahabubnagar, by then in respect of the news item published dated 29.11.2007 in Surya Telugu Daily newspaper. The complaint is filed by the learned Public Prosecutor by virtue of the competency to maintain by virtue of Section 199 (2) Cr.P.C. with the previous sanction of the Government covered by G.O.Rt.No.2757 dated 05.05.2008. The news item reads as follows:

“The case of Mahbubnagar district collector Usha Rani abusing certain tribals in the name of caste came for discussion before the parliament on Tuesday evening upon that it is learnt that speaker Somnath Chaterjee ordered Enquiry. The details of the incident is that 50 Tribals of Keshavapuram Thanda were under national rural employment guarantee scheme for 17 days in laying road works. The labour complaint to the National Human Rights Commission that they were driven out of the office and were abused in the name of caste when they went to the collector office and demanded for the wages. They staged dharna before the collectorate on 7th of the month under the leadership of MLA and MP's at the dharna member of parliament belonging to the ST community MP Ravindranaik, MP Hari Babu Rathode, Nagarkurnool M.P. Dr.Manda Jaganatham, L.H.P.S. State president Das Ram Naik and other participated in the dharna while this being so MP Hari Babu Rathode, raised the case in the parliament during monsoon sessions of parliament. He informed the speaker that the tribal labour what were not paid on time and when they went to the collector chamber for demanding

timely payment of wages they were abused in the name of caste. Responding to this the speaker Somnath Chaterjee enquired whether the collector misbehaved with the palamur labour? Whether wages were not paid to the labour on time? Whether labour went to the collector on 19/9/07? Whether they were driven out of the chamber? Whether police refused to register a case against the collector when the girijans labour made a complaint to the concerned police station. Whether Government initiated any action against the collector for abusing the tribals in the name of the caste. What is the action initiated by the State Government and reasons for not initiating the action.

The speaker wanted to know the above information and sent a copy to the central village Ministry.

The Palamur Collector case the details in parliament was released by the district lambada right porate samithi on Wednesday night.”

The averments in the complaint shows the LW.1-Smt. Usha Rani, IAS, is senior officer with integrity and devotion to duty and is working as Collector and District Magistrate of Mahabubnagar District since May 2006, who held earlier even important positions like Director (DWRCA) for welfare of self help groups (SHGs) of women, which has brought national recognition for the State of A.P. in that field, she also worked as a Managing Director, A.P. State Scheduled Castes Financial Corporation wherein number of initiatives taken up to the benefit of the disadvantageous people of society and worked as Additional Commissioner of GHMC in developing the infrastructure like roads, parks etc., in Hyderabad and also worked Municipal Commissioner, Vijayawada and the Corporation also received ISO certification in her tenure and she receives good appreciation from people in and around with no more criticism about her performance being hard working and with good reputation. She has taken up number of welfare activities for the

welfare of poor even as Collector of Mahabubnagar by entertaining the public grievance even apart from every Monday to the extent possible regularly by providing solutions to the public in need for any complained of injustice from any corner. It is averred that the accused is the chief editor of Surya Telugu Daily Newspaper with Head Office at Hyderabad with circulation all over India including at Mahabubnagar District and news item without proper verification by causing great damage to the image of the institution and to the reputation of the LW.1. On 29.11.2007, the news item was published and circulated in Mahabubnagar District Edition under the caption of "Parliamentlo Palamooru Collector case Vicharanaku Adeshinchina Speaker" with large size of photo of LW.1 giving prominent place giving appearance highlighted coloured caption of photo under subheading "Palamooru Major News" which news item referred above. The news item published is suggested that LW.1 abused tribal labour when they approached her for payment of wages to the works done by them in Koilkonda Mandal and because of her behaviour tribal group agitated and staged dharna against her and when the matter is highlighted in Parliament an enquiry was ordered by Speaker against her, however it is not correct as there is no order for such enquiry by the Speaker as alleged in the news item published by the accused which is defamatory in nature. On 29.11.2007 LW.2 sister of LW.1, LW.3 friend of LW.1 met at Banjara Hills and enquired about the truth of imputation covered by the news item saying the relatives and friends called them over phone and enquired about the imputation and the said imputation in the news item is baseless and aimed at harming the reputation of LW.1 and by lowering the

prestige in the estimation of her colleagues, friends, relatives, employees of various departments and general public and lowering her image before friends and colleagues etc, because of the news item even there is no order for such enquiry against her by the Speaker, thus the news item is nothing but defamatory. LW.1 cause issued notice to the accused on 29.11.2007 calling upon his explanation and he gave evasive reply which does not disclose that the matter was discussed in Parliament and no rejoinder was published to the news item.

The contentions in the quash petition against the said private complaint taken cognizance by the learned Sessions Judge are that he is the Chief Editor of the news paper and allegation taken on face value incriminate him and the prosecution under 7 of the Press and Registration of Books Act has no application for a person who is named as Chief Editor for there are several editors for the news paper who control the selection of the matter that is published and to take cognizance against the petitioner-Chief Editor of the news paper their must be positive averment in the complaint which is lacking to impute the knowledge of the news item and complaint does not contain any such allegation of petitioner had knowledge and absolutely there is no material to say the petitioner got knowledge of the news item before its publication apart from no way defamatory one and as it refers to the question raised by two members of the Parliament in the Parliament and raising of questions by Members of Parliament when not in dispute in the complaint for those questions referred to the Ministry for remarks only covered by the news item for the public good and the

continuation of the proceedings are nothing but abuse of process hence to quash.

Notice on personal service ordered to 2nd respondent shows the same was delivered, but did not appear. The learned Public Prosecutor representing the State & on behalf of the defacto complainant. The learned Public Prosecutor of Court of Sessions supported the taking cognizance by the learned Sessions Judge saying the news item per se defamatory punishable under section 500 IPC for not coming within any of the exceptions 1 to 10 to section 499 IPC and equally for the news paper containing the news item printed and circulated by sale, the offences under sections 501 & 502 IPC apply and sought for dismissal.

The learned counsel for the petitioner/accused have reiterated the contentions in the quash petition mainly contents that the case comes under the exception to section 499 IPC and no way attracts any of the penal consequence under sections 500 to 502 IPC and particularly from exceptions 1 to 3 of Section 499 IPC and also the submission of being the chief editor petitioner cannot be made liable for there are other editors and placed reliance upon expressions of the Apex Court in **K.M. Mathew Vs. State of Kerala and Another**¹ and **Dasari Narayana Rao Vs. R.D. Bhagvandas and Another**².

The crux is whether the petitioner being the chief editor undisputedly cannot be made liable. In **K.M. Mathew supra** it is observed that there is no allegation in the complaint there in of the chief editor was responsible for the selection of news item and its

¹ AIR 1992 SC 2206

² 1986 CrL.J. 888

publication being the prima facie accusation to take cognizance. In **Dasari Narayana Supra** it was held in respect of news item published in Telugu Daily Newspaper i.e., Udayam, to which the accused was the Chairman of Board of Directors of Tarakaprabhu Publishers Private Limited and not even editor there by held chairman of the company was neither printer nor publisher nor editor to make him liable. Here the petitioner did not produce any material as to who secured the news item and who prepared and finalized if not by him to come within any exception. In fact the complaint specifically avers that the accused has published the news item in his Surya Telugu daily news paper intentionally and knowingly to defame her. Once such is the allegation about the knowledge of imputation in the complaint, it cannot said that technically the complaint is not maintainable against him. There by the two expressions placed in this regard by counsel for the petitioner no way apply to quash the proceedings of the petitioner as chief editor is not liable.

Now coming to the other merits of the matter, the fact that in the Parliament in winter session the Member of Parliament Hari Babu Rathode saying the amount due to the workers under the scheme of Food for Work, who belong to ST Community was not paying any amount in time and causing injustice to them and when the issue brought to the notice of the Collector-LW.1 personally, they were abused with the caste name and the Speaker when the issue raised by the MP responded as to did the Collector behaved with those coolies in such a way and is the amount not paying in time for the Food for Work and did the coolies went to the chambers of the Collector on particular day and did the

Collector abused them in the caste name and is her gunmen and attender necked them out and no amount being paid to them, was the police did not choose to register the case when they approached the police station and is the Government taken any action if so what it is and if not why no action taken to justify, asked the Ministry of Rural Development to enquire. It is further mentioned that the news item is given by lambada rights Association for publication in writing. Once that is part on the news item mainly if at all there is anything the Lambada Rights Association who issued the news item for publication be made liable for defamation. Leave it apart, these are what is asked by the Speaker when issue raised by the MP in the Lok Sabha on certain questions for clarifications mentioned and there is in fact nothing specifically alleging the name of the Collector of she behaved indecently, but for the allegation referred as if. The 2nd exception of Section 499 IPC reads that public conduct of public servants to express in good faith any opinion in respect of them in the discharge of public functions or respecting their character appears in that conduct is not defamation. In fact as held by this Court in **Mr. Bennett Coleman & Co. Limited, Mumbai & Others Vs. Dr. K. Sarat Chandra** in Crl.P.No.5448 of 2014 by order dated 27.11.2015 as follows:

“In the English case-**Scot Vs Sampson**³ Justice Cave has defined defamation in simplest way as ‘*a false statement about a man to his discredit*’. This definition is smaller yet it encompasses everything about the concept.

³ (1882) 9 QBD 491

8(a.ii). Defamation law aims to strike a balance between allowing the distribution of information, ideas, and opinions, and protecting people from having lies told about them. It's a complicated area of law as on the one hand, people should not ruin others' lives by telling lies about them; but on the other hand, people should be able to speak freely without fear of litigation over every disagreement, insult or mistake. Political and social disagreement is important in a free society and we obviously don't all share the same opinions or beliefs. For instance, political opponents often reach opposite conclusions from the same facts, and editorial cartoonists often exaggerate facts to make their point.

As held in Khushwant Singh vs. Maneka Gandhi⁴-there are two competing interests to be balanced as submitted by the learned counsel for the respondent, that of the author to write and publish and the right of an individual against invasion of privacy and the threat of defamation.

8(a.iii). To constitute "defamation" under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of complainant, irrespective of whether complainant actually suffered directly or indirectly from the imputation alleged-as held in Jeffrey J. Diermeier vs. State of West Bengal⁵.

⁴ AIR 2002 Delhi 58(DB)-para-75.

⁵ Criminal Appeal No. 1079 of 2010(S.L.P.Crl. No.898 of 2009)-14 May, 2010.

8(a.iv). What the victim must prove to establish defamation as per some generally accepted rules is, if you believe you are or have been "defamed," to prove it you usually have to show there's been a statement that is all of the following: published, false, injurious and unprivileged. Let's look at each of these elements in detail.

1.First, the "statement" can be spoken, written, pictured, or even gestured. Because written statements last longer than spoken statements, most courts, juries, and insurance companies consider libel more harmful than slander.

2."Published" means that a third party heard or saw the statement, i.e. someone other than the person who made the statement or the person the statement was about. "Published" doesn't necessarily mean that the statement was printed in a book. It just needs to have been made public through television, radio, speeches, gossip, or even loud conversation. Of course, it could also have been written in magazines, books, newspapers, leaflets, or on picket signs.

3. Defamatory statement must be false, otherwise it's not considered damaging. Even terribly mean or disparaging things are not defamatory if the shoe fits. Most opinions don't count as defamation because they can't be proved to be objectively false. For instance, when a reviewer says, "That was the worst book I've read all year," she's not defaming the author, because the statement can't be proven to be false.

4. The statement must be "injurious", since the whole point of defamation law is to take care of injuries to reputation, those suing

for defamation must show how their reputations were hurt by the false statement. For example, the person lost work; was shunned by neighbours, friends, or family members; or was harassed by the press. Someone who already had a terrible reputation most likely won't collect much in a defamation suit.

5. Finally, to qualify as a defamatory statement, the offending statement must be "unprivileged." Under some circumstances, you cannot sue someone for defamation even if they make a statement that can be proved false. Lawmakers have decided that in these and other situations, which are considered "privileged," free speech is so important that the speakers should not be constrained by worries that they will be sued for defamation. Lawmakers themselves also enjoy this privilege. They aren't liable for statements made in the legislative chamber or in official materials, even if they say or write things that would otherwise be defamatory.

8(a.v). Coming to Public officials and proof for defamation; public have a right to criticize the people who govern them, so the least protection from defamation is given to public officials. When officials are accused of something that involves their behaviour in office, they have not only to prove all of the above elements of defamation, but also to prove that the defendant acted with "actual malice". "Actual malice" means that the person who made the statement knew it wasn't true.

The law of defamation does not infringe the right of freedom of speech guaranteed by article 19(1) (a). It is saved by Article 19(2). It is so saved, as it was included as one of the

specific purposes for which a reasonable restriction can be imposed.

Newspaper libel: Newspapers are subject to the same rules as other critics. They have no special right or privilege. In spite of the latitude allowed to them, they have no special right to make unfair comments, or to make imputations upon a person's character, or imputations upon or in respect of a person's profession or calling.

If a libel appears in a newspaper, the proprietor, the editor, the printer and the publisher are liable to be sued either separately or together. Press and Registration of Books Act, 1867, [PRB Act] defines 'Editor' as the person who has control over selection of material, which is to be published. Further, there is presumption under section 7 of the PRB Act. The presumption is regarding awareness of contents of newspaper and it can be raised only against the Editor whose name appears on the copy of said newspaper. It cannot be raised against other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of said newspaper.

In case of Gambhirsinh R. Dekare versus Falgunibhai Chimanbhai Patel and others-2013 Cr.L.J.1757 (SC), the Apex Court has ruled down that the Editor whose name is published in said newspaper [in view of section 7 of PRB Act] is liable for civil and criminal liability, if published matter is defamatory.

12) Defamation as per section 499 IPC is whoever by ---(I) words, spoken or intended to be read, or (ii) signs, or (iii) 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, subject to the exceptions to defame that person.

13) The very wording says to say imputation is intending to harm or knowing or having reason to believe that it will harm the reputation of such person before saying it as defamation must be seen subject to the exception. The question therefrom is it to mean to decide whether it prima facie defamation or not for even taking cognizance or to reject the complaint as the case may be, from the pre-cognizance enquiry, Court has to consider whether the facts propounded by the complainant which includes a complaint by the public prosecutor comes or not within the exceptions provided by Section 499 I.P.C, for the exceptions are not solely meant by invoking Section 105 Indian Evidence Act as defence to the accused during trial.

From the above, coming to the expressions relied by both sides:

27. **In Jawaharlal Darda vs. Manoharrao Ganpatrao Kapsikar**⁶ the news item was published on 4.2.84, the complaint in that behalf was filed by the complainant on 2.2.87 and the news item merely disclosed what happened during the debate which took place in the Assembly on 13.12.83. It stated that when a question regarding misappropriation of Government funds meant for Majalgaon and Jaikwadi was put to the Minister concerned, he had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons

⁶ 1998(4)SCC-112

involved, he had stated the names of five persons, including that of the complainant. The said proceedings came to be published by the accused in its Daily on 4.2.84. Because the name of the complainant was mentioned as one of the persons involved and likely to be suspected, he filed a complaint before the learned CJM alleging that as a result of publications of the said report he had been defamed. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith, it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus, the facts and circumstances of the case disclose that the news items were published for public good, in holding not liable for criminal defamation.

28. In Rajendra Kumar Sitaram Pande vs. Uttam⁷-The Apex Court observed that, the next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section(1) of Section 201 Cr.P.C can it be said that a prima facie case exist for trial for exception 8 to Section 499 I.P.C clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The principle thus laid down is before issuing a process and taking

⁷ 1999(3)SCC-134

cognizance the Court has to consider from the existing material whether case falls within the exception and only if not, to say prima facie accusation on a complaint to take cognizance for criminal defamation if makes out. It is because a close reading of Section 499 I.P.C pre-exceptions and pre-explanations portion speaks as subject to exception for saying if the imputation is intended or knowing or having reasons to believe that harm the reputation to said to defame or not. It is something different of prima facie consideration at pre-cognizance stage to the post-cognizance defence available to the accused under any of the exceptions in detail to make out. In the said defence, the accused is entitled to participate and defend by placing material, whereas the pre-cognizance stage, the Court has to consider from the material placed by the complainant to come to a conclusion from that enquiry, whether that material benefits the accused not before to any of the exceptions and if not whether the imputation is to defame to take cognizance, if defamatory.

29. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office in the filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. ----- The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal

Code defines the offence of defamation and Section 500 provides the punishment for such offence.

30. Exception 8 to Section 499 I.P.C clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental inquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code. The Apex Court held there from by perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand in our considered opinion this is a fit case for quashing the order of issuance of process and the proceedings itself.”

31. In order to attract the 9th Exception to Sec. 499 of the Indian Penal Code, the imputations must be shown to have been made (1) in good faith, and (2) for the protection of the person making it or of any other person or for the public good. 'Good Faith' is defined, in a negative fashion, by Sec. 52 Indian Penal

Code as follows: "Nothing is said to be done or believed in 'Good faith' which is done or believed without due care and attention". The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too the question whether an imputation was made for the public good. In fact the 1st Exception of Sec. 499 Indian Penal Code expressly states "Whether or not it is for the public good is a question of fact". 'Public Good' like 'Good faith' is a matter for evidence and not conjecture.

32. In Harbhajan Singh v. State of Punjab⁸, it was observed - "Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case...what is the nature of the imputation made, under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there any reasons to accept his story that he acted with due care and attention and was satisfied that the imputation

⁸ AIR-1966 SC-97

was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception".

33. In Chaman Lal Vs. The State of Punjab⁹ the Court observed -"In order to establish good faith and bona fide it has to be seen first the circumstance under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith"

34. In Vadilal Panchal Vs. Dattatreya D.G.Digaonkar-AIR-1960-SC-1113-(3JB)-the Apex Court at paras-11-15 observed referring to Emperor v. Dhondu Bapu(29 BLR-713); Emperor v. Finan(33 BLR-1182) and Tulsidas v. Billimoria(34 BLR 910), relied by the High Court, of which in Emperor v. Dhondu Bapu(1supra) a complaint charging defamation was dismissed by the Magistrate under Section 203 CrPC without taking any evidence, on the ground that the accused was protected by exceptions to Section 499 IPC, in saying none of the aforesaid decisions lay down as an absolute proposition that self defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of Sections 200,202 &203 of CrPC in discharge of accused, before issue of process(rejection of complaint without taking cognizance).

⁹ AIR-1970-SC1372

35. The above expression of **Vadilal panchal** is a Three Judge Bench expression with unanimous conclusion. Subsequently in other Three Judge Bench expression of Apex Court in **Sewakram Sabhani V. R.K.Koranjia**¹⁰ the majority opinion of the opinion of Justice A.P.Sen conquered by Justice Chinnapareddy, whereas minority opinion was expressed by Justice Paharul Islam. From the majority opinion in dealing with the matter for the offence under Section 500 I.P.C and whether it comes within the 9th exception of Section 499 I.P.C read with Section 52 I.P.C as to accused to be protected under the exception is a question of fact and onus is on the accused to prove that he is so protected as a matter of evidence once the offending article published by the journalist in press is perse defamatory. Whereas the minority opinion is expressed at para No.28 of the judgment is that the truth or falsity of the imputation published in the news article is not material here. Even if the findings in the report be proved to be false, once the respondents/accused will be protected sending of the case to the Magistrate for trial after perusal of the enquiry report is an exercise in futility and abuse of process of the criminal Court. An order to prevent abuse of process of the Court or vexatious proceeding would be warranted under Section 482 Cr.P.C. if the merits of the case before the High Court justified it. In para No.40, it is observed that from the enquiry report when it cannot be said that the respondent published the report or its summary without due care and when it establishes good faith the publication obviously appears to be for public good within the 9th

¹⁰ (1981)3 SCC 208

exception of Section 499 I.P.C for no offence to made out under Section 500 I.P.C.

36. In this context it is necessary to mention that in **Sewakram** supra, the judgment of **Vadilal**, three judges bench unanimous expression supra not referred or considered. Apart from it as referred supra **Rajendra Kumar Sitaram Pande** supra it is a subsequent expression of the apex Court when clearly speaks that from reading of the complaint and the report of the treasury officer when prima facie exists for application of exception 8 to Section 499 I.P.C, for no case made out under Section 500 I.P.C calling upon an accused to face trial would be a travesty of Justice. From this, earlier to mention from Three Judges Bench expression of the apex Court in **Deena @ Deen Dayaland V. Union of India**¹¹ and batch of writ petitions and the doctrine of precedents, the apex Court at para No.66 observed that “we have given our anxious and respectively consideration to the passages extracted and the observations made by our learned brother Bhagawati, J, the fact that these are contained in a minority Judgment is of no justification for ignoring them. In a matter as socially sensitive as this, it is improper to overlook the opposing point of view, whether it is expressed in a minority judgment or elsewhere. Apart from it even in a subsequent expression of the Apex Court in **Veerendra Kumar Sreevastava V. U.P.Rajya Karmachari Kalyan Nigam**¹² observed at para No.5 on the binding nature even of minority view that “we may also refer to the minority view expressed by learned Bother Lahoti, J. (as he then

¹¹ AIR 1983 SC 1155

¹² (2005)1 SCC 149

was) in the case of **Pradeep Kumar Biswas**¹³ because the examination of the nature of difference in opinion; between the majority and minority view, for the purpose of the present case, may be of some relevance. In the minority view, different tests are required to be applied in each particular case. The claim of a body as included within the definition of “State” based on it being a statutory body falling in the expression “other authorities” is to be considered differently from claim of a body based on the principles propounded in the case of **Ajay Hasia**¹⁴ that it is an “instrumentality or agency” of the State. In the opinion of the minority, the tests laid down in the case of **Ajay Hasia** are relevant only for the purpose of determining whether an entity is “an instrumentality or an agency of the State”. It is also to refer in this context a single Judge expression of this Court in **Devireddy Venkat Reddy V. B.Padmavathi**¹⁵ wherein dealing with petition sought for quashing of private complaint for defamation under Section 500 I.P.C against manager of Bank of India overseas branch, the Court observed by relying in Three Judges bench in **Sewakram** and not placed reliance in **Rejendra Kumar Sitaram Pande** supra on the facts before it on good faith under ninth exception of Section 499 I.P.C can be looked into during trial and pre-mature at the stage of pre-trial to quash. In fact it referred earlier single judge expression of this Court in **Vedurumudi Rama Rao V. Ch.Venkat Rao**¹⁶ in quashing the private complaint cognizance for the offence under Section 500 I.P.C saying nothing shown to support the allegation of accused/quash petitioner

¹³ (2002)5 SCC 111

¹⁴ (1981)1 SCC 722

¹⁵ 2015(3) ALT (Crl) 284 (AP)

¹⁶ 1997 Crl.L.J 3851

issued the circular with any malice against complaint or damage his reputation. It also referred in **S.Khushboo** supra para Nos.33 and 34 refused supra. It is also referred **Harbajan Singh** and **Chaman Lal** supra besides **M.M.Damai V. S.K.Sinha**¹⁷that referred **Sewak Ram, Satrugna Prasad Sinha V. Raj Bhai S.R**¹⁸ besides two more single judge expressions of this Court in **V.V.S.H.Prasad V. S.Ramesh**¹⁹ and **I.Venkateswarlu V. State**²⁰. However, none of the expressions including the expression **Devireddy Venkat Reddy** supra, considered the three judges bench expression in **Vadilal** which conclusion is supported by the expressions subsequent to **Sewak Ram** with majority and minority opinions and when minority opinion supports the **Vadilal** supra and same supports by expression subsequent to **Sewakram** by **Jawaharlal Darda** and **Rajendra Kumar Sitaram Pande** supra.

37. From the above, apart from **Vadilal** Three Judges Unanimous expression provides as a precedential authority of the exceptions to Section 499 I.P.C also must be taken into consideration from the material on record at the pre-cognizance stage in deciding whether offence under Section 500 I.P.C is made out or not and for that matter including in general exceptions provided in Chapter IV of I.P.C where the reference was particularly to Sections 76 to 79 I.P.C and in **Sewakram**, the minority opinion is in saying from very material when it shows the exceptions to Section 499 I.P.C applies, it is a futility to take cognizance for the offence under Section 500 I.P.C and abuse of process in asking to face trial before the Magistrate and the

¹⁷ 2001(2) ALT (Crl.) SC 63

¹⁸ (1996)6 SCC 263

¹⁹ 2012(2) ALT (Crl.) 121 (A.P)

²⁰ 2014(1) ALT (Crl.) 274 (A.P)

subsequent expression of **Sewakram** in **Rajendra Kumar Sitaram Pande** also speaks the same therefrom suffice to say from the delivery later that when the material itself before the Court shows the accused is entitled to the protection from prosecution for the offences under Section 500 I.P.C from the case falls under any of the exceptions provided in Section 499 I.P.C in saying no offence made out. It is a fit case to quash the proceedings rather than asking to face the ordeal of trial. Apart from it, the Apex Court in **Amit Kapoor V. Ramesh Chander**²¹ at para No.27 observed that in exercising the powers under Section 482 Cr.P.C the uncontraverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not, to decide the Court show apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ulterior purpose. The Court where finds it would amount to abuse of process or interest of Justice favours otherwise it may quash the proceedings. The power is to be exercised *ex debito justia* that is to do real and substantial justice (Munniswamy) for administration of which alone the Courts exercise. In **Ajay Goswamy V. Union of India**²² it is observed with reference to the freedom of press and protection of minors and from harmful and disturbing materials and indecent representation of Women (Prohibition) Act, Press Council Act and the India Penal Code provisions at para No.71 that the test of judging a work should be that of an ordinary man of common sense and prudence and not

²¹ (2012)9 SCC 460²² (2007)1 SCC 143

out of the ordinary or hypersensitive man as observed by Justice Hidaytullah, CJ in ***K.A.Abbas V. Union of India***²³ at para No.49 that if the deprived begins to see in these things more than what an average person would, in large, the same way, as it is wrongly said, a Fresh man sees, a woman's legs in everything, it cannot be helped.

38. The Apex Court has held in the case of B.S.Joshi vs. State of Haryana-2003 CBC 393(SC) that it would not be expedient to allow a lame prosecution to continue and the ends of justice are higher than the ends of mere law.

39. It is held in Narshi Thakershi Vs. Pradyuman Singhji Arjun Singhji-1971(3)SCC-844 that 'it can not be denied that justice is a virtue which transcends all barriers and the rules of procedure or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice'.

40. In State of Karnataka vs. L.Munnniswamy-1977 (3) SCR 113, considering the scope of inherent power of quashing under Section 482 Cr.P.C, this Court held that in the exercise of this wholesome power, the High court is entitled to quash proceedings if it comes to the conclusion that ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that **the ends of justice are higher than the ends of mere law though**

²³ (1970)2 SCC 780

justice had got to be administered according to laws made by the legislature.

41. From the above facts, provisions and propositions, the crux on facts not in dispute is the complainant while accepting the entire, per se cannot be said false and per se when cannot be said intentionally or knowingly or by reason to believe to disrepute and when per se cannot be said with malice and when per se shows within exception 8 to Section 499 I.P.C for the conduct of the complainant a public servant, by such press statement to the public who got lawful authority being rulers of the State By the people, For the people and Of the people and from even with sanction of the State Government through Public Prosecutor made the complaint when it is the conduct pointed out in the imputation while discharging public duty, when the Magistrate before taking cognizance from the material when supposed to consider as to the material on its face allows the case falls within the exceptions to Section 499 I.P.C, in not doing so in taking cognizance, same is nothing but a lame prosecution that cannot be allowed to continue in futility to make the accused to face the ordeal despite ends of Justice requires to quash to subserve.”

Having regard to the above, there is nothing to continue the prosecution, for the chances of conviction are bleak and with no fruitful purpose that could be served.

Accordingly and in the result to sub serve the ends of justice, the Criminal Petition is allowed by quashing the proceedings in C.C.No.7 of 2008 against the petitioner/accused.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.10.2017
ska

