



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.11.2017

Delivered on : 14.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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CRL.O.P. (MD) 11759 and 11760 of 2017

and

Crl.M.P. (MD) Nos.8096 to 8099 of 2017

Crl.O.P. (MD) No.11759 of 2017

1. Ritesh Bawri
2. Binod Kumar Bawri
3. Vinay Bawri
4. Saroj Bawri
5. Mala Bawri
6. Dimple Bawri
7. Nisha Bawri Singh

8. M/s.Saroj Vanijya Pvt. Ltd.,
Represented by its Administrative Director,
Office at : 7th Floor, No.3A,
Ecospace, Plot No.2F/11,
New Rajarhat,
Kolkatta - 700 156.

9. M/s.Saroj Sunrise Pvt. Ltd.,
Represented by its Administrative Director,
Office at : No.31, Padmavathy Complex,
H.No.38, G.S.Road,
Thimapur,
Nagaland - 797 112.

: Petitioners / Accused 1 to 9

-Vs-

1. M/s.Dalmia Bharath (Ltd)
Having its Registered Office
at Dalmiapuram, Tiruchi
represented by its authorised
Agent and Deputy General Manager V.Balasubramanian.

2. V.Balasubramanian,
S/o.Venkateswaran,
Deputy General Manager,
Dalmia Bharath (Ltd)
Dalmiapuram, Thiruchi
Residing at Flat No.208F, "Vignesh Paradise",
Melur Road, Srirangam,
Thiruchi.

: Respondents / Complainants



PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with C.C.No.22 of 2017 on the file of the learned Judicial Magistrate, Lalgudi, Tiruchy District and quash the same.

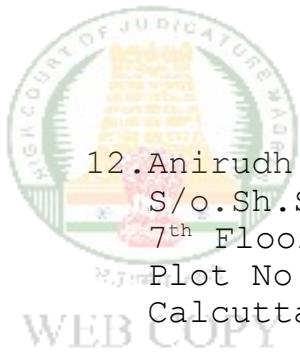
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For Petitioners : Mr.V.Karthic
Senior Counsel
for M/s.Fox Mandal and Associates

For Respondents : Mr.R.Shunmugha Sundaram
Senior Counsel
for Mr.R.Parthiban

CrI.O.P. (MD) No.11760 of 2017

1. Ritesh Bawri
2. Binod Kumar Bawri
3. Vinay Bawri
4. Saroj Bawri
5. Mala Bawri
6. Dimple Bawri
7. Nisha Bawri Singh
8. M/s.Saroj Vanijya Pvt. Ltd.,
Represented by its Administrative Director,
Office at : 7th Floor, No.3A,
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Office at : No.31, Padmavathy Complex,
H.No.38, G.S.Road,
Thimapur,
Nagaland - 797 112.
10. Ramesh Trimbakrao Shiledhar,
S/o.Trimbakrao Shiledar,
Plot No.87, Sankar Nagar,
Nagpur, Maharastra - 440 010.
11. Pradip Bansal,
S/o.Sri Nirotti Lai Bansal,
Flat No.001, Tower-6,
Horizons, Uniworld City,
New Town,
Calcutta - 700 156.



12. Anirudh Pachishia,
S/o. Sh. Subhash Chandra Pachisia,
7th Floor, No. 3A, Ecospace,
Plot No. 2F/11, Newtown Rajarhat,
Calcutta - 700 156.

: Petitioners / Accused 1 to 12

-Vs-

1. M/s. Dalmia Bharath (Ltd)
Having its Registered Office
at Dalmiapuram, Tiruchi
represented by its authorised
Agent and Deputy General Manager V. Balasubramanian.

2. V. Balasubramanian,
S/o. Venkateswaran,
Deputy General Manager,
Dalmia Bharath (Ltd)
Dalmiapuram, Thiruchi
Residing at Flat No. 208F, "Vignesh Paradise",
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: Respondents / Complainants

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with C.C.No.23 of 2017 on the file of the learned Judicial Magistrate, Lalgudi, Tiruchy District and quash the same.

For Petitioners : Mr. V. Karthic
Senior Counsel
for M/s. Fox Mandal and Associates

For Respondents : Mr. R. Shunmugha Sundaram
Senior Counsel
for Mr. R. Parthiban

COMMON ORDER

The Criminal Original Petition (MD) No. 11760 of 2017 is filed to call for the records in connection with C.C.No.23 of 2017 on the file of the Judicial Magistrate Court, Lalgudi, Trichy and to quash the same. Similarly, Criminal Original Petition (MD) No. 11759 of 2017 is to quash C.C.No.22 of 2017 on the file of Judicial Magistrate Court, Lalgudi.

2. The petitioners in CrI.O.P. (MD) No. 11760 of 2017 are the accused 1 to 12 in C.C.No.23 of 2017 on the file of Judicial Magistrate Court, Lalgudi. The respondents 1 and 2 are the complainants. A private complaint was lodged by the respondents 1 and 2 under Section 200 Cr.P.C. for taking action against the



petitioners for the offences under Section 34, 120(B), 499, 500 and 503 I.P.C. The first respondent is a company registered under the Companies Act and the second respondent is the Deputy General Manager of the company stated to be an authorised representative of the company who has been authorised to lodge the complaint and to give evidence on behalf of the company and to take further action against the petitioners in relation to the incidents for which the complaint had been lodged.

3. In the complaint, it is stated that the first respondent is a company having its registered office at Dalmiapuram, Trichy District and its corporate office at New Delhi. The first respondent claims to be the flagship and holding cement entity of the Dalmia Bharath Group which is one of the oldest Indian business conglomerates. The first respondent has further stated in the complaint that along with its subsidiaries it is one of the fastest growing cement manufacturers in India having business stakes in 18 States and providing employment to more than five thousand people. It is further stated that the first respondent has built an impeccable reputation for the group throughout India. It is also stated that the first respondent as part of their commitment to society used to extend their financial and technical support to other sick industries to make them profit earning entities and that because of its commercial activities with social concern, the first respondent is appreciated throughout India.

4. It appears that petitioners 1 to 10 herein have stakes in Calcom Cement India Limited (hereinafter referred as "CCIL") another cement manufacturing company. In the complaint, the petitioners 1 to 7 are described as members of the Bawri Group and founders of Calcom and other industries. It is stated that the petitioners 1 to 7 are known as Bawri Associates. The petitioners 8 and 9 are the two private limited companies administered by Bawri Group. It is stated that the 10th petitioner has joined Bawri Group in their business. It is alleged that the 11th petitioner was nominated as the Director by Bawri Group on the Board of CCIL. The 12th petitioner is an employee described as a person working for Bawri Group. It is stated in the complaint that at the time when CCIL was facing financial crisis, the Bawri Group approached the first respondent and made the first respondent to invest as a major shareholder so as to make the project of CCIL viable and profit making. It is further stated that the first respondent made investments. It appears that there was some misunderstanding between the promoters of first respondent and the Bawri Group and it is admitted that several complaints and petitions were filed before Company Law Board, Calcutta, apart from initiating action for settlement of disputes by arbitration. It is stated in the complaint that in the background of several issues and disputes between the first respondent and the Bawri Group, a letter dated 02.05.2016 and another letter dated 01.06.2016 were sent to Hon'ble Prime Minister of India by the 12th petitioner on behalf of the 10th petitioner. It is stated that the petitioners 1 to 12 in active



conspiracy with one another and other persons have made brazenly defamatory and slanderous statements against the first respondent and its promoters / management. Though the 12th petitioner alone was the signatory to the representations and signed on behalf of the 10th petitioner, it is stated in the complaint that defamatory allegations were made at the instance of all the members of Bawri Group knowing that the allegations have no factual basis. It is further stated that the representations were sent and published with ulterior motive to lower the reputation of the first respondent and its executives who are in the management, in the market, in the eyes of Government authorities / officials and regulatory bodies with ulterior motives to prejudice the Government authorities / officials to the detriment of first respondent and in order to cause irreversible and unquantifiable damage to the first respondent and its promoters. It is further stated in the complaint that the defamatory statement was made by the petitioner in active conspiracy with each other and that the petitioners have wilfully made the derogatory statements in the letters, which are patently false. The following are the derogative statements contained in the two letters addressed to the Hon'ble Prime Minister of India:

"Statements in the Letter dated 02.05.2016 addressed to the Prime Minister's office, New Delhi.

(a) "However I would like to draw your attention to a corporate group Dalmia Bharat Ltd and its CEO Puneet Dalmia who are acting with same mala fide intent as Kingfisher etc. and indulging in blatant fraud and criminal misrepresentation to dupe lakhs of Indian Citizens. They are stifling any fair probe and delaying the legal proceedings at various statutory, legal forums with sole intention to defraud public at large, siphoning public money and to deny central government of its dues on account of taxes."

b. "... company manage and operated by Mr.Puneet Dalmia has defrauded public investors while filing false financial results on stock exchanges"

c. " ... that the affairs of CCIL are not being managed in prudent like manner by Dalmia Group and Several financial irregularities including siphoning of funds through circular transactions, Dalmia Group has also been using the CCIL to misuse the benefits provided by the Banks by way of the Corporate Deb Restricting scheme in 2012."

d. "A bare perusal of all this facts and records point out that the Dalmia Group spearheaded by Mr.Puneet Dalmia is trying to take law in its own hand and delaying / frustrating legal process at various courts / agency involving with a sole intention to defraud public at



large. It is going to be another big business issues like Sahara, Kingfisher where government ultimately becomes answerable to public."

e. "It is noteworthy to mention that the Dalmia's are going for a public issue in near future and are manipulating the share prices of Dalmia Bharat Ltd to dupe the public of thousands of crores and only a comprehensive coordinated action can avert this unholy attempt of Dalmia to swindle public money."

Statements in the Letter dated 01.06.2016 addressed to the Prime Minister's Office, New Delhi.

a. "We would like to bring to your notice a very serious fraud being committed by the Dalmia Family which would be amounting to Tens of Thousands of Crores. Unless this can be prevented it would be a case much bigger and in dimensions than Vijay Mallaya"

b. "it has been done and is being done in a manner where large amount of fraud in multiple dimensions is being done which can now result in the group cheating the shareholders of thousands of crores by rigging there prices in a systematic and well planned manner."

c. " what the Dalmia's are doing with other agencies within the same department they are able to go on with there nefarious activities"

5. In the complaint, it was further stated that the derogatory and defamatory statements in the letters dated 02.05.2016 and 14.06.2016 were made at the behest and in active connivance with the other petitioners and it is stated that the 12th petitioner though an employee of Bawri Group appended his signatures to the representations on behalf of other petitioners. It is the specific allegation in the complaint that the petitioners 1 to 12 have wilfully caused defamatory and derogatory statements with ulterior motive to lower and harm the reputation of the first respondent and its promoters in the estimation of the society and public at large. The representations were also stated to be to lower and harm the reputation of the first respondent and its promoters in the eyes of Government authorities / officials to the detriment of the first respondent and to cause unquantifiable loss to them. It is alleged in the complaint that the petitioners 1 to 10 are shareholders of CCIL and that with a common intention they have made such serious and grave allegations which have no factual basis only to malign the first respondent. It is stated in the complaint that the defamatory and derogatory terms in the representations / communications was intentionally made to depict the first respondent in a bad light and to dissuade intending investors from investing in the first respondent and building business relationship with the



first respondent. It is also stated that the defamatory statements were made on behalf of the petitioners with a definite purpose and object to mislead the Government authorities in order to create a suspicion in the minds of public at large and to dissuade prospective ventures with other business conglomerates. Since the petitioners are also in the business, it is stated that they know very well about the consequences of making and spreading such derogatory statements and that the petitioners instead of approaching proper forums to protect their interest and rights pursuant to the agreement which they had entered into with the first respondent and its promoters, have published such letters to tarnish the reputation of first respondent. By publishing, sending and forwarding such representations depicting the first respondent and its promoters as accused and as persons who are making profits by cheating the public and by doing business in flagrant violation of law, the petitioners have caused damages to the goodwill of the first respondent. It is further stated that on account of such alleged representations great damage has been caused to the reputation of the first respondent apart from suffering great loss in terms of money and time and damage to the business. Since the letters were sent with ulterior motive and to achieve their unjustifiable claims, it is stated that the petitioners have committed the offences pursuant to a common intention and criminal conspiracy attracting Sections 499, 500, 503, 34 and Section 120(b) of I.P.C.

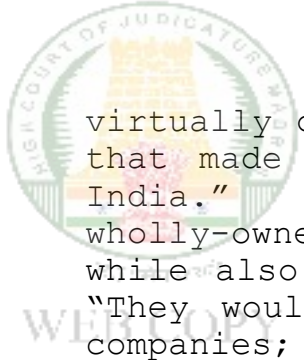
6. In CrI.O.P.(MD)No.11759 of 2017 the petitioners are accused 1 to 9 in C.C.No.22 of 2017 on the file of the Judicial Magistrate Court, Lalgudi, Trichy District. The petitioners 1 to 9 in CrI.O.P.(MD)No.11760 of 2017 are the petitioners in CrI.O.P.(MD)No.11759 of 2017. Similar to the complaint which is the subject matter of CrI.O.P.(MD)No.11760 of 2017, another complaint was lodged by the respondents on the basis of the following articles:

(i) Article dated 16.02.2016 published in Business Line with the following heading - 'OBC flags allegations against Dalmia Bharat Unit'.

(ii) Article dated 16.02.2016 published in Business Line with the following heading - "Evidence will show that they starved Calcom Cement".

(iii) Article dated 17.02.2016 published in Business Standard under the heading - "Partners spar in Dalmia arm ahead of KKR exit"

7. In the article dated 16.02.2016, published in 'Business Line' an interview with the first petitioner, former Managing Director of CCIL was reported. It is found in the article that the first petitioner has said in an interview as follows "once the Dalmia Group took over management, they did very classic economic value destruction. First, the capex necessary in the company



virtually doubled, from Rs.300 Crore to Rs.800 Crore. Effectively, that made Calcom the most expensive cement plant ever put up in India." "They also started loading operating costs from other wholly-owned Dalmia Group companies (like Adhunik Cement) to Calcom, while also doing related party transactions of over Rs.500 Crore." "They would buy the clinker (from Calcom) only from their group companies; they would borrow money only among themselves and not go out into the market, not take money from the banks. And they lend (to Calcom) at 18 per cent interest." Again the second article is about the telephonic interview of the first petitioner with business line as former Managing Director of CCIL. The first petitioner in the interview has detailed the economic value destruction done by the Dalmia Group in CCIL. The questions and answers during the course of interview have been published as extracted below:

"Why did you decide to partner with Dalmia and not sell Calcom to them upfront in 2012?

At that point, one possible decision was to sell 100 per cent of the company to Dalmia, the other was to partner with Dalmia. The belief at that point was that there is tremendous value creation that was possible with Calcom.

There is another company called Star Cement that is at 2.7 million tonnes, Calcom is at 2.1 million tonnes. That company made over Rs.400 Crore of EBITDA and they are on track to report Rs.600 Crore of EBITDA in 2015-16.

We had tremendous advantages - we were very strategically located, we had the best mines and had the government's support as an investor. So our belief was that the next three-four years would be very good for the company. And so, when they said, let's create value together with two business families joining, and I'm in management and could run the company with the assistance of the Dalmias, there was no reason why that value could not be created.

Why did you hand over more control to the Dalmias later?

This is a classic bait-and-switch. They entered the company by promising this and valuing the company (at a certain amount). Calcom is a dominant cement player in the North-East. Evidence will show that they starved the company. It came to a point in October 2012 where they were going to default on salaries. For us, it was a choice between letting the company die after having done a corporate debt restructure and smearing our reputation with the entire banking fraternity or giving up management to them. Effectively, it was like a gun to my head.



Have the banks responded to your letter revoking the guarantees you had given for Calcom?

Axis Bank has called a consortium meeting of all the banks saying the Bawri family wants to revoke its guarantee. A guarantee is typically irrevocable so in theory, I can't revoke it unless there is some external circumstance.

We've written to them saying here is somebody who is plundering the company and I can't be standing guarantee when they are not even willing to listen to what I'm saying. Technically, my claim for revoking the guarantee is deficient.

But it puts the ball in Axis Bank's court saying you either take action or you remove me - you can't have both.

Do you think this will be resolved only in court or there can be an out of court settlement at some point in time?

If you look at the timeline, my problem with the Dalmias started in August 2012, after three-four months of them investing with us. I waited till 2015 before I went into litigation with them.

I don't think anybody in their right minds would want to fight the Dalmia family and my intention was never to fight. We have fought because we had no other choice but to fight. So, if there is an out-of-court settlement, as a family we would welcome it.

For valuation, the best benchmark I can give is that Star Cement (which is located in the same area) is valued at Rs.4,000 crore."

8.The second article reveals the nature of interview and the response of Mr.Ritesh Bawri, founder and former Managing Director, CCIL. In the third article published in Business Standard by a journalist by name N.Sundaresha Subramanian, New Delhi, the statement of the first petitioner is referred to in the following lines:

"Ritesh Bawri, son of Binod and Calcom's managing director till 2012, told Business Standard, "The Dalmia group's stated policy was to run all companies to maximise group profit. In doing so, the group abused its majority position in Calcom, turning an attractive proposition that would have benefited development in the northeast into a vehicle for its own interests.



Bawri alleged the Dalmias started loading operating and capital costs on to Calcom and diverted sales to their own group company, at the cost of minority shareholders. "This led to significant economic losses for Calcom." The documents placed before CLB, reviewed by Business Standard, include several allegations such as loading of project costs, diversion of sales of Calcom to Adhunik Cements, another DCBL subsidiary, and questionable related-party transactions such as inter-corporate loans at exorbitant interest rates."

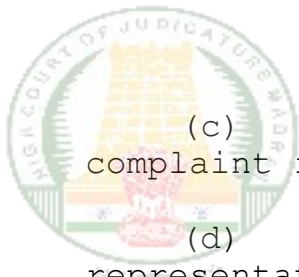
9.As in the case of C.C.No.23 of 2017 similar allegations were also made by the first respondent in the private complaint lodged under Section 200 of Cr.P.C.. Since the allegations are identical, it is not necessary to detail the allegations in the private complaint in C.C.No.22 of 2017.

10.In both the cases, on behalf of the first respondent company separate legal notices were issued to the petitioners calling upon them to withdraw all the allegations and aspersions made by them and to tender a complete, express and unconditional and unqualified apology to the first respondent in writing by all the petitioners by publishing the same in a prominent newspaper and to refrain themselves from committing such acts, deeds or any other things against the first respondent. In response to the legal notices issued on behalf of the first respondent on 26.08.2016 and 24.08.2016 respectively, separate reply notices were sent on behalf of the petitioners. Reply notices dated 22nd September, 2016 were sent on behalf of the petitioners repudiating the allegations and reiterations made in the notice and the contents of the reply notices are also relevant in this case. It is to be noted that the petitioners have taken a stand supporting the defaming statements but denied the involvement of petitioners 1 to 10 and 12 in CrI.O.P. (MD)No.11760 of 2017 and the petitioners 2 to 9 in the other case. Thereafter, the respondents have preferred the above private complaint.

11.One main ground that was raised in these quash petitions is that the learned Judicial Magistrate without even advertng to the provisions of Section 200 of Cr.P.C. and without conducting an enquiry as envisaged under Section 202 of Cr.P.C. has taken cognizance of the complaint upon recording the sworn statement of the complainant. However, the learned Senior Counsel appearing for the respondents has produced before this Court a copy of the deposition of three witnesses who were examined on behalf of the respondents. The other grounds on which the petitioners seek to quash the private complaint are as follows:

(a) A joint complaint by respondents is not envisaged in law.

(b) There is no cause of action for the second respondent who is only an employee of first respondent to maintain a complaint against the petitioners.



(c) The first respondent is not a juristic person and no complaint for defamation is maintainable.

(d) Since the accusations found in the articles and representations were made in good faith and for public good, that will not amount to defamation.

(e) No allegation is attributed against petitioners 2 to 9 in CrI.O.P.(MD)No.11759 of 2017 and petitioners 1 to 9 and 11 in CrI.O.P.(MD) No.11760 of 2017 and that no common intention can be evolved to implicate others in the offences related to defamation as no specific overt act is alleged.

(f) It is not evident from the complaint that the accused entered into criminal conspiracy to attract Section 120 (B) of I.P.C.

(g) Since the cause of action arose elsewhere, the complaints before Judicial Magistrate Court, Lalgudi, is unsustainable.

(h) In view of the exceptions 1, 4 and 9 to Section 499 I.P.C, the complaints are liable to be quashed.

12.The learned Senior Counsel appearing for the petitioners in both petitions, advanced his arguments to sustain every grounds above stated. Learned Senior Counsel appearing for respondents 1 and 2 advanced his arguments focussing more on the maintainability of quash petitions having regard to the damaging accusations and the scope of Section 482 of Cr.P.C., to entertain the quash petitions.

13.The learned Senior Counsel for the petitioners submitted that a joint complaint by respondents 1 and 2 is not maintainable. He relied upon a judgment of Calcutta High Court in the case of Sashadhar Achairya v. Sir Charles Tegari reported in AIR 1931 Calcutta 646, wherein, it was held that a joint complaint by two persons is not contemplated by the code. He then relied upon a judgment of this Court in the case of Narayanaswami and others vs Egappa Reddi and others, reported in AIR 1962 Madras 443. This judgment is on the interpretation of Section 233 of 1898 Act corresponding to Section 218 of Cr.P.C., 1973 regarding joinder of charges. It is held by a learned Single Judge of this Court that there should be a separate charge for each distinct offence of which a person is accused and that two or more complainants cannot file a single complaint. That was a case of two complainants joining together to file a single complaint for different offences for which separate charges is required to be framed. Even in the course of same transaction, there may be different charges at the instance of different complainants. A single complaint clubbing together complaints filed by different persons is held to be not maintainable. Having regard to the facts admitted, this judgment has no application to the present case on hand. Further, the accused in that case had preferred a revision before High Court to



revise the order of Sub Magistrate holding that there is nothing illegal in entertaining a joint complaint filed by respondents. After holding that the order of Sub Magistrate was wrong, it was held that the complaint should be treated as a complaint by one of the respondents. Hence even if the Court comes to the conclusion that the joint complaint is not maintainable, this Court can treat the complaint as one by first respondent.

14. The learned Senior Counsel relied upon another judgment of this Court in the case of R. Krishnamurthy and another vs M.P. Raja and another reported in 1989 LW (CrL.) 186. In this case, a complaint was filed for defamation by two advocates jointly. Following the judgment of Calcutta High Court in the judgments reported in AIR 1931 Calcutta 646 in the case of Sashadhar Acharya v. Sir Charles Tegari and the judgment of this Court in the case of Narayanaswami v. Egappa Reddi above referred to, in which it has been held that there is no provision in the Criminal Procedure Code for joint complaints, the private complaint was quashed. In the present case, the complaint was primarily by the first respondent company represented by its authorised representative and by the authorised representative in his individual capacity.

15. Learned Senior Counsel relied upon yet another judgment of a learned Single Judge of this Court in the case of Dr. J.A. Thothavusamy and others vs. S. Radhakrishnan and others reported in 2006 (2) MLJ (CrL.) 1174. In this judgment, it is held that the complaint made by two persons jointly in respect of one and same occurrence is not valid. The conclusion does not appear to be on the true analysis of the earlier judgments where the facts and circumstances are slightly different and talks about joint complaint. This judgment was followed in the case of Maheswari and others v. Jayanthi and Suganthi reported in 2012 (1) RCR (CrL) 45. However, the observation in AIR 1962 Mad 443 to the effect that the Magistrate can treat the complaint filed in that case as a complaint by one of the complainant at their option and permit the other complainant to file a separate complaint if they so desire is not noticed in the above two judgments.

16. In the later judgment, the principle applied is not discussed. The law settled appears to be that a joint complaint in respect of different cause of action and different offences by two or more persons is not maintainable. In the present case, the complaint was primarily by the first respondent company represented by its authorised representative and by the authorised representative, the second respondent. Since a defence is also taken that the company is not a juristic person to maintain a complaint, it appears that the second respondent has joined as a complainant not by alleging any offence against himself, but as an individual, who has been authorised to file a complaint on behalf of the company. There is no joinder of complaints warranting different charges at the instance of second complainant. Even if a complaint is filed by two, the Court can treat the complaint as one by the



first respondent at a later stage and the complaint need not be quashed at this stage for that reason.

17. The next submission of the learned Senior Counsel for the petitioner is about the maintainability of complaint by the first respondent company. The complaint is about the publication of Article and representations damaging the reputation of the company, the first respondent. Explanation 2 of Section 499 of IPC makes it clear that an imputation concerning a company or an association may amount to defamation. The words and statements complained of are against the company and its promoters accusing them as fraud in their dealings with other companies. The allegations certainly affect the company and its investors and the complaint is that they are aimed at defaming their business operations. Company can also be a person referred to in Section 499 of IPC and its legal status and locus to maintain a complaint cannot be doubted in view of Explanation '2' of Section 499 of IPC. The company is a juristic person. As per Section 3(42) of General Clauses Act, 1897, a company answers the definition of person. Hence, this Court is unable to accept the submission of learned Senior Counsel for the petitioner that the company is not a juristic person and that it cannot be defamed.

18. Learned Senior Counsel relied upon a judgment of the Gauhati High Court in the case of Homen Borgohain and others v. The Brahmaputra Valley Regional Handloom Weavers' Co-operative Society Ltd. reported in 1995 GLLJ 2357, wherein, it has been held as under:

"15. Apparently and collection of persons may be covered by this explanation. But that collection of persons must be identifiable so that it can be said that this group of particular people has been defamed, as distinguished from the rest of the community. There is no dispute that a Co-operative Society doing business in certain way may bring an action for defamation in respect of the publication of defamatory news item which effects its business reputation. But a Society/Company cannot be said to be defamed, as to allegation which would be actionable at the suit, in case of an individual; but which would not be defamatory of a Society/Company, would not be actionable, in a defamation case. If imputation is found direct, the procedure followed is that, the Board of Directors may pass resolution to that effect, and can entrust any person of its choice by resolution to cause the action in Court of law. In such a situation the point would arise,- whether the Society/Company is the actual aggrieved person in the case to establish that either it has suffered special damage or that the words are likely to cause not only humiliation but also pecuniary damage. Obviously to ascertain the maintainability of the complaint the locus standi of the complainant has to be decided in its initial stage. The question of maintainability on the ground of applicability



of Section 199(1), Cr. P.C. may arise before the Court on an application to drop the proceeding. At that preliminary stage the trial Court has to decide whether the proceeding is liable to be dropped as the complainant is not the aggrieved person Under Section 500, I.P.C. Admittedly an application was filed by the petitioners and the same was rejected.

16. As discussed above, the emerging position is that whether the impugned news item cast imputation to the Brahmaputra Valley Regional Handloom Weavers' Co-operative Society as a whole. The provisions of Section 199(1), Cr. P.C. reads as follows:-

"No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf."

17. Both the parties strenuously attempted to submit their respective points. A critical scrutiny of the news item has emphasised an query how the wording in the news item made imputation to the Society. For this purpose repetition of the news item is required to find out the link of the principal person Mr. Jagannath Sarma, the Managing Director and the Society. The stand of the petitioner is that no attempt was made by the petitioners to malign and impair the image of the Co-operative Society in its business and to ruin its reputation. Apparently, as it appears from the news item, it has made some imputation against the opposition parties of the State for not taking follow up action of their complaint raised in the State Assembly and then to the Weaving and Handloom Department of the State Government who in spite of such allegations, which had raised storm in the Assembly decided to give order to the Society for manufacture of Janath Cloth which involve millions of rupees. Society's name has been indicated as it would manufacture the Janata Cloth and this would enable it to collect, as profit, millions of rupees. Mr. J.M. Choudhury, learned counsel for the opposite party complainant has submitted that the last portion of the impugned news item imputed the Society wherein clear imputation was made directly with the words that, "Directorate of Handloom and Weaving has even in this year instructed the Brahmaputra Valley Regional Handloom Weavers' Co-operative Society to manufacture Janata cloth - So that several millions of rupees can be collected."



18. As it transpires the news item is compact in one paragraph wherein principal subject of imputation was embezzlement of fund amounting Rs. 200 crores (two hundred crores) and accusation was pointed to Mr. Jagannath Sarma, the Managing Director of the Society. Apparently, in last part of the news item, name of the Society was mentioned as the continuation of the first part of the news item and to substantiate the allegation of misappropriation of the principal in the name of the Society has been brought in of which he is the Managing Director. The whole of the impugned news item has to be taken to appreciate the meaning and the subject of imputation. Whatever be the imputation with the defamatory words, it has to be taken with the understanding of the general public. Whatever the intention of the news item to make imputation upon the principal's character or conduct it intended to communicate, the mention of the name of the Society in the conduct of the principal do not bear any defamatory meaning: Apparently target or imputation is Mr. Sarma and mention of the opposition parties of the State of Handloom & Textile department and the complainant Society, are used to substantiate the imputation against the principal person. Simple reading of the news item, in my view, would create some opinion not against the Society but against the principal, whose inaction or action would help the principal to indulge in the act of misappropriation. The critical reading of the news item shows that the natural and ordinary meaning of the words for the purpose of defamation has not been pointed to the Society, the intention communicated to the readers or the general public was to show the involvement and conduct of the person named categorically. Definitely, the impression of the people (readers) after reading the news would be on the conduct of Mr. Sarma, who has been shown, by implication, the beneficiary of the profit of the Society.

19. The caption of the news item is "Oil on the head of the thief" (Assamese wordings are "Choror Murat Tel") points out and indicates a person as a thief, i.e. somebody has been identified as a thief. By the headline a particular person was pointed out and identified as 'Chor' (thief) and after that the news continued to point out M. Sarma and implicated him to the misappropriation as 'thief.' The other names, opposition political parties, Directorate of Handloom and Weaving and the Society have been mentioned through whom the person would be profited, i.e. oil would be poured on the head of the 'thief.'

<https://hcservices.courts.gov.in/hcservices> 20. From the discussion, I am of view that the word 'thief' is not ambiguous and the meaning and imputation carried in the news is not capable, on the face of it, bearing two



meanings, the imputation is made against one person who has been identified as 'thief,' and definitely the word is not defamatory in itself to the Society. The news item may propose to impute Mr. Sarma, the person, as thief by reason of his alleged misappropriation but it is equally inconsistent to involve the Society and determining this aspect this Court holds that the words complained of, are not capable of containing defamatory meaning ascribed to the Society. The far fetched suggestion of "collecting millions of rupees by manufacturing Janata Cloth" can have no imputation to the Society as a whole. Mere feeling of involvement cannot constitute a case of defamation Under Section 500, I.P.C. and cannot therefore be an actionable wrong. The construction of the words in the latterpart of the news item, which has been taken by the complainant Society as the imputation to it, are not intended to impute the Society. Even, as the counsel for the petitioners has submitted, the news item was a simple one and meant for information to the reader and the public about the state of affairs to which the public has a right to be informed regarding the alleged misappropriation of a huge amount which was also raised in the floor of the state Assembly where assurance was given by the Chief Minister of the State for C.B.C. Enquiry.

21. For the reasons discussed above, I hold that even a defamatory purpose will not render the accused petitioners liable, if the statement has defamatory significance for others.

22. Mr. Bhattacharjee, learned counsel for the petitioner referred in his support 1969 CrL LJ 701, (Mysore) (President and Directors of the Agricultural Produce Co-operative Marketing Society Ltd., Kushalnagar v. M.K. Mohamed Ali). In this case the complainant Society was defamed and therefore Magistrate was competent to entertain the complaint petition. The case of the petitioner was that the accused made some statements' defaming only the President and Directors of the Society and not of the Society itself. Since a complaint by an aggrieved person is a condition precedent to the jurisdiction of a Court to deal with the offences mentioned in Section 198, Cr. P.C. (Old) a complaint by the Society which was not the aggrieved person held to be a nullity. It was further held that the complaint was not maintainable since an offence Under Section 500 of the I.P.C. could not be gone into in absence of the person aggrieved.

23. In view of my above discussion I hold that the complainant Society not being the person aggrieved has no locus standi to file the complaint for defamation and accordingly the proceeding in complaint case No. 983/93



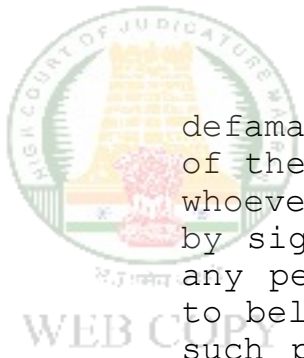
pending in the Court of Judicial Magistrate, Guwahati is quashed."

19. In this case a news item was published in a weekly about misappropriation of two hundred crores of rupees by the Managing Director of a Co-operative Society. The society lodged a defamation case against the Editor and partners of the weekly. Since the complaint was not at the instance of Managing Director of the society, a plea against the maintainability of the complaint was raised in that case by the persons accused by stating that there is a legal bar under Section 199(1) of Cr.P.C. Since the Judicial Magistrate concerned passed an order explaining the offence under Section 500 to 502 read with Section 34 of I.P.C. a criminal revision was filed before Gauhati High Court for quashing the complaint and the order of Judicial Magistrate. It was found that the allegations were against the President and directors of Society and not about the Society. Hence it was held that this complaint by the Society, which was not the aggrieved party is not maintainable. This has no application to the present case.

20. He further relied upon the judgment reported in AIR 1972 SC 2609. In the case of G.Narasimhan and others v. T.V.Chokkappa reported in AIR 1972 SC 2609, the Hon'ble Supreme Court dealt with a situation which is entirely different. In the case before Hon'ble Supreme Court, a resolution passed in a conference organised by a party (Dravidar Kazhagam) was the subject matter of publication. Chairman of the Reception Committee in the conference was the complainant. The issue that was raised and considered by Hon'ble Supreme Court are reflected in para 14 to 22:

"14. On these contentions, the principal question for determination is whether the respondent could be said to be an aggrieved person entitled to maintain the complaint within the meaning of Section 198 of the Code. That section lays down that no magistrate shall take cognizance of an offence falling inter alia under Ch. XXI of the Penal Code (that is, Sections 499 to 502) except upon a complaint made by some persons aggrieved of such offence. Section 198, thus, lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the magistrate would be void and illegal.

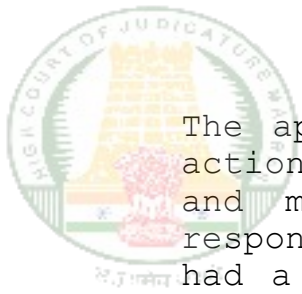
15. Prima facie, therefore, if Section 193 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any



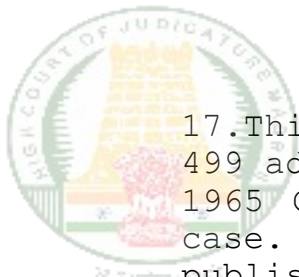
defamatory imputation against him individually. Section 499 of the Penal Code, which defines defamation, laid down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing inveighs against mankind in a general, or against a particular order of men, e.g., men of own, it is no libel. It must descend to particulars and individuals to make it a libel (1699)3 Balk 224, cited in Ratanlal and Dhirajlal Law of Crimes (23rd ed.) 1317. In England also criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite, e.g. men of science, but a definite one. such as, the clergy of the diocese of Burham, the justices of the peace for the county of Middlesex. (see Kenny's Outlines of Criminal Law (19th ed.) 235. If a well-defined class is defamed, every particular member of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

16. In this connection, counsel for the appellants leaned heavily on Knupffer v. London Express Newspaper Ltd. [1944] A.C. 116. The passage printed and published by the respondents and which was the basis of the section there read as follows :

"The quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an emigre group called Hlado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who long sought a suitable Fuehrer-I know with what success."



The appellant, a Russian resident in London, brought the action alleging that the aforesaid words had been falsely and maliciously printed and published of him by the respondents. The evidence was that the Young Russia party had a total membership of 2000, that the headquarters of the party were first in Paris but in 1940 were shifted to America. The evidence, however, showed that the appellant had joined the party in 1928, that in 1935 he acted as the representative of the party and as the head of the branch in England, which had 24 members. The appellant had examined witnesses, all of whom had said that when they read the said article their minds went up to the appellant. The House of Lords rejected the action, Lord Simon saying that it was an essential element of the cause of action in a libel action that the words complained of should be published of the plaintiff, that where he was not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact would not arise if they could not in law be regarded as capable of referring to him, and that that was not so as the imputations were in regard respect of the party which was in Paris and America. Lord Porter agreed with the dismissal of the action but based his decision on the ground that the body defamed had a membership of 2000, which was considerable, a fact vital in considering whether the words in question referred in fact to the appellant. The principle laid down here was that there can be no civil action for libel if it relates to a class of persons who are too numerous and unascertainable to join as plaintiffs. A single one of them could maintain such an action only if the words complained of were published "of the plaintiff", that is to say, if the words were capable of a conclusion that he was the person referred to. (see Gatley on Libel and Slander (6th ed.) 288. Mr. Anthony, however, was right in submitting that the test whether the members of a class defamed are numerous or not would not be apt in a criminal prosecution where technically speaking it is not by the persons injured but by the state that criminal proceedings are carried on and a complaint can lie in a case of libel against a class of persons provided always that such a class is not indeterminate or indefinite but a definite one. Kenny's Outlines of Criminal Law (19th ed.) 235. It is true that where there is an express statutory provision, as in Section 499, Expl. (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Expl. (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body.



17. This was the construction of Expl. (2) to Section 499 adopted in Sahib Singh Mehra v. U.P. MANU/SC/0067/1965: 1965 CriLJ434, 828 and which guided the decision in that case. The article complained of there was one printed and published in the appellant's newspaper called Kaliyug of Aligarh which contained the following :

"How the justice stands at a distance as a helpless spectator of the show as to the manner in which the illicit bribe money from plaintiffs and defendants enters into the pockets of public prosecutors and assistant public prosecutors and the extent to, which it reaches and to which use it is put."

This Court held that the prosecuting staff of Aligarh and even the prosecuting staff in the State of U.P. formed an identifiable group or "collection of persons" within the meaning of Section 499, Expl. (2) in the sense that one could with certainty say that a group of persons has been defamed as distinguished from the rest of the community, and therefore, a complaint by the Public Prosecutor and eleven Assistant Public Prosecutors was a competent complaint. Following the test laid down in this decision. the High Court of Allahabad in Tek Chand v. R. K. Karanjia (1969) Cr.L.J.536 held that the Rashtriya Swyam Sevak was a definite and an identifiable body, that defamatory imputations regarding it would be defamation within the meaning of Section 499, Exp. (2), that such imputations would be defamation of the individual members of that body or class and that a complaint by an individual member of such a body was maintainable. (see also the dictum of Kendall, J. in Wahid Ullah Ansari v. Emperor MANU/UP/0386/1935: AIR 1935 All 743.

18. This being the position in law, the question upon which these appeals must be decided is: which was the class or body in respect of which defamatory words were used and whether that body was a definite and an identifiable body or class so that the imputations in question can be said to relate to its individual components enabling an individual member of it to maintain a complaint ?

19. The High Court, after citing Tek Chand's case [1969] Cr.L.J.536 went on to say that the Dravida Kazhagam was an identifiable group, that the respondent was an active member of that body, that he was also the chairman of the reception committee of the conference and that he was one of those who piloted and sponsored the resolution, which was said to have been wrongly reproduced and distorted in the news item in question. Apart from the fact already mentioned by us earlier that neither the complaint nor the



evidence of the respondent indicated that the resolution was piloted by him, the news item nowhere referred to or even mentioned the Dravida Kazhagam. As already pointed out, the conference was a body distinct from that party, having its own Organisation, its own secretaries who dealt with the correspondence to and by the conference and its own office where its work was conducted. No doubt, the conference was organised by the Dravida Kazhagam, but that would not mean that both were the same or that the members of the Dravida Kazhagam and those of the conference or those who attended it were the same. Indeed, the principal function of the reception committee would be to enroll members of the conference and thus collect funds to defray its expenses. In fact, the evidence of the respondent indicated that the conference was attended not only by the members of the Dravida Kazhagam but also by outsiders who included as many as 5000 women. It is therefore, wrong to identify one with the other or to say that defamation of the conference as a class or collection of persons was the defamation of the Dravida Kazhagam. That was not and indeed could not be the case of the respondent.

20. The news item complained of clearly stated that the resolution was passed by the conference and not by the Dravida Kazhagam. In his very first letter, dated January 28, 1971, which the respondent signed describing himself as the chairman of the reception committee and not as, an important member of the Dravida Kazhagam, the respondent complained that the news item had distorted the resolution passed by the conference and asked the editor to publish his "correction and clarification" of that resolution. There is no grievance there that the Dravida Kazhagam suffered injury in reputation or otherwise by that alleged distortion. In his advocate's letter dated February 1, 1971, the respondent's complaint was that the news item was highly defamatory and had tarnished the image of the conference of whose reception committee he was the chairman. In his evidence before the Magistrate also as clearly stated that the resolution was the resolution moved by the president of the committee and passed by the conference. Thus, his case throughout was that the publication of the said resolution reported in the said news item in a distorted form had tarnished the image not of the Dravida Kazhagam but of the conference.

21. That being so, the High Court completely missed the real issue, viz., whether the conference was a determinate and an identifiable body so that defamatory words used in the resolution passed by it would be defamation of the individuals who composed it, and the respondent, as one such individuals and chairman of its reception



committee could maintain a complaint under Section 500 of the Penal Code. Whether the Dravida Kaghagam was an identifiable group or not was beside the point, for, what had to be decided was whether the conference which passed the resolution in question and which was said to have distorted was such a determinate body, like the Rashtriya Swayam Sevak in Tek Chand's case (1969) Cr.L.J.535 or the body of public prosecutors in Sahib Singh Mehra's case MANU/SC/0067/1965:1965 Cri.L.J 434 as to make defamation with respect to it a cause of complaint by its individual members. In our view the High Court misdirected itself by missing the real and true issue arising in the applications before it and deciding an issue which did not arise from those applications. The judgment of the High Court, 'based on an extraneous issue, therefore, cannot be sustained.

22. In this view of the matter, we would have ordinarily remanded the case to the High Court. But such a procedure appears to be unnecessary, as in our view, the conference was not such a determinate class like the one in the cases referred to earlier, where complaints by its individual member or members were held maintainable. It is impossible to have any definite idea as to its composition, the number of persons who attended, the ideas and the ideologies to which they subscribed, and whether all of them positively agreed to the resolution in question. The evidence simply was that the person presiding it read out the resolution and because no one got up to oppose it was taken as approved of by all. The conference clearly was not an identifiable or a definitive body so that all those who attended it could be said to be its constituents who, if the conference was defamed, would, in their turn, be said to be defamed.

21. The subject matter of publication in this case is against group of individuals and the company as well. The issue in this case is whether the complainant namely the company is an aggrieved person. Since this requires evidence, the complaint cannot be thrown out at this stage on the basis of this judgment.

22. Learned Senior Counsel appearing for the respondents relied upon the judgment of this Court in the case of Dr.R.Krishnamurthy vs. Sun TV Network, reported in 2008 (1) MWNL (Cr.) 196 to support his stand that a company has locus standi to maintain a complaint alleging defamatory statement made in News items published in Newspaper. He relied upon another judgment of this Court in the case of K.R.Karalan vs. M/s.Southern Roadways Ltd., Kochadai, Madurai, reported in 1984 L.W.Crl. (104). In the judgment of Bombay High Court in the case of Indian Express Newspaper (Bombay) Pvt., Ltd., and another vs. Dr. Jagmohan Mundhara and another, reported in AIR 1985 Bombay 229, it has been held as follows:



"....22. It is well settled that a corporation cannot suffer damages in mind or body. But as held in Metropolitan Saloon Omnibus Co. Ltd. v. Hawkins (1859) 4 H & N 87; South Helton Coal Co. v. North Eastern News Association Ltd. (1894) 1 Q.B. 133; D.L. Caterers Ltd. v. D' Ajou (1945) K.B. 364; Lewis v. Daily Telegraph Ltd. (1964) A.C. 234 and Selby Bridge Proprietors v. Sunday Telegraph (The Times Feb. 17, 1966) a trading corporation has a business reputation and can sue for defamation in respect of a publication calculated to injure its reputation in the way of its business. The position is succinctly stated in Spencer Bower on Actionable Defamation at Pp. 278-279:--

"It is obvious that 'reputation' in the sense in which alone it concerns the topic of defamation has relation to the particular person enjoying it. But it must not be forgotten that 'person' for this to say, it includes both 'a body of persons' and a film....'. That a commercial 'body of persons' has a trading character and that trading character I now clearly well established."

It may be that the innuendo or the imputation may be directed against an individual connected with the management of the commercial body of persons. But if it is of such nature as to not only defame the individual but also injure the trading character of the commercial body of persons, then both the individual as well as the commercial body will have a cause of action to sue for defamation. To suggest that the management of the newspaper in the hands of an individual who is susceptible to political pressure, is prepared for his personal gain to victimise honest and fearless journalists who have enhanced the reputation of the newspaper by some original investigative journalism and has no qualms of conscience in suppressing truth by any means even by abetting crimes, certainly injures the trading character of the newspaper, which has acquired reputation for integrity and fearless. The first plaintiff, therefore, has as such right to sue for defamation as the individual whom the defamation conduct is attributed in the film.".....

23. The contention that the complaint does not disclose any offence attracting Sections 499, 500 and 503 of IPC, cannot be accepted. In every article published, the statements of first accused during interview and the representations given to the Honourable Prime Minister, Serious allegations damaging the reputation of first respondent and its executives are found. It is the case of respondents that unsubstantiated allegations were made and caused to be published against Dalamia Bharath Ltd./the first respondent and its Chief Executive with an intention to lower and



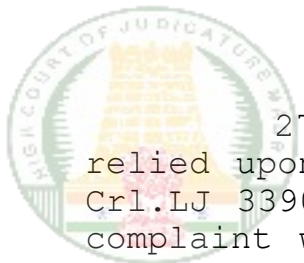
damage the reputation of the company in the eyes of public, other companies, Government authorities and regulatory bodies. It is further stated that the grave charges have no factual basis. It is also stated that the slanderous statements were made by the accused knowing them to be false and that the allegations have some implications dissuading potential investors and lenders from investing or lending in CCIL as well. Since the first respondent is also a stake holder in CCIL, it is further contended that great loss and serious injury is caused to the first respondent.

24.The relevant portion of the statements found in the Articles, interviews and representation to the Honourable Prime Minister, which are published and made are serious and the petitioners in their reply notice have not disputed the contents and the possible damage. Only with regard to the representation to Honourable Prime Minister, petitioners 1 to 9 and 11 in CrI.O.P.(MD) No.11760 of 2017, have stated in their reply notice that they are not involved in the preparation of the letters to Honourable Prime Minister. However, the other petitioners stood by their letters and admitted that their allegations reflect the disputes between Bawri groups and first respondent. Be that as it may, considering the contents of publications caused and letters addressed to Honourable Prime Minister, this Court has no hesitation to hold that the contents are highly defamatory and Sections 499, 500 and 503 of IPC are attracted.

25.In this regard, learned Senior Counsel appearing for the respondents submitted that the question whether the matter published, constitute an offence or not need not be gone into at this stage. He relied upon a judgment of Hon'ble Supreme Court in the case of John Thomas vs Dr.K.Jagadesan reported in 2001 (6) SCC 30, wherein, it has been held as follows:

"..... However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant cannot contend, at this stage, that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory.".....

26.Learned Senior Counsel for the respondents submitted further that only in summon cases instituted otherwise than on complaint, the accused can be discharged at mid way and that in this case the petition to quash the complaint cannot be entertained. He also relied upon the same judgment reported in 2001 (6) SCC 30. However, the said judgment is on the interpretation of Section 258



27. Learned Senior Counsel appearing for the petitioners relied upon another judgment reported in 2003 CrLJ 3390. In 2003 CrLJ 3390, a learned Single Judge of this Court has held that a complaint without giving any details of the imputation through the actual words or contents is unsustainable and a clear abuse of process. Since accused is entitled to know the details of imputation alleged to be defamatory, it is true that the allegation should be precisely set out in the complaint. In this case, there is specific reference to the imputations contained in the letter sent to the Prime Minister's Office and the Articles published. Even in the reply notice, it is contended that the offending statements are not denied but described as made in good faith for public good. Hence, this judgment has no application.

28. The next submission of learned Senior Counsel for the petitioners is that the statement in the letters and the articles and interview disclose only things that happened to Calcom during the management of Dalmia groups and that they are true statements made or published for the public good. It is further stated that based on the two statements several proceedings are pending. It is also stated that the petitioners are aggrieved by the conduct of other groups. Learned Senior counsel submitted that in view of exceptions 1, 4 and 9 of Section 499 of IPC, the petitioners cannot be said to have intended to harm the reputation of complainant.

29. Section 499 and exceptions 1, 4 and 9 of Section 499 of IPC are extracted below:

"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 expected, to defame that person.

First Exception -Imputation of truth which public good requires to be made or published.-It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Fourth Exception - Publication of reports of proceedings of Courts.-It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Ninth Exception-Imputation made in good faith by person for protection of his or other's interests.-It is not defamation to make an imputation."



30. From the language of exception 1, the accused who have caused the publication and made the statements have to prove that such statements are true. Unless the imputations complained of are proved to be true and published or made for public good, there is no scope of applying first exception. Even before, this Court, the petitioners have not made an attempt to prove that the serious allegations are true. The applicability of exception 1 has to be established based on evidence. Hence merely by relying upon exception 1, the petitioners cannot seek relief to quash the complaint.

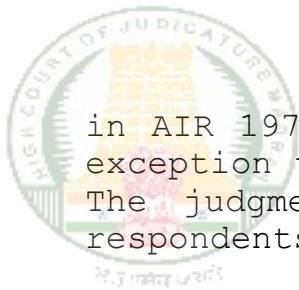
31. The allegation are not mere report of what took place before the pending proceedings. Merely because the petitioners have made similar statements in pending proceedings, they cannot rely upon exception 4.

32. By referring to exception 9, the accused may contend that what they have alleged before Court or Tribunal to redress their grievance will not attract Section 499 of IPC. Here that is not the position. Even for applying exception 9, the petitioners have to prove that the allegation are made in good faith. This is also a factual issue and hence the petitioners cannot force this Court to go into facts at this stage in a proceeding to quash the complaint.

33. Learned Senior Counsel for respondents relied upon a judgment of Hon'ble Supreme Court in the case of Jeffrey J. Diermeier and another vs. State of West Bengal and another, reported in (2010) 6 SCC 243, wherein, it has been held as follows:

..."40. In the instant case, the stage for recording of evidence had not reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied the requirements of "good faith" and "public good" so as to fall within the ambit of the Tenth Exception to Section 499 IPC. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by respondent No.2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties."....

34. Similarly, in the case of Sewakram Sobhani vs R.K. Karanjia, Chief Editor, Weekly Blitz and others, reported in (1981) 3 SCC 208. The Hon'ble Supreme Court has held that the question whether accused is protected under the ninth exception is a question of fact and matter of evidence. Again, the Hon'ble Supreme Court in the case of Balraj Khanna and others vs Moti Ram, reported



in AIR 1971 SC 1389, has held that question as to applicability of exception to Section 499 can arise only after commencement of trial. The judgments relied on by the learned Senior Counsel for the respondents support my view.

35. Learned Senior Counsel appearing for petitioners then submitted that except the first petitioner in Crl.O.P.(MD)No.11759 of 2017 and petitioners 10 and 12 in Crl.O.P.(MD)No.11760 of 2017, others have been unnecessary implicated and criminal conspiracy is not established nor can it be inferred from the complaint. He relied upon the following precedents.

36. In AIR 1980 SC 1382, in the case of V.C.Shukla and others v. State (Delhi Administration) it is held as follows:

"8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under s. 120 B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore,



propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film."

37. In the case of *Saju v. State of Kerala* reported in 2001 (1) SCC 378, the Hon'ble Supreme Court has held as follows:

7. To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not illegal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is merely incidental to that object. To attract the applicability of Section 120B it has to be proved that all the accused had the intention and they had agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. This Court in Yash Pal Mittal v. State of Punjab [AIR 1977 SC 2433] held: "The offence of criminal conspiracy under S.120A is a distinct offence introduced for the first time in 1913 in Chapt.V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under S.120A is brought out pitthily by this Court in *EG Barsay v. The State of Bombay* (1962) 2 SCR 195 at p.229 thus:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has



not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S.43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may be liable".

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy."

38. In the case of Nazir Khan and others v. State of Delhi reported in AIR 2003 SC 4427 the Hon'ble Supreme Court has held as follows:

"16. In Halsbury's Laws of England (vide 4th Ed. Vol.11, page 44, page 58), the English Law as to conspiracy has been stated thus:

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

17. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence, it can be established by direct or circumstantial evidence. (See: Bhagwan Swarup Lal Bishan Lal etc.etc vs. State of Maharashtra [AIR 1965 SC 682 at p.686])



18. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference.

19. The provisions of Section 120-A and 120-B, IPC have brought the law of conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well settled. Russell on crime (12 Ed. Vol. I, p. 202) may be usefully noted-

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties, agreement is essential. More knowledge, or even discussion, of the plan is not, per se, enough."

Glanville Williams in the "Criminal Law" (Second Ed. P. 382) states-

"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for 'concert of action', no agreement to 'co-operate'.

Coleridge, J. while summing up the case to Jury in Regina v. Murphy [(1837) 173 ER 502 at p. 508] states:



to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, had they this common design, and did they pursue it by these common means the design being unlawful."

20.As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in section 120B [See: S.C. Bahri v. State of Bihar (AIR 1994 SC 2420)]

21.The conspiracies are not hatched in open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence. [See: E.K. Chandrasenan v. State of Kerala (AIR 1995 SC 1066)]."



"20) The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

40. From the reading of above judgments, none of them support the case of petitioners to quash the complaint. They are even against the petitioners in the sense that it has been an accepted proposition that no overt act is necessary to prove criminal conspiracy. In all the cases above referred to, the issue was considered after full fledged trial. Hence this Court is of the view that the allegation in the complaint involving all the petitioners need not be proved at this stage and an opportunity should be given to the complainant to prove the allegations.

41. It is settled law that the inherent power cannot be exercised to strike a legitimate prosecution. There are no special features or circumstances in this case to conclude that it is not expedient to permit the prosecution to continue. Every person possesses a right to his reputation which is regarded as property. Hence nobody can use his freedom of speech or expression as to injure another's reputation.

42. The learned Senior Counsel argued that the complaint lodged by the second respondent is not maintainable as there is no cause of action and the second respondent is only an employee of first respondent. It is stated that the second respondent is the authorised representative of the Company. The submission of learned Senior Counsel has no merits. In this regard, the judgment of this Court in the case of K.R. Karalan vs. M/s. Southern Roadways Ltd., Kochadai, Madurai, reported in 1984 L.W. CrL. (104) may be usefully referred to. In para 5 of the judgment, it has been held as follows:



"Therefore, it follows that everyone who belongs to the management of the group company can be termed an aggrieved person. The company, though a juridical entity, does not have a physical or bodily existence in flesh and blood and, such, only the Directors or the Managerial staff or representatives of the company can institute action on behalf of the company. In this case, the clear averment in the complaint is that Thiru.Chandran, Additional Executive Officer, who has filed the complaint has been duly authorised by the Management of the Company to take appropriate legal action in regard to the subject matter of the complaints and connected legal matters. In the light of these factors, there is absolutely no scope for the petitioner to contend that the complaints have not been preferred by an aggrieved person and consequently, the complaints have been taken on file in violation of the provisions of S.199 (1) Crl.P.C."...

43.The learned Senior Counsel finally argued that the cause of action arose out side of the jurisdiction of Lalgudi and that therefore, the proceedings are liable to be canvassed. As for as the complaints are concerned, the registered office is stated to be within the jurisdiction of Judicial Magistrate Court, Lalgudi. In this case, it is admitted that Section 202 of Cr.P.C. is satisfied. The enquiry contemplated was conducted before issuing summons. Hence this Court is not inclined to accept the case of petitioners.

44.In this case, petitioners 8 and 9 in both the petitions are private limited companies represented by their Administrative Director, not named. These two companies are stated to be involved by attributing criminal conspiracy against them. Section 499 of I.P.C. requires imputation with an intention to harm. Criminal conspiracy can be established by proving an agreement. Even though company is a juristic person, it cannot be said that it is capable of hatching a plan joining with other individuals. A corporate entity may be sued or complained of for publishing anything to harm the reputation of another. But to involve a company by presuming criminal conspiracy cannot be accepted. Though this aspect was not argued, this Court is of the view that the complaint against petitioners 8 and 9 are not maintainable and hence liable to be quashed insofar as petitioners 8 and 9 are concerned. As a result, the two criminal original petitions are partly allowed and the complaints in C.C.Nos.22 and 23 of 2017 on the file of the Judicial Magistrate Court, Lalgudi are quashed insofar as petitioners 8 and 9 (the private limited companies) are concerned and insofar as other petitioners are concerned, the criminal original petitions are dismissed. The proceedings in C.C.No.22 and 23 of 2017 on the file of the Judicial Magistrate Court, Lalgudi shall go on and the learned Judicial Magistrate, Lalgudi is directed to dispose of both cases as expeditiously as possible, preferably within a period of



six months from the date of receipt of a copy of this order. The personal appearance of petitioners is dispensed with unless their appearance is required by an order of Court. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (P&A)

Sub Assistant Registrar

To

The Judicial Magistrate,
Lalgudi, Tiruchy District.

+2CC to M/s.FOX MANDAL AND ASSOCIATES, Advocate, SR.Nos.68717,68718

+2CC to Mr.R.PARTHIPAN, Advocate, SR.Nos. 68599,68600

Order made in
CRL.O.P.(MD)11759 and 11760 of 2017
14.06.2018

SRM

ES/SKN/RSK/SAR 4/02.07.2018/34P/6C