

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 6-9-2019****DELIVERED ON 12-9-2019****CRMP No. 186 of 2014**

1. R. Ajit S/o D. Ramchandra Aged About 41 Years The Chief Executive Officer (Printer And Publisher), Central Chronicle Raipur, Navbharat Bhawan, Press Complex, Rajbandha Maidan, Raipur, PS City Kotwali, Raipur, Tah. And Distt. Raipur C.G.
2. K.N. Kishore S/o K.K. Nakulan Aged About 44 Years Editor, Central Chronicle Raipur, Navbharat Bhawan, Press Complex, Rajbandha Maidan, Raipur, PS City Kotwali, Raipur, Tah. And Distt. Raipur C.G.
3. Dinesh Kumar S/o Late Sachchidanand Aged About 49 Years Journalist/ reporter, Central Chronicle Raipur, Navbharat Bhawan, Press Complex, Rajbandha Maidan, Durg, PS City Kotwali, Raipur, Tah. And Distt. Raipur C.G.

---- Petitioners**Versus**

1. J.K. Laxmi Cement Limited Village Malpuri Khurd, Tah. Dhamdha, Distt. Durg C.G.
2. D.K. Mehta S/o B.R. Mehta Senior Vice-President, J.K. Laxmi Cement Ltd., Village Malpuri Khurd, Tah. Dhamdha, Distt. Durg C.G.
3. State of Chhattisgarh through The Distt. Magistrate, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For petitioners No.1 and 2	:	Ms. Usha Menon, Adv.
Petitioner No.3	:	In person.
For respondents No.1 and 2	:	Mr. S. S. Rajput, Adv.
For respondent No.3	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioners have preferred this CRMP under Section 482 of the Criminal Procedure Code, (for short 'Cr.P.C.') to quash the complaint case No. 534/2014, registered under Section 500 IPC against them, pending before JMFC Durg.
2. In brief the case of the respondents is that respondent No.1 is a reputed National level cement manufacturing company. On the basis of news reports of petitioner No.3, petitioners No.1 and 2 published a news

in the English newspaper Daily Central Chronicle dated 08-04-2013 that the Senior Officers of the company, 40 employees of Jharkhand domicile, associates of Virendra Kurre had set the factory on fire in the presence of police officials, two crore rupees cash were kept in the gunny bags by the Senior Offices of the company which were not burnt, the company provided 7 LPG gas cylinders to the arsonist. They also published a news in English newspaper Twin City Chronicle dated 09-04-2013 that respondent No.2 and his associates had set the fire, the company is helping in theft. The allegations are defamatory.

3. In brief the petitioners' case is that the provisions of Section 200 have not been followed by the JMFC. Respondents No. 1 and 2 made malicious allegations. The complaint case is filed with ulterior motive to take revenge from them, because petitioner No.3 had reported many irregularities, corruption of the company and his officials. After 7 months of filing the complaint it was registered. The source of news was the information received from other persons and documents received under RTI. It is not possible that a single villager may enter into the premises of the company. According to the annual report of the company they were under pressure to pay four crore rupees with effect from 1st April, 2013 but factory was not in a position to start production for the next years and thereafter due to fire. They succeeded in rescheduling the project plan and also the loan liabilities. They also wished to encash the fire incident from the insurance companies.

4. JMFC Durg after recording the statements under Sections 200 and 202 Cr.P.C. registered a complaint case against the petitioners under Section 500 of the IPC on 16-01-2014, considering the news published in Central Chronicle Newspaper dated 08-04-2013 and 09-04-2013.

5. Counsel for petitioners No.1, 2 and petitioner No.3 himself argued that respondents No.1 and 2 failed to produce any concrete evidence to substantiate the charge punishable under Section 500 of the IPC. Filing complaint by respondents No. 1 and 2 is an act of vendetta. Respondent No.2 is not competent to file the said complaint. Respondents No.1 and 2 are abusing the process of law to harass them. The intervention of this Court is necessary to secure ends of Justice.

6. Counsel for the respondents No.1 and 2 argued that imputations

were made by petitioners by way of publishing said news, knowingly that it would harm their reputation. Prima facie a case under Section 500 IPC is made out. There are no such grounds on strength of which this Court may intervene by exercising powers enumerated in Section 482 Cr.P.C.

7. Counsel for the respondent No.3 supported the case of the respondents No. 1 and 2.

8. It would be pertinent to mention the provisions of Section 499 of the IPC which reads as under :-

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

- Explanation (1) xxx xxx xxx
- Explanation (2) xxx xxx xxx
- Explanation (3) xxx xxx xxx
- Explanation (4) xxx xxx xxx

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.”

9. Counsel for respondents No. 1 and 2 placed reliance in the judgment of Hon'ble Supreme Court in the matter of **M.N. Damini -v- S.K. Sinha and others** [(2001) 5 SCC 156], wherein it has been observed that -

“ For deciding whether the criminal proceedings should be allowed to continue or the same should be quashed, two aspects are to be satisfied (1) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue”

10. Counsel for respondents No. 1 and 2 placed reliance in the judgment of Hon'ble Supreme Court in the matter of **K.M. Mathew -v- K.A. Abraham and others** [(2002) 6 SCC 670], wherein it has been observed that -

“ There is no statutory immunity for the Managing, Resident Editor

or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control.”

11. Counsel for respondents No. 1 and 2 placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Mohd. Abdulla Khan -v- Prakash K.** [2018(1) SCC 615], wherein it has been observed that -

“Whether there is sufficient evidence to establish the guilt of respondent for any one of Sections 500, 501, 502 is a matter that can be examined only after recording evidence at the time of trial. That can never be a subject-matter of a proceeding under Section 482, Cr.P.C.”

12. Counsel for petitioners No. 1 and 2 placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Rajib Ranjan and others -v- R. Vijay Kumar** [(2018) 1 SCC 615], wherein it has been observed that:-

“The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Where the case with civil nature converts into criminal prosecution, the High Court can quash the proceedings in exercise of its inherent powers under Section 482, Cr.P.C.”

13. In the judgment of Hon'ble Supreme Court in the matter of **Umesh Kumar Vs. State of Andhra Pradesh and another** [(2013) 10 SCC 591], Para 20 is relevant which is mentioned below:-

“**20.** The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the

petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.”

14. Hon'ble Supreme Court in the matter of **Tilly Gifford Vs. Michael Floyd Ishwar and other** [(2018) 11 SCC 205] has observed in Para 3 as under:-

“3.Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.”

15. In the matter of **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, Hon'ble Supreme Court has observed in para 108 as under:-

“108. we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, in para 6, the Full Bench of Hon'ble Supreme Court has observed as under :-

“The inherent power of the High Court under Section 561-A of the Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may

or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

17. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

(5) xxx xxx xxx

(6) xxx xxx xxx

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) xxx xxx xxx

18. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised **sparingly and**

with caution.”

19. In the matter of **State of UP v. Golkonda Linga Swamy** [(2004) 6 SCC 522] Hon'ble Supreme Court observed that while exercising the power under Section 482 of Cr.P.C. the court does not function as a court of appeal or revision.....

20. From the aforesaid provisions of Section 499 IPC and aforesaid observations made by the Hon'ble Supreme Court, following legal propositions emerge:-

- i. Inherent powers enumerated in section 482, CrPC can be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of process of Court and to otherwise secure the ends of justice;
- ii. Inherent power under Section 482, Cr.P.C. is to be exercised sparingly and with caution;
- iii. The High Court cannot appreciate the evidence as it can only evaluate material document on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceedings against the accused;
- iv. The Court cannot look into the material, acceptability of which is essentially a matter for trial;
- v. Power under Section 482 Cr.P.C. does not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused;
- vi. While exercising the power under Section 482, Cr.P.C. Court does not function as a court of appeal or revision;
- vii. Where the allegations made in the first information report or the complaint, and other materials accompanying the FIR or complaint prima facie disclose a cognizable offence or make out a case against the accused, powers under Section 482 Cr.P.C. should not be exercised;
- viii. Where there is no bar to the institution and continuance of the proceedings, powers under Section 482 Cr.P.C. should not be exercised;
- ix. Where a criminal proceeding is not manifestly attended with

malafide with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and person grudge, powers under Section 482 Cr.P.C. should not be exercised;

- x. If any person makes or publishes imputation by words or written or by making signs or by visible representation with intention or knowledge, or having a reason to believe that such an imputation will harm the reputation of the person against whom the imputation is made, the defamation is made out except the exceptions provided in Section 499 of IPC.
- xi. If a case with civil nature converted into criminal prosecution to pressurize the accused or harass him then Court can intervene in the matter by exercising the power embodied in Section 482, Cr.P.C.

21. From the complaint of respondents No. 1 and 2, statements recorded under Sections 200 and 202 of Cr.P.C., daily newspapers English – Central Chronicle dated 8-4-2013 and dated 9-4-2013 and as per the petitioners' case, news were published that J.K.S Laxmi Cement Factory was not torched by the Irritated villagers. As per the informed sources, factory was set on fire together by the senior officials of the company, supporters of Kurre and about 40 workers belonging to Jharkhand wearing company's helmets. Reliable sources said, as per plan money Rs. 2 crores were to be paid to Kurre which were kept in a gunny bag in the office of a senior official of the company which were not burnt. The company had also provided 7 LPG Gas Cylinder. Sources revealed that flourishing business of theft continued for more than 30 days. The theft was a regular practice in the work premises of JK Laxmi in knowledge of company officials.

22. In the case in hand, prima facie it does not appear that JMFC Durg has not followed the provisions of Section 200 of the Cr.P.C. Moreover petitioners have not raised any objection before trial Court regarding this count. Thus, this Court finds that on this count, this Court cannot intervene in the proceedings of said complaint case.

23. In the case in hand, complaint was filed by respondent No. 2 who is the Senior Vice President of respondent No. 1. Prima facie it cannot be

said that on behalf of respondent No. 1, respondent No. 2 cannot file the complaint. Moreover, this question has not been raised by the petitioners before the trial Court. Thus, this Court cannot intervene in the proceedings of said complaint case on this count.

24. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Tilly Gifford** (supra), this Court finds that aforesaid defence of petitioners cannot not be considered at this stage.

25. It does not appear that there is an express legal bar to the institution and continuance of the proceedings against the petitioners. Prima facie it does not appear that criminal proceeding has been instituted with mala fide intention or ulterior motive for wreaking vengeance on the petitioners and with a view to spite them due to private and personal grudge.

26. Prima facie it does not appear that respondents No. 1 and 2 converted the case of civil nature into this criminal case to harass or pressurise the petitioners. Thus, petitioners do not get any help from the aforesaid observation made by Hon'ble Supreme Court in the matter of **Rajib Ranjan** (supra).

27. Prima facie it is manifest that petitioners had exercised control over said news articles, thus no statutory immunity is available to them. Thus, aforesaid observation made by Hon'ble Supreme Court in the matter of **K.M. Mathew** (supra) goes against the petitioners.

28. In the case in hand whether petitioners are protected by first exception of Section 499, I.P.C. imputations were made or published for the public good is the question of fact. Looking to the aforesaid observations made by Hon'ble Supreme Court in the matters of **Mohd. Abdulla Khan**(supra), **Umesh Kumar** (supra) and **Tilly Gifford** (supra), this Court finds that only trial Court can decide by appreciation of the evidence as to whether first exception of Section 499 of the IPC is available to petitioners or not. It is not the subject matter of the proceeding under Section 482 Cr.P.C.

29. Looking to the above mentioned facts and circumstances of the case, this Court finds that from the aforesaid complaint, statements recorded under Sections 200 and 202 Cr.P.C., imputations made in

aforesaid newspapers, prima facie a case under Section 500 of the IPC is made out against the petitioners. Thus, aforesaid observations made by the Hon'ble Supreme Court in the matter of **Choudhary Bhajan Lal** (Supra), **R.K. Kapoor** (Supra), **Golkonda** (supra) and **M.N. Damini** (supra) are applicable against petitioners and in favour of respondents.

30. In the case in hand, it appears that there is no abuse of process in the proceedings of said complaint case and no intervention is necessary to secure ends of justice. Thus, looking to the aforesaid observation made by Hon'ble Supreme Court in the matter of **Parbatbhai Aahir** (supra), this Court finds that on the ground of abuse of process and to secure ends of justice, this Court can not intervene in the proceedings of said complaint case.

31. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid observation made by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection.

32. Consequently, the instant Cr.M.P. is dismissed.

Sd/-
(Sharad Kumar Gupta)
Judge