

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.1984 of 2018

Arun Thakur, S/o Late Shri Vidyanath Thakur, aged about 72 years,  
Rajgum Bara, Vijay Ward 02, Jagdalpur, District Bastar (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Station House Officer, Police Station Kotwali, Jagdalpur, District Bastar (C.G.)
2. Smt. Pratibha Pandey, W/o Late Ghanshyam Pandey, aged about 60 years, R/o Maa Danteshwari Photocopy Center, Collectorate Premises, Jagdalpur, District Bastar (C.G.)
3. Madhuri Pandey, D/o Late Ghanshyam Pandey, Aged about 40 years, R/o Dharampur, House No. 9, State Bank Colony, Dharpura, Jagdalpur, District Bastar (C.G.)
4. Jyoti Pandey, D/o Late Ghanshyam Pandey, Aged about 48 years, R/o Dharampur, House No. 9, State Bank Colony, Dharpura, Jagdalpur District Bastar (C.G.)
5. Pramila Pandey, D/o Late Ghanshyam Pandey, Aged about 50 years, R/o Dharampur, House No. 9, State Bank Colony, Dharpura, Jagdalpur, District Bastar (C.G.)
6. Prafulla Pandey, S/o Late Ghanshyam Pandey, Aged about 45 years, R/o Dharampur, House No. 9, State Bank Colony, Dharpura, Jagdalpur, District Bastar (C.G.)
7. Sangeeta Pandey, D/o Late Ghanshyam Pandey, Aged about 44 years, R/o Dharampur, House No. 9, State Bank Colony, Dharpura, Jagdalpur, District Bastar (C.G.)

---- Respondents

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For Petitioner: Mr. Rahul Tamaskar and Mrs. Madhunisha Singh,  
Advocates.

For Respondent No.1 / State: -

Mr. Chandresh Shrivastava, Deputy Advocate General.

For Respondent No.2: -

Mr. Punit Ruparel, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/05/2019

1. Whether an Advocate, while acting under the instructions of his client and proceeding professionally, can be prosecuted / punished for the offence of defamation punishable under Section 500 of the Indian Penal Code is the precise question involved in this petition which arises for consideration on the following factual backdrop: —
2. The petitioner is an Advocate enrolled under the provisions of the Advocates Act, 1961 and has standing of more than 45 years at the Bar in District Court, Jagdalpur (Bastar). He drafted a plaint on behalf of Smt. Madhuri Pandey, D/o Ghanshyam Pandey that is for declaration of title, confirmation of possession and permanent injunction against Pratibha Pandey, arrayed as defendant No.1 in the plaint and in para 7, defendant No.1 was mentioned as concubine of Ghanshyam Pandey. The dispute relates to the property of plaintiff's (Smt. Madhuri Pandey's) father Shri Ghanshyam Pandey and the suit was filed on 10-1-2014 before the trial Court. In that suit, the said defendant – Pratibha Pandey appeared before the trial Court on 4-5-2014 through her counsel and thereafter, it appears that she filed a complaint on 17-2-2018 before the higher authorities including the Inspector General of Police, Jagdalpur, Bastar, that the petitioner along with other persons filed a plaint in which she has been held to be the concubine of one Ghanshyam Pandey, whereas she is widow of Late Shri Ghanshyam Pandey and as such, appropriate action be taken for damaging her reputation. It appears that the said complaint was not taken cognizance of by the police authorities leading to filing of petition before this Court being W.P.(Cr.)

No.23/2018 (Smt. Pratibha Pandey v. State of Chhattisgarh and eleven others) for taking action against the State and other persons in terms of Lalita Kumari v. Government of Uttar Pradesh and others<sup>1</sup> in which this Court directed the concerned police to proceed in accordance with law after registering the first information report (FIR). Thereafter, the police investigated and registered the offence under Sections 506 & 509 of the IPC and thereafter, charge-sheet was filed for offence under Sections 294, 500, 506 and 509 read with Section 34 of the IPC.

3. In the aforesaid background facts, the petitioner takes exception to the initiation and continuance of his prosecution for the aforesaid offences principally, on the ground that he being an Advocate in performance of his professional duty has drafted the plaint bona fide against respondent No.2 herein which was duly filed before the trial Court and in which she is contesting the suit and therefore the defamatory statement, if any, is covered by Ninth Exception to Section 499 of the IPC and therefore no action can be taken on the basis of his act in the professional capacity in a bona fide manner. Even otherwise, taking the complaint as it is on its face value, no offences punishable under Sections 294, 500, 506 and 509 read with Section 34 of the IPC are made out, therefore, Criminal Case No.540/2018 against the petitioner pending in the Court of Chief Judicial Magistrate, Jagdalpur deserves to be quashed and the impugned order dated 8-8-2018 refusing to discharge him on the ground of limitation deserves to be set-aside.

4. Return has been filed by respondents No.1 and 2 separately

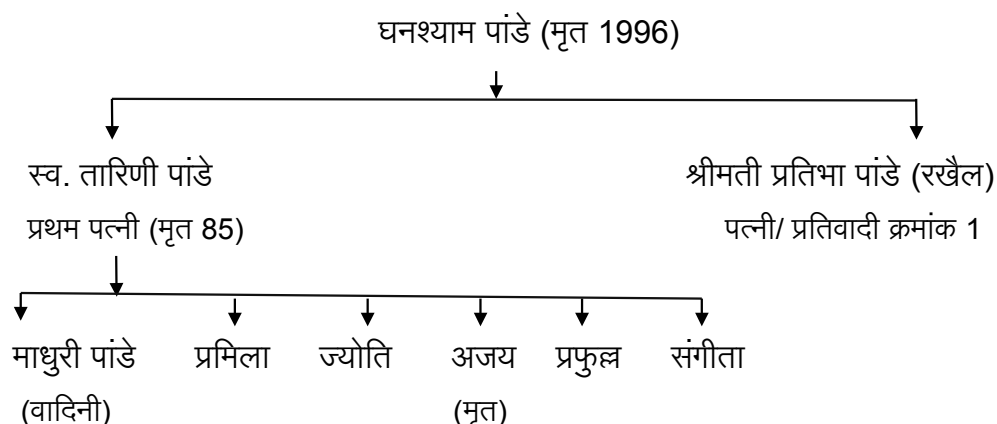
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<sup>1</sup> (2014) 2 SCC 1

opposing the petition under Section 482 of the CrPC holding that action taken by the police authorities is strictly in accordance with law.

5. Mr. Rahul Tamaskar, learned counsel appearing for the petitioner, would submit that the petitioner has acted strictly in performance of his professional duty by drafting the plaint as per the instructions of his client which cannot be taken exception to, as the Advocate enjoys privilege while acting professionally for administration of the cause in which he is professionally engaged. He would further submit that by virtue of the provision contained in Section 196 of the CrPC, cognizance of offence under Section 500 of the IPC cannot be taken on the basis of police report as such, for offence under Section 500 of the IPC, cognizance on police report is barred. Lastly, he would also submit that no such offence under Sections 294, 506 and 509 of the IPC are made out against the petitioner and the learned trial Magistrate is absolutely unjustified in rejecting his application for discharge on the ground of limitation.
6. Mr. Chandresh Shrivastava, learned Deputy Advocate General appearing on behalf of the State / respondent No.1, would submit that the report filed by respondent No.2 herein was considered and the offences charged were found against the petitioner and as per the material available on record, the petitioner has been charge-sheeted which is strictly in accordance with law and thus, initiation and continuance of prosecution of the petitioner cannot be held to be unsustainable under the law and the instant petition deserves to be dismissed.

7. Mr. Punit Ruparel, learned counsel appearing for respondent No.2, would submit that the petitioner knowing fully well that respondent No.2 is the legally wedded wife of Shri Ghanshyam Pandey, who is no more, in order to defame her, drafted the plaint in the manner which is clearly defamatory to respondent No.2, as the duty of the Advocate prescribed in Chapter II, Part VI, of the Bar Council of India Rules – Duty to Opponent has been prescribed which the petitioner has not followed, therefore, taking cognizance of the offence under Section 500 of the IPC on police report is strictly justified. He would further submit that the petitioner has not only made defamatory statement in the plaint while drafting the plaint, but also thereafter, abused and threatened respondent No.2 which constitutes the offence under Sections 294, 506 and 509 of the IPC. Therefore, the petitioner has rightly been charge-sheeted for the aforesaid offences which is in accordance with law and no interference is called for in the impugned order in exercise of inherent jurisdiction under Section 482 of the CrPC.
8. I have heard learned counsel for the parties and considered their respective submissions made herein-above and also went through the record with utmost circumspection.
9. The petitioner having been engaged as counsel drafted a plaint on behalf of Smt. Madhuri Pandey, D/o Ghanshyam Pandey, as the dispute relates to the property left by Ghanshyam Pandey and Smt. Madhuri Pandey is one of the daughters of late Shri Ghanshyam Pandey. The petitioner while drafting the plaint on behalf of Smt. Madhuri Pandey has shown the family tree as under: -



10. It appears from the aforesaid genealogical tree that respondent No.2 herein has been shown to be the concubine / wife of Ghanshyam Pandey. This, according to respondent No.2, is defamatory, as she is the legally married wife of Ghanshyam Pandey after the death of his first wife Smt. Tarini Pandey and that led to the present dispute.

11. Thus, in the instant case, the petitioner, who had drafted the plaint in discharge of his professional duty on the basis of instructions given by the client, is being prosecuted for offence under Section 500 of the IPC.

12. Section 499 of the IPC defines defamation 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 expected, to defame that person.

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

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

*Explanation 3.*—An imputation in the form of an alternative or expressed ironically, may amount to

defamation.

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

13. Ninth Exception to Section 499 of the IPC, which is relevant to the present case, is quoted herein-below: -

**“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 on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.”

14. In order to attract the Ninth Exception to Section 499 of the IPC, the imputation must be shown to have been made (i) in good faith; and (ii) for the protection of person making it or for any other person or for public good.

15. In the matter of Chaman Lal v. State of Punjab<sup>2</sup>, the Supreme Court has held that in order to establish good faith and bona fide, it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the accused made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally, whether there is preponderance of probability that the accused acted in good faith.

16. The Madras High Court in the matter of K. Pannai Sethuraman v.

A.R. Sethupathy<sup>3</sup> has held that it is a settled principle of law that a

<sup>2</sup> AIR 1970 SC 1372

<sup>3</sup> 2008 Cri.L.J. 3155

lawyer conducting a case on behalf of his client enjoys certain privileges and latitudes and the presumption will be that he has acted in good faith unless, contrary is alleged or established. An advocate will come within the Ninth Exception to Section 499 of the IPC and it will be presumed that he acted in good faith and in the interest of the protection of his client unless contrary is alleged or established.

17. The Allahabad High Court in the matter of **B Sumat Prasad Jain v. Sheo Dutt Sharma and another**<sup>4</sup> with regard to the privilege of an advocate acting professionally in a cause observed as under: -

“So long as the interests of litigants in this country are entrusted to recognized and qualified professional men and so long as the Courts repose their confidence in the Bars which practise before them, I respectfully agree with Sir Henry Richards in thinking that it would be a disaster to the litigating public, both if the liberty of speech or action of their advocates were circumscribed by exposure to civil suits for words spoken or written in the course of the administration of cause entrusted to them, and if the Courts were by law compelled to withdraw their confidence from them. Such exposure would, I think, be calculated to limit their freedom and independence in their clients' interests to a greater extent than would be the case in England, if no absolute privilege existed there, since the risk of vexatious and often ruinous litigation in India is far greater. Nor do I perceive for what good reasons, so long as the same principles of the practice and administration of justice are maintained, or aimed at, in this country as in England the necessity for the maintenance of the absolute privilege of the Bar should be less. Indeed, there is the greater need for it in a country in which the advocate is exposed to larger risks of spiteful litigation. If it be said that conversely, the risk of the abuse of an absolute privilege is also greater, I should still maintain that it were better in the public interest that the immunity of the advocate should be sufficiently large to enable him to perform his duty fearlessly than that some relatively few cases of abuse should be made the subject of a just civil liability. If abuse occurs, as sometimes from inexperience and sometimes from less excusable causes is bound to happen, the remedy lies, I think, not in an alteration of

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4 AIR 1946 Allahabad 213

the law relating to the privilege but in fostering high standards of practice, in the censure of the public and in the continuous vigilance of the Courts themselves.”

18. Likewise, in the matter of **K. Daniel v. T. Hymavathy Amma**<sup>5</sup> it was observed by the Kerala High Court that the English Courts have reiterated the view during last four hundred years that the statements made by Judges, Juries, counsel, parties and witnesses in the course of judicial proceedings are not actionable in civil law for defamation as the occasion is absolutely privileged. It was further held that the English Common Law relating to absolute privilege enjoyed by Judges, advocates, attorneys, witnesses and parties in regard to words spoken or uttered during the course of a judicial proceeding is applicable in relation to a civil suit filed for damages for defamation. The reasons for granting absolute privilege to the statements made in the course of judicial proceedings are laid down in paragraph 11 of the judgment which are as follows: -

“11. It is imperative that Judges, counsel, parties and witnesses participating in a judicial proceeding must be able to conduct themselves without any apprehension of being called upon to answer a claim for damages for defamation. They must be able to act uninfluenced by any such fear. Freedom of speech on such occasions has to be totally safeguarded. Hence it is necessary to protect the maker of statements on such occasions. The privilege arises on account of privilege attached to the occasion and not to the individual. It is possible that sometimes counsel or the parties or witnesses may take advantage of the occasion and indulge in false or malicious statement which has the effect of bringing down the reputation of some other person; that would certainly be mischievous. But to say that statement would be privileged only in the absence of malice would put these persons in considerable strain and apprehension on such occasions. Basis of privilege is not absence of malice or the truth of statement or the intention of the maker but public policy. Any restriction

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5 AIR 1985 Kerala 233

on privilege during the occasion would create constraints in the process of administration of justice.”

19. Likewise, in the matter of **Chunni Lal v. Narsingh Das**<sup>6</sup>, the Full Bench of the Allahabad High Court has held that defamatory words used in connection with the judicial proceedings are not actionable on the ground of absolute privilege and as such the suit for damages for defamation instituted by the plaintiff was dismissed.
20. Recently, in the matter of, **Pradip Kumar Mitra v. Lipi Basu and others**<sup>7</sup>, the Calcutta High Court relying upon the decision of the Full Bench of the Allahabad High Court in **Chunni Lal** (supra) and that of the Kerala High Court in **K. Daniel** (supra) while following the view has held that the privilege extended to the Judges, Juries, counsel, parties and witnesses are based on the principle of public policy.
21. Likewise, in the matter of **Bennett Coleman & Co. Ltd. and others v. K. Sarat Chandra and others**<sup>8</sup>, the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh held that the privilege of Judges, Counsel, Jury, Witnesses or Parties to be the absolute privilege and observed as under: -

“Absolute privilege-a statement is said to have absolute privilege when no action lies whether against Judges, Counsel, Jury, Witnesses or Parties, for words spoken in the ordinary course of any proceedings before any Court or Tribunal recognized by law. It is manifest that the administration of justice would be paralyzed if those who were engaged in it were liable to actions of libel or slander upon the imputation that they had acted maliciously and not bona fide. The privilege extends not only to words spoken but also to documents properly used and regularly prepared for in the proceedings.”

6 AIR 1918 Allahabad 69

7 2017 SCC OnLine Cal 619

8 MANU/AP/1026/2015

22. The Calcutta High Court in the matter of P.C. Gupta v. The State<sup>9</sup>

has held that the doctrine of absolute privilege is not applicable to criminal proceeding. It was held as under: -

“It is abundantly clear, therefore, that even in the said Single Bench decision of the Bombay High Court, the doctrine of absolute privilege enjoyed by a lawyer in regard to words spoken or uttered during the course- of a judicial proceeding was applied only to civil suits filed for damages for libel or slander and it was noted that there was originally a divergence of opinion and ultimately the preponderance of the decisions of the different High Courts is that the said doctrine of absolute privilege should not be applied to a criminal proceeding where the party prosecuted should be required to bring his case within exception 9 to Section 499 of the Indian Penal Code.”

23. The Calcutta High Court further relied upon the observation by the

Master of the Rolls in the case of *Munster v. Lamb*<sup>10</sup> which is as under: -

“If any one needs to be free of all fear in the performance of his arduous duty, an advocate is that person and, therefore, unless and until there is a proof of 'express malice' on the part of the lawyer, in the discharge of his professional duties, he does not come within the bounds of the offence of defamation. In ancient Rome a class of persons called the juris prudentes came into existence though they were not professional lawyers in their true sense. Notion of law does not include of necessity the extent of a distinct profession of lawyers whether as Judges or as Advocates, but 'there cannot well be a science of law without such profession'. The lawyers are the high priests in pursuit of truth at the altar of justice and there should be no spoke in the wheels of justice by fettering unreasonably the freedom of such lawyers. Fiat justitia mat caelum: Let justice be done, though heavens may fall.”

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9 (1970) ILR 2 Cal 254

10 (1882) SUR. 11 Q.B.O. 588

24. In light of above-stated legal analysis, an advocate, who acted professionally as per instructions of his/her client, cannot be made criminally liable for the offence of defamation under Section 500 of the IPC unless contrary is alleged and established.
25. Now, the question is, whether in light of the Ninth Exception to Section 499 of the IPC and in view of the law laid down in the aforesaid decisions by various High Courts, the statement made in the plaint by the petitioner herein mentioning respondent No.2 herein to be concubine of Shri Ghanshyam Pandey under the instructions of respondent No.3 herein / plaintiff, falls within the said Ninth Exception to Section 499 of the IPC?
26. Reverting to the facts of the case, from a careful perusal of the plaint supported with affidavit, it appears that all the words found in the plaint including that respondent No.2 herein is concubine of Ghanshyam Pandey have been averred only on the basis of instructions given by the plaintiff, as she being the daughter of late Shri Ghanshyam Pandey is claiming the suit property stating that Smt. Pratibha Pandey is not the widow of her father and she is only concubine and not entitled for the suit property. The petitioner in his capacity as advocate in discharge of professional duty on the instructions of his client incorporated the said averment in para 7 of the plaint filed in the civil suit. His acts are bona fide and he cannot be fastened with criminal liability. As such, imputation was made in good faith and on the basis of instructions of his client in order to protect her right to property which she is claiming, as right to property is a constitutional right under Article 330A of the Constitution of India and therefore does not constitute the offence

of defamation under Section 499 of the IPC punishable under Section 500 of the IPC and falls within the Ninth Exception to Section 499 of the IPC. As such, an Advocate who has acted professionally and drafted plaint making averment as per the instructions of his client, cannot be held liable for the offence of defamation under Section 500 of the IPC.

27. Yet, there is one more reason for quashing the prosecution. Section 199 of the CrPC provides that no court shall take cognizance of an offence punishable under Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the offence. Offence of defamation under Section 499 of the IPC punishable under Section 500 of the IPC is one of the offences punishable under Chapter XXI of the IPC. But, in the instant case, the offence has been registered on the basis of police report. The word “complaint” has been defined in Section 2(d) of the CrPC and “police report” is defined in Section 2(r) and according to the said definition, “police report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of Section 173. The law in this regard is also well settled. In the matter of **S. Khushboo v. Kanniammal and another**<sup>11</sup>, the Supreme Court has clearly held that in respect of the offence of defamation under Section 500 of the IPC, the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved and observed as under: -

“37. It may be reiterated here that in respect of the offence of defamation, Section 199 CrPC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is

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11 (2010) 5 SCC 600

aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in the given facts of the present case, we are unable to see how the complainants can be properly described as "persons aggrieved" within the meaning of Section 199(1) CrPC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people."

28. Therefore, in the instant case, cognizance of offence punishable under Section 500 of the IPC could not have been taken in absence of complaint in writing specifically filed by the complainant before the Magistrate, on the basis of police report only which is barred by Section 199 of the CrPC.

29. This would bring me to the question whether the offence under Section 294 of the IPC is made out against the petitioner. In the first report respondent No.2 made to the Inspector General of Police, Jagdalpur, Bastar (page 16 of the petition), there is no allegation to show that the petitioner in the company of other co-accused was present and abused obscene words and shared common intention with them and as such, there is no such ingredient of offence under Section 294 of the IPC and therefore it cannot be held that offence under Section 294 of the IPC is made out against the petitioner.

30. The petitioner has been charged for offence under Section 509 of the IPC only on the ground by aid of Section 34 of the IPC, as from the allegation itself it is evident that the petitioner was not in the company of co-accused when the alleged words were spoken by

the other co-accused to show that he ever shared common intention.

31. This would bring me to finally, the offence under Section 506 of the IPC. As per the complaint and the statements of the complainant and her witnesses, the incident occurred 3-4 years prior to lodging of FIR. Civil suit was filed way back on 10-1-2014 and FIR has been lodged on 24-10-2017.

32. In the matter of **Manik Taneja and another v. State of Karnataka and another**<sup>12</sup>, it has been held by the Supreme Court as under: -

“12. ... The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. ...”

33. Admittedly, respondent No.2 claims that the alleged incident happened in the year 2014 and after lapse of 3-4 years, FIR has been lodged which clearly goes to show that there was no intention of the petitioner to cause harm, as in such a case, she would have rushed to the police authority well in time. As such, even it cannot be held that the petitioner has abused and insulted respondent No.2 in terms of Section 506 of the IPC.

34. As a fallout and consequence of the aforesaid discussion, the impugned order dated 8-8-2018 is set aside and it is held that initiation and continuance of prosecution of the petitioner for the offences punishable under Sections 294, 500, 506 and 509 read with Section 34 of the IPC is nothing but abuse of the process of the Court in terms of clause (1) of paragraph 102 of the decision

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12 (2015) 7 SCC 423

rendered by the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**<sup>13</sup> and as such, the entire proceedings being Criminal Case No.540/2018 (State of Chhattisgarh v. Arun Thakur and others) against the petitioner pending in the Court of Chief Judicial Magistrate, Jagdalpur are hereby quashed. It will continue against others.

35. The petition is allowed to the extent indicated herein above.

Sd/-  
(Sanjay K. Agrawal)  
Judge

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13 1992 Supp (1) SCC 335

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.1984 of 2018

Arun Thakur

Versus

State of Chhattisgarh and others

Head Note

An advocate who has acted professionally as per instructions of his clients' cannot be prosecuted for offence of defamation under Section 500 of the IPC.

एक अधिवक्ता जिसने अपने मुवक्किल के निर्देशों के अनुरूप व्यावसायिक कार्य किया है, उसे भारतीय दण्ड संहिता की धारा 500 के अधीन मानहानि के अपराध के लिए अभियोजित नहीं किया जा सकता।