

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 22 of 2019

1. Saurabh Jain S/o Shri Mukesh Jain, Aged About 32 Years, R/o Simga Road Sasaholi, Tilda- Nevra, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Anil Agrawal S/o Late Shri Kishan Lal Agrawal, Aged About 44 Years, R/o Gandhi Chowk, Ward-12, Nera, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioners

Versus

1. State of C.G. Through Collector, Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Mahesh Agrawal S/o Brijmohan Agrawal Aged About 40 Years R/o House No. 05, Neelkamal Sadan, Kharora Road, Ward No.18, Tilda Nevra, District- Raipur, Chhattisgarh..... Complainant, District : Raipur, Chhattisgarh

-----Respondents

For Petitioners : Mr. Pawan Kesharwani and Ms. Juhi Jaiswal, Advocates.
For State/respondent No.1: Mr. Arijit Tiwari, Panel Lawyer.
For Respondent No.2: Mr. Govind Ram Miri and Mr. Basant Kaiwartya, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

23/10/2019

1. This petition has been brought challenging the order dated 09-11-2017 passed in Criminal Revision No.No.417/2017 by the Court of Additional Sessions Judge (Special Judge of Special Court for trial of C.B.I. cases) Raipur in which order of the trial Court was set aside and the revisional Court directed the trial Court to take cognizance under Section 500 of the IPC and proceed according to Section 204 of the Cr.P.C.
2. Respondent No.2 filed a complaint before the Court of JMFC Tilda for

prosecuting the petitioners under Section 500 of the IPC. The trial Court by order dated 23-08-2017 dismissed the complaint under Section 203 of the Cr.P.C. Upon being challenged in Revision petition the revisional Court has held that there is substance present for prosecution under Section 500 of the IPC, hence, the order has been passed.

3. It is submitted by learned counsel for the petitioners that the case of the petitioners is covered under Second Exception under Section 499 of the IPC. Respondent No.2 is elected Chairman of Municipal Council Tilda Newara. The petitioners being in the opposition had expressed their views in good faith regarding the conduct of respondent No.2 in the discharge of his public functions, therefore, it does not amount to commission of offence of defamation.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Subramanian Swamy v. Union of India**, (2016) 7 SCC 221, in which it was held that for claim of benefit of Second Exception under Section 499 of penal Code it is required to show that opinion expressed was in good faith relating to the conduct of a public servant in discharge of public functions or respecting his character so far his character appears in that conduct. Therefore, it is prayed that no offence is made out against the petitioners. Hence, the order impugned be set aside.

4. Learned counsel for respondent No.2 submits that the petition has been brought at premature stage, there is evidence present to show the act and conduct of the petitioners, according to which material is present for prosecution of the petitioners under Section 500 of the IPC. Reliance has placed on the judgments of Hon'ble the Supreme Court **S.L. Palanitkar and others Vs. State of Bihar and another**, 2001

CRI.L.J. 4765, **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others**, (1976) 3 SCC 736 and **Chandra Deo Singh Vs. Prokash Chandra Bose alias Chabi Bose and another**, AIR 1963 SC 1430.

5. In reply it is again submitted that the case of the petitioners very clearly falls under Exception 2 of Section 499 of the IPC.
6. Heard learned counsel for the parties and perused the documents.
7. In the complaint filed by respondent No.2 it is stated that these petitioners arranged a meeting in which the petitioners have without any basis leveled allegation of corruption against respondent No.2, because of which the image and reputation of respondent No.2 has suffered harm. The witnesses examined in the complaint case who have made the statement as it is mentioned in the complaint.
8. In the present state of things there is evidence present that defamatory statement was made against respondent No.2 because of which his image and reputation have been maligned. The claim of the petitioners that the case falls under Exception 2 of Section 499 of the IPC needs to be established, which is not clearly made out at this stage. It has to be established that the petitioners had given their expression in good faith regarding the conduct of respondent No.2 and also regarding his character and that element of good faith will be established only by bringing evidence. Therefore, the good faith of the petitioners cannot be presumed, hence, I do not find any substance in this petition, accordingly, this criminal revision is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge