

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.955 of 2018****Order reserved on: 24.01.2020****Order delivered on:14.02.2020**

Y.K.Degan, S/o Shri J.K. Degan, Aged about 62 years,
The then Executive Director (Works), Bhilai Steel
Plant, Bhilai, Present Post-Jindal Nagar President,
Jindal Steel, District-Angul Odisha

----- Petitioner**Versus**

1. Smt. Suman Unni W/o Shri K.L. Krishnan, Age about 45 years, Quarter Number-4A, Street-35, Street-10, Bhilai, Thana-Durg, District Durg, Chhattisgarh
2. State of Chhattisgarh, Through Collector, Durg, District Durg, Chhattisgarh

----- Respondents

For Petitioner	: Dr.N.K.Shukla, Senior Advocate with Mr.Ajay Lakra, Advocate
For Respondent No.1	: Smt.Suman Unni in person

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. This petition under Section 482 of the CrPC is directed against the order dated 9.4.2018 passed by 1st Additional Sessions Judge, Durg, in Criminal Revision No.195/2017 by which learned revisional Court has set aside the order dated 8.8.2017 passed by the trial Magistrate on 8.8.2017, whereby the trial Magistrate has dismissed the complaint finding no case for taking cognizance for offence under Section 500 of the IPC is made out against the

petitioner.

2. The aforesaid challenge has been made on the following factual backdrop:-

2.1 It is the case of the petitioner that he has made a written complaint on 21.12.2013 at Kotwali Police Station, Sector-6, Bhilai against threatening given to him by one woman "Suman" on that day at 8.35 a.m., but the police vide Crime No.429/2013 gave a report under Section 155 of the CrPC and advised the petitioner to approach the jurisdictional Court and on the next day i.e. 22.12.2013, news article was published in local newspaper "Naiduniya" titled as "ईडी के घर घुसकर बेदर भाजपा नेत्री ने मचाया हंगामा", in which it was mentioned that the petitioner has lodged complaint in police station against BJP leader Smt.Suman Unni and investigation is being done as it is also reported that said Suman Unni was evicted from unauthorized occupation of Bhilai Steel Plant's house and created ruckus in the house of the petitioner.

2.2 Respondent No.1 filed an application under Right to Information Act, which was received to her and thereafter, she sent legal notice to the petitioner, which was replied by the petitioner

on 6.6.2014 and ultimately, on 24.6.2015 respondent No.1 filed criminal complaint under Section 200 of the CrPC making the petitioner, Bureau Chief, Naiduniya, Editor, Dainik Naiduniya and SHO as party, in which learned Magistrate took cognizance of offence under Section 500 of the IPC on 13.10.2015 against the petitioner, against which, the petitioner preferred revision under Sections 397 and 399 of the CrPC, in which learned revisional Court set aside the order dated 13.10.2015 passed by the trial Court and remanded the case to the trial Court again for inquiring again and for taking additional preliminary evidence by respondent No.1 herein. Pursuant to the remand, respondent No.1 examined one Santosh Rawat and A.K. Qureshi and this time, learned trial Magistrate dismissed the complaint on 8.8.2017, against which, respondent No.1 preferred criminal revision and by the impugned order, the revisional Court has allowed the revision and held that prima-facie offence under Section 499/500 of the IPC is made out against the petitioner and therefore, directed for taking cognizance against him, against which, this petition under Section 482 of the CrPC has been

filed.

3. Reply has been filed by respondent No.1 in detail stating inter-alia that the revisional Court is absolutely justified in directing for taking cognizance against the petitioner.
4. Learned Senior Counsel submits that learned revisional Court has committed illegality in directing for taking cognizance against the petitioner, as such, the impugned order deserves to be set aside.
5. On the other hand, respondent No.1 in person supports the impugned order.
6. I have heard learned counsel for the parties and considered their submissions made hereinabove and also went through the records with utmost circumspection.
7. 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."

8. Section 501 of the IPC deals with printing or engraving matter known to be defamatory, which reads as follows: -

"501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

9. "To publish" means to make known to others or to communicate to a third person. (See Webster's Comprehensive dictionary – International Edition). Publication will be complete if after making or printing the defamatory statement, it is made

available to the public. (Vide Collector of Central Excise v. New Tobacco Company and others¹).

Publication includes pleadings, affidavits etc. which are filed in Courts. (In Re Ajay Kumar Pandey, Advocate²). The Kerala High Court also in the matter of Prabhakaran v. Gangadharan³ has held that once a statement is filed in a Court of law such statement can be taken as published.

10. The Supreme Court in the matter of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others⁴ laid down the criteria when the order of the Magistrate in issuing process against an accused can be quashed or set aside:-

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can even reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible ; and

1(1998) 8 SCC 250

2(1998) 7 Supreme 473

32006 (2) KLT 122

4(1976) 3 SCC 736

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

11. Applying these principles to the facts of the present case, it seems that the petitioner made complaint to the police on 21.12.2013, but the police did not take cognizance of said complaint holding that the complaint discloses non-cognizable offence. Newspaper report filed as Annexure P-3 would show that the newspaper journalist approached the Town Inspector, Bhilai Nagar and covered the information about the news and on that basis article was published. Additional statement of Santosh Rawat and A.K. Qureshi was taken after remand of the matter by the revisional Court. The statement of Santosh Rawat does not disclose that information to newspaper agency about the incident was given by the petitioner and it was published at the instance of the petitioner. Likewise, other statement of A.K. Qureshi also does not disclose that information to the newspaper agency about the incident was given by the petitioner. Therefore, it appears from the statements of the witnesses that the petitioner did

not inform the newspaper journalist about the incident and said information was collected by the newspaper journalist from police station. It also appears from news article so published in the newspaper and therefore, it cannot be held that the petitioner has committed the offence under Section 499 of the IPC, which is liable to be punished under Section 500 of the IPC, as such, learned revisional Court has committed legal error in directing for taking cognizance under Section 500 of the IPC against the petitioner.

- 12.** For the foregoing reasons, the CrMP is allowed and the impugned order dated 9.4.2018 passed by the 1st Additional Sessions Judge, Durg, in Criminal Revision No.195/2017 directing for taking cognizance under Section 500 of the IPC against the petitioner is hereby set aside.

Sd/-

(Sanjay K.Agrawal)

Judge

B/-