

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 278 of 2018

Alpana Ghosh & Ors.

-Versus-

Amitava Ghosh

For the Appellants: Mr. Rajdeep Mazumdar, Adv.,
 Mr. Mayukh Mukherjee, Adv.

For the Respondents: Mr. Sandipan Ganguly, Sr. Adv.,
 Mr. Dipanjan Dutta, Adv.,
 Mr. Rajiv Kumar, Adv.,
 Ms. Sambrita Chatterjee, Adv.

Heard on: July 22, 2021.

Judgment on: October 1, 2021.

BIBEK CHAUDHURI, J. : –

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioners/accused persons for quashing of the proceedings in connection with Complaint Case no. C/3915/2017, under Section 500 of IPC now pending before the Court of Ld. Judicial Magistrate, 7th Court at Alipore and all orders passed in connection therewith including order dated 1st December, 2017 whereby the Ld. Chief Judicial Magistrate, Alipore has issued process against the present petitioners.

2. According to the facts of the case, one Mrs. Bela Paul an aged widow/ apartment owner of the society, on 3rd June 2017, had applied for permission for effecting repairs of her apartment. The secretary of the society allowed the same. Subsequently on 25th June 2017 at AGM, a resolution to stop the said repairing work was passed alleging, inter alia that Mrs. Paul might transfer her membership of the society and her apartment. On 12th July 2017, the legal advisor of the society gave a written opinion that the resolution adopted in the AGM dated 25th June, 2017 was illegal and in contravention of the applicable statute. An emergency meeting of the Board of Directors convened on 7th August 2017 was attended by seven out of nine directors. The complainant, opposite party herein, construed to resumption of the repair work at Mrs. Bela Paul's apartment. Accused no. 1 to 3/petitioners herein opposed the same. When the accused no. 2 started shouting at the complainant (who was suffering from fever), he decided to recuse himself from the said meeting.

3. On 9th August, 2017, an alleged defamatory letter was addressed to the chairman of the society. The same was sent to the office of the society on 10th August 2017. And on 12th August, 2017, the same was circulated among all the members of the society. Contents of the alleged defamatory letter stated: (i) Complainant threatened Petitioners with dire consequences and also demeaned female members of the society. (ii) Opposite party caused premature dissolution of the meeting by indecorous behavior in breach of his duties as vice-chairman of the Board

of Directors. (iii) Opposite party was dismissive of the lawful suggestions made by petitioners.

4. On 23rd August, 2017, the opposite party through his Advocate issued notice to the petitioners for ceasing the publication and circulation of the alleged defamatory letter and to issue written apology denying the impugned allegations against him. Lastly, on 14th November 2017 the alleged defamatory letter was found pasted on the wall of the elevators of the apartments of the said society. The opposite party contended that the phrase and expressions used in the impugned letter are designed to invite adverse opinion against the opposite party and amount to an attack on moral standing of the opposite party, and to harm reputation of the opposite party in front of the members of the society and other peers. The allegations made in the letter are baseless and have been made in bad faith with the intent to cause harm to reputation of the complainant. Thus the opposite party filled a complaint before the Learned Chief Judicial Magistrate, Alipore, South 24 Paraganas, vide, complainant case no. C/3915/2017 under Section 500 of Indian Penal Code.

5. In this instant application, the petitioners submitted that they are innocent and are in no way connected with any offence far less offence alleged herein.

6. As stated in section 499 of I.P.C defamation means:

“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.

The exceptions are,- 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.

Second Exception.—**Public conduct of public servants.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant

in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—**Conduct of any person touching any public question.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

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.

Fifth Exception.—**Merits of case decided in Court or conduct of witnesses and others concerned.**—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—**Merits of public performance.**—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Seventh Exception.—**Censure passed in good faith by person having lawful authority over another.**—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract

made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—**Accusation preferred in good faith to authorised person.**—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

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 interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—**Caution intended for good of person to whom conveyed or for public good.**— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

7. Mr. Rajdeep Mazumder, learned Counsel appearing on behalf of the petitioners submits that the petitioners in their capacity as directors issued certain letters to the Chairman of the society in accordance with the provisions of the West Bengal Cooperative Society Rules, 2011 as well the West Bengal Cooperative Societies Act. It is an undisputed fact that in the erstwhile board, the petitioners were directors while the opposite party was the Vice-Chairman of the said society. As per Section 8(4) of the West Bengal Cooperative Societies Act, the Board of Directors is the governing

body of the cooperative society for management of the affairs of the society. The duties of the Board are delineated in Rule 53 of the West Bengal Cooperative Societies Rule. As per Rule 53, it is the duty of the Board to conduct its business with utmost transparency. The petitioners were of the view that the meeting dated 7th August, 2017 was not at all transparent. A member of the society/apartment owner cannot transfer his/her apartment without the permission of the Board. The petitioner being the Directors apprehended that one Mrs. Bela Paul would try to transfer her apartment under the garb of repairing. Therefore, the petitioners raised objection in the said emergency meeting. In the meeting the petitioners were abused humiliated and defamed by the opposite party. Subsequently, the said letters were found to be pasted on the wall of the elevators. There being no material to show even prima facie that the petitioners pasted the copies of the letters on the wall of the elevators, issuance of process under Section 499/500 of the Indian Penal Code is illegal and abusive of the process of the court.

8. It is further submitted by Mr. Mazumder that the learned Chief Judicial Magistrate, Alipore took cognizance of offence against the petitioner without taking into consideration the relevant provisions of the Statute and the ingredients of the offences under Section 499/500 of the Indian Penal Code. He also submits that explanation 4 of Section 499 of the Indian Penal Code clearly states that 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. The complainant/opposite party was alone examined on solemn affirmation under Section 200 of the Code of Criminal Procedure and no other person was examined in support of his case. Thus, the complainant prima facie failed to establish that his reputation was lowered in the estimation of others. According to Mr. Mazumder the basic ingredients of offence under Section 499 of the Indian Penal Code, not being proved prima facie, taking cognizance of offence under Section 499/500 of the Indian Penal Code against the petitioners by the learned Magistrate is abuse of the process of the Court. In support of his contention he refers to a decision of the Hon'ble Supreme Court in the case of **Shatrughna Prasad Sinha vs. Rajbhai Surajmal Rathi & Ors** reported in **(1996) 6 SCC 263**.

9. Alternatively, it is submitted by Mr. Mazumder that the materials on record clearly suggest that on 7th August, 2017 in course of the emergency meeting an altercation took place between the petitioners and the opposite party regarding the affairs of the Board. Both the petitioners and the opposite party by separate letters made certain complaints against each other to the chairman of the society in good faith. Therefore, issuance of letters by both the parties against each other is not defamatory publication because it was done in good faith. In support of his contention Mr. Mazumder refers to a decision of the Hon'ble Supreme

Court in the case of **Rajendra Kumar Sitaram Pande & Ors. vs. Uttam & Anr.** reported in **(1999) SCC (Cri) 393**. In paragraph 7 the Hon'ble Supreme Court observed as follows:-

“7. The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201 can it be said that a prima facie case exist for trial or exception 8 to Section 400 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office in the filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold inquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have

lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental inquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand in our considered opinion this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself. This appeal is allowed.”

10. Mr. Mazumder also relies on an unreported decision of this Court in the case of **M/s Pataka Industries (Pvt.) Ltd vs. State of West Bengal & Ors.** (CRR No.3277 of 2008, judgment delivered on 7th October, 2013). In this case a criminal proceeding arising out of a private complaint was quashed on the ground that the opposite party failed to examine any person, as witness on his behalf in support of the fact that his moral or

intellectual character has been lowered in the eyes of the said person subsequent to publication of the alleged defamatory statements.

11. Mr. Sandipan Ganguly, learned Senior Counsel for the opposite party submits that the opposite party, on the other hand, has been serving as the Vice-Chairman of the Board of Directors of Saptaparni Cooperative Housing Society Limited since 2012. He has been working towards the best interest of the society. He lodged a written complaint under Section 200 of the Code of Criminal Procedure against the present petitioner in the court of the learned Chief Judicial Magistrate at Alipore, stating, inter alia, that on 7th August, 2017 an emergency meeting of the Board of Directors of the Society was convened to take decision on a resolution dated 25th June, 2017 directing one Mrs. Bela Paul, an apartment owner and member of the society to stop repairing work of his apartment. Prior to the aforesaid emergency meeting, the society obtained report of the legal advisor as to whether the Board of Directors of the society could take any decision restraining an apartment owner from effecting necessary repair work in her apartment. The legal advisor submitted his report that the Board of Directors does not have any such authority to stop any apartment owner from making repair of his/her apartment. It is sufficient to state that in the meeting dated 7th August, 2017 hot deliberation was exchanged between the petitioners and the opposite party over the said issue. On 9th August, 2017 and 12th August, 2017 further defamatory allegations were made against the opposite party by accusing him of threatening the petitioners with dire consequences

demeaning female members of the society and also being dismissive of lawful suggestion. The opposite party was exposed as an ill-mannered, uncivilized and dishonest person. It is further alleged by the opposite party that on 14th November, 2017, one Nirupam Chowdhury visited his residence. When he was coming to the residence of the opposite party, he saw a letter pasted on the wall of the elevator containing defamatory statement against the opposite party. The said Nirupam Chowdhury regarded the opposite party in high esteem, but seeing the letter he raised suspicion against the opposite party on his moral character and reputation. According to the opposite party pasting of the letter containing defamatory allegation against him is publication of defamatory letter.

12. After the contents of the petition of complaint filed by the opposite party against the petitioner having been placed, learned Senior Counsel for the opposite party refers to a decision of the Hon'ble Supreme Court in the case of **Cref Finance Limited vs. Shree Shanthi Homes (P) Ltd. & Anr.** reported in **(2005) 7 SCC 467**. In the said decision it is held by the Hon'ble Supreme Court that once the court on perusal of the complaint is satisfied that the complaint discloses the commission of offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, the said matter cannot be quashed under Section 482 of the Code of Criminal Procedure on the ground that the learned Magistrate issued process by passing an order where the words "cognizance taken" was absent. It was held by the Hon'ble Supreme Court that absence of words "cognizance taken" in the order would make no difference because

taking cognizance is distinguished from issuance of process. Though the issue in hand is not on the question about taking cognizance by the Magistrate, Mr. Ganguly invites the Court to consider that Section 482 of the Code should be sparingly used when process against the accused persons is issued.

13. It is further submitted by Mr. Ganguly that the right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation is an element of personal security and is protected by the constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously but these terms are distinguishable. The learned Advocate for the petitioners submitted that the entire incident took place in course of a meeting of the society and parties wrote number of letters to the chairman of the society. According to the opposite party the said letters contained defamatory statement against him. According to the petitioners they wrote letters to the chairman narrating the incident that happened on 7th August, 2017 against the opposite party in good faith. Relying on a decision of the Hon'ble Supreme Court in the Case of **Chaman Lal vs. The State of Punjab** reported in **1970 (1) SCC 590**, it is submitted by Mr. Ganguly that good faith is a question of fact and has also to be established during trial of the case. At the time of taking cognizance or in a proceeding under Section 482 of the Code, neither the Magistrate nor the High Court can decide such question. On the selfsame issue he also

refers to a decision of the Hon'ble Supreme Court in the case of **Sukra Mahto vs. Basdeo Kumar Mahto & Anr.** reported in **1971 (1) SCC 885**.

14. In **Harbhajan Singh vs. State of Punjab & Anr.** reported in **AIR 1966 SC 97**, the Hon'ble Supreme Court held that good faith would be a question to be considered on the facts and circumstances of each case - what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception to Section 499 of the Indian Penal Code.

15. Mr. Ganguly has also placed reliance on Paragraph 37, 38, 39 and 40 of **Jeffrey J. Diermeier & Anr. vs. State of West Bengal & Anr.** reported in **(2010) 6 SCC 243**. The said paragraphs mentioned by Mr. Ganguly is relevant for the purpose of the instant case and is reproduced below:-

“37. It is trite that where to the charge of defamation under Section 500 IPC, the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him. The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the

same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt.

38. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with a degree of proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception.

38. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which it came to be made and the status of the person who makes the imputation as also the status of the person against whom imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding appellants' plea of "good faith" and "public interest". Unfortunately, all these are questions of fact and matters for evidence.

39. 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.”

16. It is submitted by Mr. Ganguly that the petitioners never denied the allegations that the letters containing defamatory allegations against the opposite party were not pasted on the wall of the elevators of the society so that it could be viewed by others at the time of user of the elevators and such act amounts publication of defamatory statement. In support of his contention he refers to a decision of the Hon’ble Supreme Court in the case of **M. A. Rumugam vs. Kittu Alias Krishnamoorthy** reported in **(2009) 1 SCC 101**.

17. Mr. Ganguly concludes by submitting that the letters written by the petitioners were published with the sole intention to harm the reputation of opposite party. Therefore, on the basis of the petition of complaint as well as after examination of the complainant on solemn affirmation the learned Chief Judicial Magistrate, Alipore took cognizance of the offence and issued process against the petitioners. At the time of taking cognizance and issuance of process, the learned Magistrate was satisfied on perusal of the statement of the complainant that he was able to establish prima facie case against the petitioners and therefore issued process. At this stage this Court cannot quash the criminal proceeding

against the petitioners because none of the triple tests contained in Section 482 of the Code is satisfied at this stage. Question as to whether a false complaint has been made against the petitioners or not is required to be gone into by the Magistrate during trial. The opposite party/complainant clearly stated in his statement on oath before the Magistrate that the publication came to the notice of one Nirupam Chowdhury and others while using the elevators installed in the apartments of the said society.

18. Having heard the learned Counsels for the parties and on careful perusal of the reported decision of the Hon'ble Supreme Court and this Court submitted by them, it is recorded at the outset that to constitute an offence of defamation under Section 499, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and the *mens rea* is a condition precedent to constitute the said offence. The complainant has to say that the accused had intended or known or had reason to believe that the imputation made or published would harm the reputation of the complainant. Any harm whatever illegally caused to any person, in body, mind, reputation or property amounts to "injury" within the meaning of Section 44 of the Indian Evidence Act. The harm caused to the reputation of any person is a form of injury. In essence the offence of defamation is the harm caused

to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

19. In the instant case the opposite party is the Vice-Chairman of a housing society. The petitioners, on the other hand, are directors of the Board of the same society. It is not denied that an emergency meeting was held on 7th August, 2017 and in the said meeting hot altercation between the parties took place. While the opposite party alleged that he was defamed by the petitioners, the petitioners also alleged that the opposite party insulted them. It is not disputed that the letters containing defamatory statement were pasted on the walls of the elevators of the apartments of the society. The opposite party alleged that publication of such letter was caused only to defame him in the estimation of others. Whether the content of the said letter was defamatory or not, or whether it was published by the petitioners or not, or whether it came to the notice of others or not or whether the complainant's reputation was demeaned in the estimation by others or not, are questions of facts to be determined by the trial court on the basis of the evidence adduced by the parties.

20. At this stage the criminal proceeding cannot be quashed invoking the inherent power of this Court contained in Section 482 of the Code.

21. In view of the above discussion the instant criminal revision being devoid of any merit is dismissed on contest, however without cost.

(Bibek Chaudhuri, J.)