

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 CRIMINAL APPLICATION NO.3399 OF 2019

PRAMOD NANA PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Yogesh H. Jadhav h/f
Mr. Nagori Girish

APP for Respondent no.1 : Mr. S P Deshmukh
Advocate for Respondent no.2 : Mr. Govind A. Kulkarni
h/f Mr. Anand Kulkarni

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

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Reserved on : November 30, 2021

Decided on : December 23, 2021

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ORDER :- (Per V K Jadhav, J.)

1. Leave to add S.C.C. number in the prayer clause.
2. Heard finally with consent at admission stage.
3. The applicant/original accused is seeking quashing of the crime no.130 of 2019 registered with Bhusawal Police Station, Taluka Bhusawal, District Jalgaon, dated 2.6.2019 for the offence punishable under section 500 of the IPC. During the pendency of this criminal application, charge-sheet came to be submitted. The applicant/accused is also seeking

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quashing of the criminal proceeding bearing SCC No.795 of 2020.

4. Learned counsel for the applicant submits that, respondent no.2 has lodged the complaint in respect of one Facebook post with the allegations that said Facebook post has been created with an intention to harm the reputation of one Smt. Raksha Khadse, Member of the Parliament. It has been alleged in the complaint that said Facebook post has been created by the present applicant and as such he has committed the offence punishable under section 500 of IPC. Learned counsel submits that on the basis of the said complaint, NCR No.130 of 2019 came to be registered in the concerned police station for the offence punishable under section 500 of IPC. Learned counsel submits that said Raksha Khadse, Member of Parliament, whose reputation is allegedly harmed by the said imputation has not lodged any complaint. Learned counsel has brought to our notice that the learned Magistrate, without going into the provisions of section 199 of

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Cr.P.C., even though complaint was not lodged by the aggrieved person, directed the I.O. in terms of the provisions of section 155 (2) of Cr.P.C. to carry out the investigation in respect of the said non-cognizable offence. Learned counsel submits that, in view of the same, investigation came to be carried out and at present charge-sheet is submitted. Learned counsel submits that, thus, crime as well as criminal proceedings are liable to be quashed on this basis alone.

5. Learned counsel for the applicant, in order to substantiate his submissions, placed reliance on the following cases :-

- i. Ejaz Ali @ Dr. Ejaz Ali Vs. State of Bihar and others Patna High Court dated 27.9.2006.
- ii. Raj Kumar Saini Vs. Sant Kanwar in CRM-M-30950 dated 2.12.2020.
- iii. Business Standard Pvt Ltd and Anr Vs. Lohitaksha Shukla and anr in CriMSC 621 of 2017 & CriMA 2665 of 2017 & 7817 of 2019.

6. Learned counsel for respondent no.2 submits that respondent no.2-informant and the witnesses as mentioned in the complaint are the party workers and,

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accordingly, they are aggrieved persons when the Facebook post has been created with the sole intention to defame the Member of Parliament of their party. Learned counsel submits that there is no substance in this criminal application and the application is liable to be dismissed.

7. Learned counsel for respondent no.2 Mr. Govind Kulkarni, in order to substantiate his submissions placed his reliance on the following cases :-

- i. G.Narasimhan and others etc. Vs. T.V.Chokkappa reported in 1972 Supreme Court 2609.
- ii. John Thomas Vs. Dr. K.Jagadeesan reported in 2001 Supreme Court 2651.

8. Learned APP submits that the applicant herein has allegedly created the Facebook post with an intention to defame the Member of Parliament of a particular party. Learned Magistrate has, therefore, rightly granted permission under section 155 (2) of Cr.P.C. for carrying out the investigation in connection with the NCR No.130 of 2019 as the party workers, who are aggrieved because of the said Facebook post, have

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approached to the police station. The learned APP submits that there is no substance in this criminal application.

9. Learned APP in order to substantiate his submissions, placed reliance on a judgment in the case of **S.Khushboo Vs. Kanniammal and others** reported in in 2010 (2) ACR 2082 (SC).

10. Chapter 21 of IPC provides definition of defamation. Section 499 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.- 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."

11. Section 500 of IPC prescribes punishment for defamation and the person guilty thereof shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both. In view of Schedule I of Cr.P.C., section 500 of IPC is made as non-cognizable, bailable and triable by the Magistrate/Court of Session.

12. In terms of section 155 (2) of Cr.P.C., no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 155 of Cr.P.C. reads as under :-

"155. Information as to non-cognizable cases and investigation of such cases -

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he

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shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

13. So far as the prosecution for defamation is concerned, in terms of the provisions of section 199 of Cr.P.C., the Court cannot take cognizance of an offence punishable under Chapter XXI of IPC except upon a complaint made by some person aggrieved by the offence. Section 199 of Cr.P.C. reads as under :-

“199. Prosecution for defamation.-

(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is

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from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction -

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such magistrate to take cognizance of the offence upon such complaint.”

14. We have carefully perused the contents of the complaint. Respondent no.2/informant claims to be the political party worker of a particular Party. It has been alleged in the complaint that the applicant herein has created a Facebook post contending therein that “म्हणे भावी केंद्रीय मंत्री बापाची ठेव ठेवली आहे का दुसऱ्या ट्रमला निवडून आली की नाही म्हणे भावी मंत्री”. English Translation reads thus :-

“Presuming herself as Fututre Central Minister.

Is it her father’s property?

She is elected for second/next term and thus presuming herself to be a future Minister.”

15. It has alleged in the complaint that, the applicant has posted the said imputation intending to harm the reputation of Smt. Raksha Khadse, a member of the Parliament of a political Party. Said Smt. Raksha Khadse, Member of Parliament has not lodged the
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complaint and respondent no.2/informant being a political worker of a party has lodged the complaint, contending therein that said imputation hurt feelings of political workers of the party including himself.

16. In a case of Raj Kumar Saini Vs. Sant Kanwar (supra), relied upon by the learned counsel for the applicant, the High Court of Punjab and Haryana has observed as follows :-

“The statutory scheme therefore indicates that the 'person aggrieved' must have an element of personal interest, being either the person defamed himself or in the case of a deceased person, his family member or other near relative. It may also be noted that [Section 320](#) Cr.P.C permits compounding of the offence of defamation but it is only the person who is defamed who can agree to the same. Reference may be made to the Division Bench judgment of the Patna High Court in 'Bhagwan Shree Rajneesh V/s. The State of Bihar and another' was observed that though generally, the person aggrieved is only the person defamed, an exception has been made in the case of a deceased person but the 'persons aggrieved' even in such case are limited only to members of his family or his near relatives, whose feelings would be hurt by the defamatory statement, and none else. The Division Bench relied upon the judgment of the Supreme Court in 'G. Narasimhan and others V/s. T.V. Chokkappa' [AIR 1972 SC 2609], wherein it was held that an exception was created to the general rule that a complaint could be filed by

anybody, whether he is aggrieved or not, as [Section 198](#) of the old Code of 1898 (presently, [Section 199 Cr.P.C](#)) modified that general rule by permitting only an 'aggrieved person' to move the Magistrate in cases pertaining to defamation. The Supreme Court observed that compliance with this Section was mandatory and if a Magistrate took cognizance of the offence of defamation on a complaint made by one who was not an 'aggrieved person', the trial and conviction in such a case would be void and illegal.”

17. In the above cited case, the respondent/complainant demonstrated that he claimed to be a follower of late Chaudhary Matu Ram Hooda, an Arya Samajist and freedom fighter. He stated that late Chaudhary Matu Ram Hooda was an inspiration and a guiding light for him. However, in the local newspapers of a particular date, the petitioner/accused had made several defamatory statements against late Chaudhary Matu Ram Hooda. It is on the strength of these newspaper reports, the respondent/complainant has filed the subject complaint alleging therein that the petitioner/accused had committed the offence of defamation.

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In the facts of the case, by referring the explanation of Section 1 of Section 499 of IPC, the Punjab and Haryana High Court held that family members or the nearest relatives of the person against whom imputations have been made, can claim to be a 'person aggrieved'. Thus, the respondent/complainant, who is not a 'family member' or 'mere relative' of late Chaudhary Matu Ram Hooda, cannot unilaterally assume unto himself the status of an 'aggrieved person' under section 199 of Cr.P.C.

18. In a case of **Ejaz Ali @ Dr. Ejaz Ali Vs. State of Bihar and ors** (supra), relied upon by the learned counsel for the applicant, the Patna High Court in paragraph no.5 has made the following observations :-

- “5. [Section 199](#) of the Code of Criminal Procedure it is plain, clearly bars taking cognizance of an offence punishable under [Chapter XXI of the Indian Penal Code](#), except upon a complaint made by some person aggrieved by the offence. [Section 500](#) of the Indian Penal Code comes within [the Chapter XXI of the Indian Penal Code](#). Proviso to the aforesaid Section however, authorizes other person to file complaint in the contingencies narrated therein with the leave of the Court.

It is common ground that the complaint has not been filed with the leave of the Court and hence the only question falling for determination is as to whether the complainant who claims to be the follower and close to the person defamed comes

within the expression 'person aggrieved' by the offence. [Section 199](#) of the Code of Criminal Procedure is an exception to the general rule that any body, aggrieved or not, can set the criminal law in motion. In my opinion, the mere fact that the feelings of the complainant have been injured in consequence of defamatory statement made against his leader is no ground under the law to prosecute the petitioner for defamation. I am of the opinion that the expression 'person aggrieved' shall necessarily mean the person directly defamed and it may sometimes refer to other depending upon the nature of offence and circumstances of the case but the grievance should not be the one shared by the follower of a leader. To bring a follower within the meaning of the 'person aggrieved' some personal element should be there and the defamatory statement should have a tendency to injure the reputation of complainant himself and should tend to lower him in the estimation of the people. When a person complains that he has been defamed as a follower of a leader, he has to satisfy that the imputation against him is personal and he is the person aimed at, before he can maintain prosecution for defamation. In other words to bring the complainant within the purview of person aggrieved his grievance should not merely be the one shared by every member of the society. The 'person aggrieved' must have a legal grievance and there cannot be any grievance merely on account of fanciful and sentimental attitude of being a follower and close to a leader.”

In the facts of the cited case, the complainant has filed a complaint claiming himself to be a follower and close to Mr. Sakil Ahmed Khan and alleging that the news item in the daily newspaper had shocked him and Muslim community at large as the same was intending to defame Mr. Sakil Ahmed Khan, a Minister of State Cabinet.

Patna High Court has observed that to bring a follower within the meaning of the 'person aggrieved' some personal element should be there and defamatory statement should have a tendency to injure the reputation of the complainant himself. The mere fact that the feelings of the complainant have been injured in consequence of defamatory statement made against his leader is no ground under the law to prosecute the petitioner for defamation. Thus, High Court of Patna has quashed the illegal order taking cognizance and issuance of the process as illegal being against mandatory provisions of law.

19. In a case of **Business Standard Pvt Ltd and Anr Vs. Lohitaksha Shukla and anr** (supra), relied upon by the learned counsel for the applicant, in paragraph no.18, the Delhi High Court has summarized the facts of the case in the following manner :-

“18. The complainant has instituted the complaint under [Sections 190/200](#) Cr.P.C. seeking punishment of respondents therein for the offence under [Section 500](#) IPC. The complainant claims himself to be a Swayamsewak of RSS and that the article in question has adversely affected

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his reputation being member of RSS. He has averred in his pre-summoning evidence, that "After reading the above said article on the website many of my friends called up and expressed their displeasure over my association with RSS and asked me to quit".

High Court of Delhi in paragraph no.35 has made the following observations :-

“35.In the present case, the complainant has not been able to show as to how he is the "person aggrieved" within the definition of [Section 199\(1\)](#) Cr.P.C. and thus, the contents of complaint suffers from vices of illegality or infirmity. Even complainant is not a part of "identifiable class" or definite "association or collection of persons" as enumerated in Explanation (2) to [Section 499](#) of IPC.”

20. In a case **G.Narasimhan and others etc. Vs. T.V.Chokkappa** (supra) relied upon by the learned counsel for the respondent no.2 in paragraph no.14 the Supreme Court has made following observations :-

“14. Prima facie, therefore, if [s. 198](#) of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually. Sec. 499 [of the Penal Code](#), which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to

defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing inveigh against mankind in a general or against a particular order of men, e.g. men of gown, it is no libel. It must descend to particulars and individuals to make it a libel (1699)³ Balk 224, cited in Ratanlal and Dhirajlal Law of Crimes (22nd ed.) 1317.” In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite, e.g. men of science but a definite one such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. (see Kenny's Outlines of Criminal Law (19th ed.) 235. If a welldefined class is defamed, every person of that class can file a complaint even if the defamatory imputation in question does not mention him by name.”

21. The Supreme Court held that “it was impossible to have any definite idea as to its composition, the number

of persons who attended, the ideas and the ideologies to which they subscribed, and whether all of them positively agreed to the resolution in question. The conference clearly was not an identifiable or a definitive body so that all those who had attended it could be said to be its constituents who, if the conference was defamed, would, in their turn, be said to be defamed.”

22. In a case of **John Thomas Vs. Dr. K.Jagadeesan** (supra), relied upon by the learned counsel for respondent no.2, the Supreme Court has observed about effect of an imputation being per se defamatory. It would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public. However, even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for, the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of the apparent deficiency. So the appellant/accused cannot contend

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that he is entitled to discharge on the ground that the imputations in the extracted publication were not per se defamatory. In paragraph nos.11, 12 and 13, the Supreme Court, in the cited case, has made the following observations :-

“11. The contention focussed by the learned senior counsel is that the respondent, who filed the complaint, has no locus standi to complain because he is only a Director of K.J. Hospital about which the publication was made and that the publication did not contain any libel against the complainant personally. It is not disputed that the complainant is the Director of K.J. Hospital. Explanation 2 in [Section 499](#) of the IPC reads thus :-

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

12. In view of the said Explanation, it cannot be disputed that a publication containing defamatory imputations as against a company would (sic) escape from the purview of the offence of defamation. If the defamation pertains to an association of persons or a body corporate, who could be the complainant? This can be answered by reference to [Section 199](#) of the Code. The first sub-section of that section alone is relevant, in this context. It reads thus:

"199. Prosecution for defamation.- (1) No court shall take cognizance of an offence under [Chapter XXI of the Indian Penal Code](#) (45 of 1860) except upon a complaint made by some person aggrieved by the offence."

13. The collocation of the words "by some persons aggrieved" definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. If K.J. Hospital is a private limited company, it is too farfetched to rule out any one of its Directors, feeling aggrieved on account of

pejoratives hurled at the company. Hence the appellant cannot justifiably contend that the Director of the K.J. Hospital would not fall within the wide purview of "some person aggrieved" as envisaged in [Section 199\(1\)](#) of the Code."

23. In a case of **S.Khushboo Vs. Kanniammal and others** (supra) relied upon by the learned APP, the Supreme Court in paragraph nos.25 and 26 has made following observations :-

"25.This takes us to the question of whether the impugned complaints were made in a bona fide manner. As we have already noted, most of the complainants are associated with the PMK, a political party which is active in the State of Tamil Nadu. This fact does add weight to the suggestion that the impugned complaints have been filed with the intention of gaining undue political mileage. It may be reiterated here that in respect of the offence of defamation, [Section 199](#) Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is 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 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\(1\)\(b\)](#) Cr.PC. 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. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala & Ors.*, (2000) 7 SCC 552, this Court observed as under :-

"The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."

26. We can also approvingly refer to an earlier decision of this Court in G. Narasimhan & Ors. Vs. T.V. Chokappa, AIR 1972 SC 2609. In that case a controversy had arisen after 'The Hindu', a leading newspaper had published a report about a resolution passed by the Dravida Kazhaghham, a political party, in its conference held on January 23-24, 1971. Among other issues, the resolution also included the following words:

"It should not be made an offence for a person's wife to desire another man."

The Hindu, in its report, gave publicity to this resolution by using the following words:

"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under [the Indian Penal Code](#)."

A complaint under [Sections 499, 500 and 501](#) IPC was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine [Section 198](#) of the Code of Criminal Procedure, 1898 (analogous to [Section 199](#) of the Cr.PC. 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. This Court further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of [Section 198](#) CrPC, 1898. The Court also took note of Explanation 2 to [Section 499](#) IPC which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed. While deciding the case, this Court placed reliance on the judgment of the

House of Lords in Knupffer Vs. London Express Newspaper Ltd. (1944) 1 ALL ER 495, wherein it had been held that it is an essential element of the cause of action for defamation that the words complained of should be published "of the complainant/plaintiff". Where he is not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to.

In fact, it is the reputation of an individual person which must be in question and only such a person can claim to have "a legal peg for a justifiable claim to hang on".

24. It is thus clear that the phrase "by some person aggrieved" used in Section 199 sub-section (1) of Cr.P.C. definitely indicated that the complainant need not necessary be the defamed person himself. Whether the complainant has a reason to feel hurt on account of the publication is a matter to be determined by the Court, depending upon the facts of each case. Further, the complainant should also be a part of identifiable class or definite association or the collection of persons as mentioned in section (2) to Section 499 of IPC.

25. In the instant case, the Facebook post of the said imputation has not named particularly Smt Raksha Khadse, a Member of Parliament of BJP Party. Further, even if the said Facebook post is read as a whole and accepted as it is in its entirety, it is a personal comment

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against unnamed person to the effect that 'only because the said person is elected in the Second Term, cannot be a future minister since it is not the persons father's territory'. Said Facebook post has not defamed in any manner a political party nor there is any comment by referring the policy of the party for making the elected person twice as a Minister. Even assuming that the complainant being a political worker of the said party, got hurt due to the said Facebook post of imputation against his leader, however, the said collection of persons being a party worker is indefinite and unidentifiable class. It cannot be said with certainty that all the political workers of the said party would be the persons aggrieved because of the said imputation of the Facebook post. Thus, in the given set of facts of the present case, we are unable to see how the complainant can properly be described as a 'person aggrieved' within the meaning of section 199 (b) of Cr.P.C.

26. In view of the above discussion and in terms of the ratio laid down by the various High Court's and the

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Hon'ble Supreme Court, we are of the considered opinion that continuation of the proceedings vide SCC No.795 of 2020 pending before the Judicial Magistrate First Class, Bhusawal would be abuse of the Court process. Hence, we proceed to pass the following order.

ORDER

- i. Criminal application is hereby allowed in terms of prayer clause "**B**" and "**B-1**".
- ii. Criminal application accordingly disposed off.

(**SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)**

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