

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 491 of 1988

Acharya Sarbatmanda Avodhuta

Vs.

Tushar Kanti Ghosh & Anr.

For the Appellant (Amicus Curie) : Mr. Anand Farmania.

For the State : Mr. Narayan Prasad Agarwal.

Heard on : 20.07.2022

Judgment on : **30.08.2022**

Shampa Dutt (Paul), J.:

This appeal is directed against judgment and order dated 07.06.1988 passed by the learned Metropolitan Magistrate, 11th Court, Calcutta, acquitting the accused/respondents in Complaint Case No. C/1201/83 for offence punishable under Section 500 of the Indian Penal Code.

The Complainant's case in brief is that 'Ananda Marga Pracharaka Sangha' popularly known as 'Ananda Marga' is a society duly incorporated and registered having its registered office at Ananda Marga Public and the aims and object are to propagate the ideas and philosophy of 'Ananda Marga', to take up literacy drive, social reforms, relief works etc., economic, physical, mental and spiritual development of mankind irrespective of caste, creed and or sect. At present the society is running about 400 Schools, Children Homes for destitute children, Charitable Dispensaries, Student Homes etc., all over the country and it also undertakes relief works at the time of natural calamities and also running Yoga Centres. The society 'Ananda Marga Pracharaka Sangha' is governed by a governing body, a Central Committee and comprises of President, General Secretary and other office bearers and members and the complainant is the General Secretary and is well known to all who have respect for him and held him in high esteem and the society 'Ananda Marga Pracharaka Sangha' has also unquestionable reputation and has been held in high esteem by the public in general and to its followers and devotees. The accused no. 1 is the Editor and the accused no. 2 is the Printer and Publisher of daily Bengali Newspaper 'Jugantar' which has a large circulation in the State

and in its publication/issue dated 20th April, 1985 of the said Newspaper the accused no. 1 and 2 made, edited, printed and published a defamatory statement about the said Ananda Marga under the heading 'Marga Ashram Theke Kishore Uddhar' meaning that a boy was recovered from Ananda Marga Ashram and under the said news item the accused no. 1 and 2 falsely and maliciously made, wrote, printed and published a news of Ananda Marga, and published that a missing boy from Sonarpur has been recently rescued from Varanasi Ananda Marga Ashram by Calcutta Police and the said boy was confined in Ananda Marga Ashram at Jodhpur Park and on search by his father Pulin Mondal, the boy could not be found there and when the father did not find him there he lodged a complaint with the police. Then, Pulin Mondal got a letter from his son that he was at Varanasi, Ananda Marga Seva Dharma Mission, and the boy was rescued from Ananda Marga Seva Dharma Mission, Village Chitapur, P.O. Sundarpur, P.S. Lanka, District- Benaras, Uttar Pradesh. By the said publication the accused persons made and understood to mean that Ananda Marga of which the complainant is the General Secretary confined the said Shasanka Sekhar Mondal in its Ashram at Jodhpur Park and recovered/removed him to Varanasi Ashram and he was rescued from there and the said Ananda Marga organization is engaged in child lifting and keeping them confined, wrongfully in their Ashram. The accused persons have harmed the reputation of Ananda Marga and all its members including the complainant and made such false and malicious imputation concerning the complainant and his society knowingly or having reason to believe that the same would

harm their reputation and the said publication had defamed the Ananda Marga and all its members and the complainant's company is now being shunned by the people who have been misled to believe that it is an organization engaged in child lifting. The said publication is absolutely false and by this false publication the position of complainant and the Ananda Marga and its members have been lowered in the estimation of others. The said issue of 'Jugantar' was sold and read by public, friends and acquaintances of the complainant in various parts of the State including Calcutta and hence the case.

The accused/opposite parties pleaded not guilty under Section 251 Cr.P.C. for offence under Section 500 IPC and claimed for trial.

The defence of the accused persons before the Trial Court was of innocence and that the complainant could not prove that the publication was made with the intent to harm or the belief or the knowledge that it will harm the reputation of the complainant's organization. The said publication in the paper was made by the accused persons in good faith and from proper source and due verification as there was no malice on the part of the accused persons against the complainant's organization.

The Trial Court considering the materials-on-record both oral and documentary evidence held that the accused persons are entitled to get protection of exception 1 to 9 of Section 499 of the Indian Penal Code and they were held not guilty of the offence punishable under Section 499 of the IPC.

Mr. Anand Farmania, learned Advocate has been appointed as **Amicus Curie** to represent the appellant in this **appeal of 1988** relating to an **incident of the year 1983**. Learned Amicus Curie on behalf of the appellant submits that the learned Magistrate did not apply his mind to the evidence before the Trial Court and also failed to consider that as a result of the publication in this case by the accused persons (Exhibit 2), Ananda Marga, the reputation of the appellant and the others have been lowered in the estimation of others and their moral and spiritual character has been assassinated in the eye of general public as statement in Exhibit 2 are defamatory. The learned Magistrate did not consider the evidence of PW-2, 3 and 5 who have deposed that as a result of the said publication in Exhibit 2, the complainant's organization's reputation has been harmed. The learned Magistrate wrongly held that the respondents are entitled to get protection of Sections 1 to 9 of Section 499 of Indian Penal Code. The learned Magistrate wrongly took into consideration the statement of witness who was not examined before the Court and should have also considered that the Institution from where the boy was alleged rescued was Seva Dharma Mission and not Ananda Marga Ashram and that the Seva Dharma Mission is not connected to Ananda Marga Ashram and the learned Magistrate erroneously did not consider the evidence of PW-4 and that malice and imputation of the accused persons are not relevant, only intention, knowledge and reason are the ingredients required to constitute the offence punishable under Section 500 of the Indian Penal Code and as the publication is neither true nor for public good, the accused respondents are not entitled to

get any protection of exception 1 to 9 of Section 499 of the Indian Penal Code and as such the learned Magistrate without considering the materials-on-record and the evidence in the proper perspective wrongly acquitted the accused persons in the said complaint case which the complainant submits that they have been successful in proving the guilt of the accused persons in the said case and as such the judgment under should be set aside and the accuseds convicted.

Mr. Narayan Prasad Agarwal, the learned lawyer for the **State** appointed to represent the accused persons in the present case submits that the learned Magistrate rightly considered the evidence-on-record and taking into consideration of facts and circumstances and the materials-on-record, rightly held that the accused persons are entitled to get the benefit of exception 1 to 9 of Section 499 of the Indian Penal Code as it was found by the learned Magistrate that the said publication was “imputation of truth” which for public good required to be made or published and that such imputation was made in good faith by the person for protection of his and others' interest and accordingly the learned Magistrate rightly found the accused persons to be not guilty of offence punishable under Section 500 of the Indian Penal Code and rightly acquitted them of all charges.

Evidence on record

Five witnesses were examined by the complainant.

Prosecution witness no. 1 Acharya Sarbatmanda Avodhuta is the General Secretary of the Society. This witness has elaborated the complainant's case. It is his case that due to the false publication of the news the organization has been defamed and the said statement is derogatory in view of the fact that the organization is engaged in good activities for upliftment of the public.

Prosecution witness no. 2 Samarendra Nath Bhadra is a teacher of Hooghly Collegiate School. He knows the organization. He has deposed that he read the paper and on showing the allegation he could not respect the organization as he did not earlier. (It is seen by this Court that this witness is a witness on behalf of the complainant).

Prosecution witness no. 3 Sukumar Das knows the complainant's organization and on reading the said article has deposed that the reputation of the organization in his eyes has lowered and he had made enquiry that the news is false. (It is seen that this witness is also a witness produced by the complainant).

Prosecution witness no. 4 Bhaskarananda Abadhut is a member of the complainant's organization. He has admitted that they have one Ananda Marga Ashram in Varanasi at C/12/24 Aurangabad, Varanasi and he is in-charge of the said Ashram. This witness has denied that there is any other Ashram by the said name and has also said that no boy named Shasanka Sekhar Mondal

from was there in the Ashram from January 1983 to April 1983 and no such recovery was made and the news item is totally false.

Prosecution witness no. 5 Partha Das knows the organization and had high regard for this organization prior to reading the article which lowered the prestige of the accused.

Defence witness

The defence has examined **Sri Nikhil Kumar Basu**, Sub-Inspector of Police, Detective Department, Lalbazer as on 18.03.1983 as **DW 1**. This witness on oath has deposed that Pulinbehari Mondal father of Shasanka Sekhar Mondal, the missing boy produced an inland letter, written by Shasanka from Ananda Marga Training Centre, Benaras. This witness recorded the G.D. Entry No. 919 dated 21.03.1983. He recorded the statement of Pulinbehari Mondal and took a search warrant for recovery of Shasanka Sekhar Mondal. He then along with Pulinbehari Mondal went to Benaras and took the assistance of local police and rescued Shasanka Sekhar Mondal on identification by his father Pulinbehari Mondal from the Ananda Marga Training Centre, P.S. Lanka, Benaras as per search list (Exhibit A) in presence of local witnesses. The seizure was made in presence of Acharya Sarbatmanda Avodhuta, the in-charge of the said Ashram. G.D. regarding the recovery was made at Lanka P.S. and on completion of formalities the boy was handed over to his father Pulinbehari Mondal by S.D.J.M. Alipore on proper bond. This witness has produced the statement of Pulinbehari Mondal and the missing boy Shasanka

Sekhar Mondal. On being cross examined this witness has categorically stated that from the search list it can be seen that it has been noted that the said premises has been described as **Ananda Marga Seva Dharma Mission, Village Chitapur, P.O. Sundarpur, P.S. Lanka, District- Benaras, Uttar Pradesh.** This witness has admitted in cross examination that Exhibit A, the search list shows that there is an endorsement that the institution is Seva Dharma Mission and not Ananda Marga. On careful perusal of Exhibit A the search list which is the most important document in the present case, it is seen that the side ways writing is it in a different handwriting. It has been noted side ways to this effect but this witness has stated that he cannot say who has written the same. On plain examination of the said search list it is seen that said note is in a handwriting which is in a total different handwriting from the entry made by DW 1. It is written side ways and DW 1 could not say who has written the same. The note is also not complete, as such the said handwriting written by some unknown person becomes doubtful. More so because of the fact that in the search list, it has been clearly written by DW 1 that the **place from where the missing boy was recovered is Ananda Marga Seva Dharma Mission, Village Chitapur, P.O. Sundarpur, P.S. Lanka, District- Benaras, Uttar Pradesh.** As such there is no denial that the place from where the boy was recovered is **also** known as Seva Dharma Mission. **But it is an institution of Ananda Marga.** It has also been clearly written during recovery by DW 1 who conducted the search that the boy was rescued from the custody of Acharya Sarbatmanda Avodhuta of Ananda Marga Ashram (Seva Dharma Mission) P.O.

Sundarpur, P.S. Lanka, District- Benaras, Uttar Pradesh. As such it is very clear that the place from where the boy was recovered is Ananda Marga Ashram Seva Dharma Mission and the same is clearly noted in the search list. The documents marked Exhibit before the Trial Court is as follows:-

For complainant	
Exhibit	Description of Exhibits
Exhibit 1	Petition of complaint no. C1201/83.
Exhibit 2	The relevant publication dated 20.04.83 in paper 'Jugantar'.
For defence	
Exhibit A	Search list.
Exhibit B and C	Remand petitions.
Exhibit D	Statement of Pulinbehari Mondal.
Exhibit E	Statement of missing boy Shasanka Sekhar Mondal has been also marked Exhibit.
Exhibit F	The inland letter sent by Shasanka Sekhar Mondal to Pulinbehari Mondal has also been marked as Exhibit.

Analysis of evidence

Section 499 of the Indian Penal Code lays down as follows:-

“Section 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 case 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.

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 a 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.*

Explanation.— *A Justice of the Peace or other officer holding an enquiry in open court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.*

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.*

Explanation.— *A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.*

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 authorized 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.”

Section 500 of the Indian Penal Code lays down as follows:-

“Section 500. Punishment for defamation.— Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Scope.— The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the

imputation will harm the reputation of such person.

Ingredients of offence.— *The offence of defamation consist of three essential ingredients, viz.:*

- (1) Making or publishing any imputation concerning any person;*
- (2) Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and*
- (3) Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.”*

The dispute in this case is regarding a publication dated April 20th, 1985 in the Bengali Newspaper 'Jugantar' on the first page “Marga Ashram Theke Kishore Uddhar” and it was reported that one missing boy from Sonarpur was rescued by Calcutta Police from Varanasi Ananda Marga Ashram.

The specific case here in is that the father of the missing boy got the information that his son was kept at Jodhpur Park Ananda Marga Ashram but the boy was not found there. Finally the boy was recovered by Calcutta Police with the help of Uttar Pradesh Police and from Seva Dharma Mission, Benaras was handed over to his family. The case of the complainant is that due to such publication, their organization has been defamed and their status has been lowered before their devotees, followers and public.

In 2014, Dr. Subramanian Swamy made corruption allegations against Ms. Jayalathitha. In response, the Tamil Nadu State Government filed

defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the Indian Penal Code (IPC). A two-judge bench of the Supreme Court comprising Justices Dipak Misra and P. C. Pant decided the case.

Section 499 defines defamation and Section 500 prescribes the punishment. Defamation is defined as spoken or written words or visible representations, concerning any person intended to harm his/her reputation. Exceptions to this include an 'imputation of truth' required for a 'public good', or the conduct of any person touching any public question, or expressing opinions on a public performance.

The challenge before the Court was twofold – first, whether criminalising defamation is an excessive restriction on freedom of speech, and second, whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.

On 13 May 2016, the Court held that Section 499 is not an excessive restriction under Article 19(2). It held that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public wrong. It held that criminal defamation is not a disproportionate restriction on free speech, because protection of reputation is a fundamental right as well as a human right.

The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under Article 21. Using the principle of ‘balancing of fundamental rights’, the court held that the right to freedom and speech and expression cannot be “allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area”.

Further, the Court held that Sections 499 and 500 IPC are not vaguely worded or ambiguous. Using the Constituent Assembly Debates to understand what the framers of the Constitution meant by the word “defamation” in Article 19(2), the Court held that the word is its own independent identity. It stands alone and defamation laws have to be understood as they were when the Constitution came into force.

The Supreme Court in Subramanian Swamy vs. Union of India, Ministry of Law and others (2016) 7 SCC 221 while deciding the case the Court held:-

“We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in Section 202 Cr.P.C. which stipulates about the resident of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of Section 499 Cr.P.C. are satisfied. Application of mind in the case of complaint is imperative.

We will be failing in our duty if we do not take note of submission of Mr. Bhambhani, learned senior counsel. It is submitted by the learned

senior counsel that Exception to Section 499 are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in M.A. Rumugam (supra) that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to Section 499 IPC, it would be necessary for the person who pleads the Exception to prove it. He has to prove good faith for the purpose of protection of the interests of the person (1998) 5 SCC 749 making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of the issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same.

In view of the aforesaid analysis, we uphold the constitutional validity of Sections 499 and 500 of the Indian Penal Code and Section 199 of the Code of Criminal Procedure. During the pendency of the Writ Petitions, this Court had directed stay of further proceedings before the trial court. As we declare the provisions to be constitutional, we observe that it will be open to the petitioners to challenge the issue of summons before the High Court either under Article 226 of the Constitution of India or Section 482 Cr.P.C., as advised and seek appropriate relief and for the said purpose, we grant eight weeks time to the petitioners. The interim protection granted by this Court shall remain in force for a period of eight weeks. However, it is made clear that, if any of the petitioners has already approached the High Court and also become unsuccessful before this

Court, he shall face trial and put forth his defence in accordance with law."

The court further held :-

"The court while deciding over the matter considered various landmark judgments including the Gian Kaur v. State of Punjab (1996) 2 SCC 648, Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others (1983) 1 SCC 124 to come to the peroration of inclusion of the right to reputation under Article 21. Over the issue of the exaggeration of 'defamation' under the restrictions of Article 19(1)(a) the court referred to the speech of Dr. B. R. Ambedkar and pointed out the intention of drafters to include reasonable restrictions on free speech and expression through the means of Article 19(2) without specifically defining the terms like 'defamation', 'public order' etc. and left it to the courts to decide what would constitute as restriction and what not so as to not restrict the meaning of any such term.

The court disregarded the dissection of rights and their enjoyment under Article 19 and 21 as contested by petitioners while holding that every citizen enjoys every right under the constitution simultaneously and took reference from Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305 and the Maneka Gandhi v. Union of India and another (1978) 1 SCC 248. To decide upon the constitutionality of Section 499 and its exceptions the bench, while individually determining each exception and various clauses in the provision, clearly enunciated that there is no vagueness in the whole section. The argument of petitioner over the 'public good', the court referred the argument as unnecessary and concluded that what can be termed as a public good is a subject matter of facts and has to decide on a case-to-case basis. The court declared section 499 of IPC, as well as Section 199 of Cr.P.C. constitutional as it being a subject

matter of magistrate to ensure that the judicial process doesn't become a tool of harassment and inherent duty of the magistrate to take care of it and concluded that the judiciary is independent of the political stigma, therefore, the arguments of petitioners stand void."

Conclusion

The defence case before the Trial Court is that they received the news from their authorized agent and taking it to be true they published the same having no malice against the complainant organization. The news item has been published on good faith and public interest.

The father of the missing boy Shasanka Sekhar Mondal has produced one inland letter written by his son from Ananda Marga Training Centre, Varanasi and accordingly, he made a G.D. Entry and lodged a complaint and on search warrant being issued they proceeded to Varanasi for rescuing the said boy and with the help of Uttar Pradesh Police, the boy was **rescued from the Ananda Marga Training Centre** and a search list (Exhibit A) was duly prepared, signed by witnesses and the statement of the boy was recorded (Exhibit E). The boy was produced before the learned Munsiff, Varanasi and later produced before the S.D.J.M., Alipore and on April 18, 1983, the boy was handed over to his father. **The premise from where the boy was recovered by the Police was described in the search list (Exhibit A) as Ananda Marga Seva Dharma Mission, Benaras.** It has been clearly written that the place of recovery was Ananda Marga Seva Dharma Mission and from the head of the

institute at Benaras namely Acharya Sarbatmanda Avodhuta. The said publication was made taking it to be true and in good faith and the accused persons did not have any mens rea or intention to harm the reputation of the organization. **Exhibit A shows that the place from where the boy was recovered is noted as Ananda Marga Seva Dharma Mission, Varanasi, Uttar Pradesh.**

The learned Magistrate rightly took into consideration the facts of the said preparation of the search list and also considered the Exhibit where it was clearly written that the boy was recovered from the Ananda Marga Seva Dharma Mission.

The case of the missing boy's father before the learned S.D.J.M., Alipore was that the boy has been induced to come out from his house to go to the Ananda Marga Mission to Jodhpur Park from where he was sent to Varanasi and from there he wrote a letter to his father stating that he should be recovered from Ananda Marga Training Centre, Varanasi and on the basis of the said letter the missing boy was recovered.

The learned Magistrate also took into consideration Exhibit (D) and (E), which corroborates the statement as made by the missing boy. The complainant's father's case is that the boy and his father were not examined and the said publication without proper verification has defamed the complainant and his organization.

The learned Trial Court rightly held that it is clear from the search list Exhibit (A) and Exhibits (B to E) and from the evidence of the DW-1, the Officer who recovered the boy that the said boy was recovered from Seva Dharma Mission of Ananda Marga at Varanasi. The learned Magistrate then held that the publication in this case has been done on the basis that it was true and also supported by the search list (Exhibit A) and on evidence of DW-1 to the effect that the boy was recovered from Seva Dharma Mission of Ananda Marga Ashram. No documents or evidence was produced by the complainant to support his statement that the said Seva Dharma Mission at Varanasi is not connected with the complainant's organization.

The boy was recovered from the custody of Acharya Sarbatmanda Avodhuta. The complainant did not examine the said Acharya to depose that the said Mission is not connected with Ananda Marga, the complainant's organization. The learned Trial Court also gave benefit of sub-Section(1) and (9) of Section 499 of the Indian Penal Code to the accused persons and rightly applied the provisions to the facts and circumstances of the case.

It is clearly seen from the materials on record that the complainant/appellant could not prove before the Trial Court that the first exception of Section 499 of the Indian Penal Code is not applicable in the present case. The evidence on record supports the case of the accused persons and from the materials on record. It is seen that the Ld. Trial Magistrate rightly

applied the first exception in this case that is imputation of truth which public good requires to be made or published. The Ld. Magistrate also taking into consideration the materials on record applied the nine exceptions to Section 499 of the Indian Penal Code to the effect that imputation was made in good faith by the accused persons for protection of his and others interests. Herein it is of publication with believed in the freedom of prays and there is absolutely no evidence of record for the Ld. Magistrate to hold otherwise.

In view of the materials-on-record and considering the evidence of DW-1 and Exhibit (A) to (E) which shows clearly that the accused persons acted without malice, rationally, for public good, and in good faith and belief of that the imputation/publication was true and published on proper verification on the basis of correct information received through their agent. The learned Court rightly held that the complainant could not prove the ingredients as required to constitute the offence punishable under Section 500 of the Indian Penal Code as alleged beyond all reasonable doubt and the Trial Court rightly came to the conclusion that the accused persons were entitled to get the benefit of exception (1) to (9) of Section 499 of the Indian Penal Code and accordingly acquitted the accused persons of offence punishable under Section 500 of the Indian Penal Code. Thus the judgment under appeal acquittal needs no interference.

The appeal being CRA 491 of 1988 stands dismissed.

Lower court records along with a copy of this judgment be sent down at once to the learned Trial Court for information and necessary action, if any.

Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Shampa Dutt (Paul), J.)