

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3815 of 2019

K. Naga Satyanarayan Verma

Vs

Jeeri Sudhakar Reddy & Anr.

For the Petitioner

: Ms. Somasree Saha.

For the Opposite Party No. 1

: Mr. Somopriyo Choudhury,
Mr. Imran Hossain,
Mr. Sanket Sarowgi,
Mr. Subhojit Ghosh.

For the State

: None.

Heard on

: 03.02.2023

Judgment on

: 24.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for quashing of proceeding being A.C. Case No. 1682 of 2019 pending before the Learned 7th Judicial Magistrate, Alipore under Sections 500 and 501 of I.P.C.

The petitioner case is that the case of the prosecution as made out in the petition of complaint is as follows:-

The accused/petitioner has circulated certain letter dated 27.02.2018, 06.03.2018 and 14th March 2018 to the Prime Minister of India, The President of India, Finance Ministry and Branch Manager Andhra Bank Bullayya College Branch, Visakhapatnama also to Reserve Bank of India against the complainant containing defamatory statements hurting the reputation of the complainant who is a reputed Chartered Accountant and at present. Accountant Member of Income Tax Appellate Tribunal ITAT, Kolkata. The allegations contained in the said letters according to the complainant is baseless but still the same has made loss of his reputation which cannot be restored and thus this complainant filed case being AC. Case No. 1681/2019 under Section 500/501 of the Indian Penal Code for defamation against the present petitioner.

The subject of the said letters and their references are enumerated hereunder:-

Sl. No.	Date	Subject	Reference
1.	27.02.2018	Information about the fraudulent documents	Gayatri Estates Gayatri Towers

		submitted by Gayatri Towers Constructed by Gayatri Estate represented its partners Smt. Jeeri Padmaja Rani wife of Jeeri Sudhakara Reddy by colluding with Chilla Rama Rao Reddy and others who are not having any title over the property covered by T.S. No. 52/1BI of Waltair Ward Block No. IV Peda Waltair, Visahapatnama as a citizen of India to save Banks as well as innocent general public Reg.	constructed in the land covered by T.S. No. 52/1BI of Waltair Ward Block No. IV, Peda Waltair Doctors Colony Near Karakachettu Polamamba Temple, Visakhapatnam
2.	06.03.2018	Complainant about the black money holding by Jeeri Sudha Kara Reddy who is working as Accountant Member, Income Appellate Tribunal presently working at Mumbai with that black money constructed 218 Flats in the name and style of Gayatri towers by constituting a firm Gayatri Estates is the mane of his wife Jeeri Padmaja Rani and brother in law Mareddy Venkata Reddy High Quality construction at Viskhapatnam project value worth Rs. 245 Crores without even	Gayatri Estates Gayatri Towers Constructed in the land covered by T. S. No. 52/1BI, of Waltair Ward, Block No. IV, Peda Waltair, Doctors Colony, Near Karakachettu, Polamamba, Temple, Visakhapatnam, Andra Pradesh.

		taking Single Piety way of bank loan-Reg.	
3.	14.03.2018	Complaint about the black money holding by Jerri Sudhakara Reddy who is working as accountant member, Income Tax Appellate Tribunal presently working at Kolkata Bench with that black money constructed 215 Residential flats in the name and style of Gayatri Towers by constituting a firm Gayatri Estate in the name of his wife Jeeri Padmaja Rani and brother-in-law Mareddy Venkata Reddy, High Quality construction at Visakhapatnam project value worth Rs. 245 crores without taking even single pie by way of bank loan,	Gayatri Estates Gayatri Towers constructed in the land covered by T.S. No. 52/1BI of Waltair Word Block No. IV Pedawaltair Doctors Colony near Karakachetty, Polamamba, Temple, Visakhapatnam, Andhra Pradesh.

The petitioner further states in this regard that the complainant as plaintiff along with initiation of this Criminal Proceeding has also **filed a Civil Suit being T.S. No. 983/2018 before the Learned Civil Judge Senior Division, Second Court at Alipore.** That the Purpose of both the proceedings is one and only to adjudicate whether the petitioner has committed any defamation or not. The Learned Trial Court adjudicating the Civil Suit has already passed an order of

injunction on 28.06.2019 restraining the defendant/petitioner herein from publishing orally or in writing any defamatory words or statement against the plaintiff till the disposal of the suit.

That the Proceeding as initiated by the Learned Magistrate also does not satisfy the ingredients of Sections 500 and 501 of I.P.C. as the investigation regarding the complaints are continuing and as also there was never by publication and/or transmission through media of these letters and/or any intention of the said publication. It is further stated letters were confidential and written to investigate and/or verify the truth and /or real fact for the purpose of welfare of general public.

That the petitioner being a responsible Citizen of India, in the interest of society have launched complaints/allegation before certain institutions confidentially and those complainants were never exposed to Public at any point of time and/or to publish and/or telecasted in any sort of media and thus the allegations in the aforesaid proceeding that he has committed defamatory statements against the complainant to damage his reputation is false and untenable. It is further stated that the petitioner has never ever addressed any letter of complaint to the plaintiff or his agents in any manner. It is further stated herein that the complaints as filed by the petitioner are still under investigation and as such whether the complainant/opposite party is innocent or not is still to be decided/matter of adjudication/which is the outcome of the

enquiry and as such whether the instant case is maintainable or not can only be decided after the authorities complete investigation against the complainant and he is declared innocent.

The petitioner further states the complainant has also filed a Civil Suit before the Learned 2nd Court of Civil Judge (Sr. division) at Alipore being the Title Suit No. 983 of 2018 and also another Suit being O.S. 587/2018 before the Learned Additional District Judges Court Visakhapatnam, Andhra Pradesh on the Selfsame cause of action and as such it is submitted that until and unless the Civil cases are decided and the Investigation against the complainant is complete the instant proceeding is premature and should be quashed.

Ms. Somasree Saha, learned counsel for the petitioner has submitted that the Learned Judge failed to consider the fact that unless the complainant is declared innocent by the Investigation authorities and the Civil Suits are adjudicated, the aforesaid proceedings of defamation is not to be taken cognizance of as the same is premature and thus not maintainable and liable to be quashed.

The Learned court erred in law by taking cognizance of the said case though the complainant has not yet been declared innocent by the authorities and as such unless and until he is declared innocent the question of the allegations being baseless, levied only to hurt his reputation does not arise and as such the same is not defamation as

the genuinity of the statements are yet to be ascertained and as such the instant proceeding needs to be quashed.

The act of the petitioner does not in any way attract the provision of defamation as contained in the Act and thus the proceedings need to be quashed.

The letters written by the petitioner were confidential letters of request to investigate to different authorities to see whether the transactions involved in Gayatri Towers was fraudulent or not so that the money invested by general public in it does not get wasted and the letters were never circulated or made media and/or there was no intention of doing so and as such the basic ingredients of defamation are not attracted however the Learned trial Court without considering this aspect took cognizance of the matter and the same being without jurisdiction needs to be quashed.

Mr. Somopriyo Choudhury, learned counsel for the opposite party has submitted on the basis of his affidavit in opposition that the case of the Opposite Party/Complainant is that:-

- a) The opposite party No. 1 was a highly respected and renowned officer of the Government of India and held the position of an Accountant Member of the Income Tax Appellate Tribunal, Kolkata under the category of General Central Service, Class I – Group A, Gazetted Officer equivalent to the rank of an

Additional Secretary to the Government of India. Throughout his career, the opposite party No. 1 commanded respect and goodwill amongst his colleagues and associates for his integrity, ethics and expertise.

- b) The opposite party No. 1 is a law abiding citizen of India. No criminal complaint has ever been lodged against the opposite party No. 1 at any point of time. As a matter of fact, as on date no civil or criminal case is pending against the opposite party No. 1
- c) One M/s Gayathri Estates, a partnership firm, had acquired a property being site measuring 12,341.86 sq.yds or 10319.40 sq. mtrs. of land in Block No. 4, Town Survey No. 52/1B-1 of Waltair Ward, Doctors Colony Road, Visakhapatnam, Andhra Pradesh (hereinafter referred to as “the said land”) for the purpose of carrying out development work there at. The brother-in-law of the opposite party No. 1, M. Venket Reddy and the opposite party No. 1’s wife J. Patmaja Rani had acquired the said property for development purpose on 3rd day of January, 1995, which is much prior to the opposite party No. 1 joining public service in the year 2001. Thereafter, both of them formed a partnership firm on 8th October 1998 and contributed all their rights in this property, as their capital into the partnership firm, M/s Gayathri Estates. This event is

also prior to the year 2001. The said partnership firm was reconstituted from time to time by its partners. The said property was given for construction, development and building of “residential apartments” on “turnkey basis” on “built up area sharing” basis to reputed builder as a Joint Venture. M/s. Gayathri Estates did not develop the property by itself. Hence the expenditure for development, building and construction of the residential apartments was not incurred by the firm M/s Gayathri Estates, but by the Joint Venture Company M/s. Welfare Builders & Estates Pvt. Ltd. and thereafter now by M/s GCON Associates.

- d) The opposite party No. 1 at no point of time either directly or indirectly was connected with M/s Gayathri Estates or any transaction done by them in respect of the said property. This fact that M/s. Welfare Builders & Estates Pvt. Ltd. had taken up the construction and development of the said property on turnkey basis and had incurred all the expenditure required thereof is known to the petitioner who had filed W.P. No. 19884/2010 in the High Court of Andhra Pradesh including M/s Welfare Building & Estates Pvt. Ltd. as a respondent.
- e) The opposite party No. 1, upon enquires, has come to learn that the petitioner claiming to be a General Power of Attorney Holder of one Boddada Narayana Babji, Proprietor of M/s Sai

Modern Construction had made several unsuccessful attempts to acquire and/or grab the said property from M/s. Gayathri Estates.

- f) It is after the failure of the petitioner to acquire the said property, several proceedings were initiated and /or caused to be initiated by him in respect thereof. It is pertinent to mention that in all of those proceedings the petitioner has miserably failed. A chart in this regard is provided herein below :-

Sl. No	Date	Description	Plaintiffs	Defendants	Case filed for	Remarks
1.	29/05/2006	W.P. No. 10626/2006	Boddeda Narayan Babji	1)Govt. of Andhra Pradesh 2) Station House Officer 3) Ponnada Mohana Rao	To register FIR	Withdrawn as dismissed on 22/01/2007
2.	29/10/2007	OS No. 98/2008	G.Bangar Rao & Others	Nidrabhangi and Chilla families & Others	Suit for Specific Performance basing on agreement of year 1981	Dismissed
3.	18/04/2008	W.P. No. 8630/2008	Sri Sai Modern Construction by GPA Holder K Naga Satyanna rayana Verma	1)GVMC 2)Chilla Appalakondamma & 10 Ors.	To Consider representation on dt. 24/02/2008 and consequential directly represent	Closed

					not to grant building permission	
4.	24/02/2008	Representation to G.V.M.C.	Sri Sai Modern Construction Prop. B. Narayana Bebj	Ponneda Mohan Rao	Not to entertain building applications	Rejected by GVMC vide ROC. No. 130/08/CP dated 14/10/2008
5.	23/05/2008	Representation to G.V.M.C.	K.N. Satyanarayana Verma (GPA holder of B. Narayana Babji)	Chilla Ramarao Reddy and Others	Revocation of Plan approval granted to Chilla Ramarao Reddy and Others	Rejected by GVMC vide ROC. No. 130/08/CP dated 14/10/2008
6.	30/09/2008	Representation to Mayor, G.V.M.C.	K.N. Satyanarayana Verma (GPA holder of B. Narayana Babji)	Chilla Ramarao Reddy and Others	For action against Chilla Ramarao Reddy and Others	Ejected by GVMC vide Find entrance ROC No. 130/08/CP dated 14/10/2008
7.	14/10/2008	Final endorsement ROC. No. 130/08/CP	Commissioner G.V.M.C.	Sri Sai Modern Construction Prop. B. Narayana Bebj		The Commissioner GVMC considered the representations at S. No. 6, 7 and 8 and after detailed enquiry and proper publication rejected the representation.

8.	11/08/2010	W.P. No. 19884/2010	Sri Sai Modern constructi ons B. Narayana Babbji rep. GPA holder Kolla Naga Satyannar ayana Verma	1)GVMC 2)Chief Planner 3)Nidrabha ngi and C hilla families. 4)Welfare Buildings & Estates Pvt. Ltd.	Declaring the action of reponden ts 1 and 2 in allowing responde nts 1 and 2 inallowin g responde nt 3 and 4 construct ion in respect of the property & Sy. No. 52/B1	Dismissed
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g) The petitioner's grudge against the opposite party No. 1 developed further after the attempt made by the petitioner and his associated to grab the said land was foiled by the intervention of the Civil Court of competent jurisdiction being 1st Additional District Judge, Vishakhapatnam in O.S. No. 258 of 2006.

h) After the aforesaid order was passed against the petitioner by the jurisdictional Civil Court and the same attained its finality, and the illegal attempts made by the petitioner to grab the property failed; he and the other persons acting in

conspiracy with him started to circulate letters containing grossly defamatory imputations against the opposite party No.1, although the opposite party No. 1 was not connected with the said land or the dispute relating to the said land in any manner.

- i) Initially, the petitioner had set up one Kovvuri Sambasiva Reddy to address a letter dated 1st October, 2014 and 9th May, 2015 to the Central Vigilance Commission and Under Secretary to the Government of India respectively, making imputations against the opposite party No. 1 to the following effect :-

- (i) That the opposite party No. 1 is involved in laundering of crores of rupees of public money and
- (ii) That the opposite party No. 1 has used his position to divert the illegally acquired money and used the same in a property on which a residential project has been raised.
- (iii) Copies of the said letters dated 1st October, 2014 was also sent to the Prime Minister's office.

- j) The Central Vigilance Commission referred the matter to the Minister of Law and Justice, who conducted an inquiry and did not find any foundation or basis in the allegations

made by the said Kovvuri Sambasiva Reddy who is a stooge of the petitioner.

- k) From the said letter it is clear that the Ministry of Law and Justice upon enquiring decided not to take any action on the baseless complaints of Kovvuri Sambasiva Reddy, In fact, on 18th January, 2021 the President of the Income Tax Appellate Tribunal has issued a certificate stating that no vigilance case/disciplinary proceeding is pending against the opposite party No. 1.
- l) Consistently failing in all the aforesaid fora, the petitioner starting sending letters to the superior authorities/professional bosses of the opposite party No.1, namely, the president, Income Tax Appellate Tribunal, the Vice President, Income Tax Appellate Tribunal and Branch Manager, Andhra Bank. Three letters dated 27th February, 2018, 6th March, 2018 and 14th March, 2018 sent to the aforesaid authorities are full of false and criminally defamatory allegations and imputations against the opposite party No. 1. Summary of the contents of the said letters are set out herein below:-
- i. The opposite party No. 1 has constituted a firm namely Gayatri Estates in the name of his wife, Jerri Padmaja Rani and brother-in-law, Marreddy

Venkatareddy, and that the said firm constituted by the opposite party No. 1 has entered into a registered agreement to sale, general power of attorney and construction agreement which was registered by Chilla Rama Rao Reddy and others for construction of a residential apartment at Vishakhapatnam.

- ii. The opposite party No. 1 with his black money has constructed stilt, cellar, ground plus 6 floors of a building on the said land totalling 218 flats by spending nearly Rs, 65 Crores.
- iii. The opposite party no. 1 while selling the said flats is getting Rs. 3,200/- per square feet as unaccounted money. Gayatri Estates has sold flats to the third parties and is in the process of selling some other flats.
- iv. The opposite party No. 1 being the Accountant Member of the Income Tax Appellate Tribunal with his black money and with the influence of his official status by influencing black money holders has forced them to invest in his project in the name of his wife and brother-in-law and completed the project without obtaining any bank loan.

- v. The opposite party No. 1 has evaded Crores of rupees in taxes payable to the government and cheated the Income Tax Department.
- m) The said letters were received at the receiving section of such high dignitaries and subsequently had gone to various concerned officers including the stenographers, secretaries, office staff and other officers of the Income Tax Appellate Tribunal. Furthermore, the letter dated 27th February, 2018 which was issued to the Branch Manager of Andhra Bank, Bullayya College Branch, Vishakhapatnam was also forwarded to the Regional Office and Head Office of Andhra Bank and as such, apart from the Branch Manager and other employees of the branch, the employees and officers of the Regional Office and Head Office of Andhra Bank had also gained access to and knowledge of the said letters and contents thereof.
- n) After the aforesaid letters were circulated, the opposite party No. 1 received hundreds of phone-calls and communications from various persons including his long time associates, friends, Central Government officers, stating that the contents of those letters has led to grossly lowering of the intellectual and moral character of the petitioner in their eyes.

- o) Those letters were circulated by the accused person/petitioner to different authorities, as stated above as a result of which numerous people who knew the opposite party No. 1 as a honest and upright officer, thought him to be a corrupt and immoral person and thus, the intellectual and moral character of the opposite party No. 1 was demanded in such manner that his credibility and goodwill as an officer of the Central Government and that too, in the position of an adjudicatory authority, where impartiality of a member is of highest importance, suffered greatly and the public image of the opposite party No. 1 was tarnished completely.
- p) By the calculated criminal activities of the petitioner, the moral and intellectual standing of the opposite party No. 1 which he had created after a number of years of painstaking hard work, was ruined irreparably amongst his colleagues, friends, associates and relatives.

In such circumstances, the opposite party No. 1 was compelled to file a complaint before the Learned Chief Judicial Magistrate at Alipore and on the basis of the aforesaid complaint, cognizance was taken and process was issued in due compliance with the procedure established by law by the jurisdictional Court.

It is submitted in this regard that though no point has been raised by the petitioner in his petition regarding Section 202 of the Code of Criminal Procedure, 1973 but it seems that such point has been raised at the stage of moving the revisional application before this Hon'ble Court as "Listed Motion" (Ex parte). It is submitted that it is no longer *res integra* that exercise of examination of witness/witnesses produced by the complainant amounts to an inquiry contemplated under Section 202 of the Code of Criminal Procedure, 1973. The examination of the complainant amounts to compliance of Section 200 of the Code of Criminal Procedure and examination of witness and recording of initial deposition of witness produced by the complainant amounts to compliance of Section 202 Cr.P.C.

In the light of the submissions made hereinabove, the prayers made in the revisional application are completely untenable and wholly unfounded and therefore, liable to be rejected and this revisional application **(CRR No. 3815 of 2019) is liable to be dismissed with exemplary costs.**

The petitioner has submitted written notes of argument stating the facts as stated in the revisional application and further stating that this Hon'ble Court while passing the ad-interim order of stay in the appeal has observed that:-

“Prima facie”, the statements made in paragraph 17 (a) to (e) of the stay petition appear to be defamatory of the appellant.

*Prima facie, the respondent had no right **to make** and publish those statements unless he can establish their truth/justification and/or some kind of privilege to him to publish those statements.*

The right of the respondent is required to be demonstrated at this stage or the stage of the trial.

Until he does so, the statements are deemed to be false and made maliciously of the appellant.

*On the above prima facie case, we grant an order of injunction restraining the respondent **from making** and publishing the above statements or any other statements of that kind or nature till 14th December, 2018 or until further order whichever is earlier”*

It is further stated by the petitioner that the findings therein were only made at an interim stage and the rest were to be decided in trial of the suit which is still to be concluded. It is denied that same cause of action which is adjudicated in civil forum can be adjudicated in Criminal Forum also at the same time. More over when the contents of the letter are still under investigation. It is denied that no point has been raised by the petitioner in his petition regarding Section 202 of Cr.P.C. It is further stated that this being point of law can be raised at any stage.

The following **judgements** have been relied upon on behalf of the **petitioner**.

1. (AIR 1991 SCC 1531) Bal Kishan Das Vs. P.C. Nayar (matter relates to Section 406 Indian Penal Code).
2. Unreported judgement passed in CRR 2369 of 2003 K. Paka Singh @ Konthouiam Paka Singh Vs. Miss. Nivedita Sengupta.

The aforesaid case refers to a judgment of the Hon'ble Apex Court reported in (2020) 10 SCC 118 where principle of quashing has been settled.

3. (2010) 6 SCC 243 Jeffrey J. Diermeier Vs State of W. B.

The **opposite party** has relied upon the following judgements in support of their case.

1. Jeffrey J Diermeier Vs. State of West Bengal (2010 (6) SCC 243).
2. M.C.Verghese Vs Poonam and Another ((1969)1 SCC 37).
3. Chamanlal Vs State of Punjab ((1970) 1 SCC 590).
4. Sewakram Subhani Vs R. K. Karanjia ((1981) 3 SCC 208).
5. Indian Oil Corporation Vs NEPC ((2006) 6 SCC 736).
6. Vijay Dhanuka & Ors. Vs Nazima Mumtaz & Ors. ((2014 (14) SCC 638).

Heard both side. Perused the materials on record. Considered.

The relevant orders of the Trial Court are dated 02.03.2019 and 15.03.2019.

Order dated 02.03.2019.

Case No. A.C. 1682 of 2019

A petition of complaint is filed U/s 200 Cr. P.C.

Heard Ld. Advocate for the complainant, perused the petition of complaint.

Considered, cognizance is taken, register the same, let the case be transferred to the file of Ld. 7th J.M. at Alipore, for disposal in accordance with law.

Complainant is directed to appear before the transferee court.

D & C by me

Sd/-

A.C.J.M., Alipore, South 24 Parganas

Order dated 15.03.2019.

Case No. A.C. 1682/2019

Record is put up today.

The complainant is present today before the Court along with a witness namely Soumitra Choudhury and they have been examined under Section 200, Cr.P.C. No other witness is present. Complainant files some documents, let it be kept with the record.

Heard. Perused the petition of complaint and materials on it, also perused the statement on oath of the complainant and

the witness on record and documents as submitted by the complainant.

The evidence of witness Soumitra Choudhury is considered and is taken for the compliance as laid down in Section 202. Cr.P.C.

Accordingly considering all, this Court finds prima facie case to proceed against the accused persons for the offence under Sections 500/501, IPC.

According, issue summons against the accused persons.

Complainant is directed to file the requisite at once.

Fix 13.05.2019, for SR and appearance.

Sd /-

J.M. 7th Court, Alipore

The Supreme Court in **Shivjee Singh vs Nagendra Tiwary and Ors., Criminal Appeal No. 1158 of 2010, on 6 July, 2010**, held:-

“Para 12. *The use of the word ‘Shall’ in proviso to Section 202(2) prima facie indicative of mandatory character of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Sections 226 and 227 and Section 465 would clearly show that non examination on oath of any or some of the witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so. Here it is significant to note that the word ‘all’ appearing*

in proviso to Section 202(2) is qualified by the word 'his'. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate. In other words, only those witnesses are required to be examined whom the complainant considers material to make out a prima facie case for issue of process. The choice being of the complainant, he may choose not to examine other witnesses. Consequence of such non-examination is to be considered at the trial and not at the stage of issuing process when the Magistrate is not required to enter into detailed discussions on the merits or demerits of the case, that is to say whether or not the allegations contained in the complaint, if proved, would ultimately end in conviction of the accused. He is only to see whether there exists sufficient ground for proceeding against the accused.

Para 16. *As a sequel to the above discussions, we hold that examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant in furtherance of the direction given by the Magistrate in terms of proviso to Section 202(2) is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint.....”*

Accordingly the order dated 15.03.2019 passed by learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas in Case No. A.C. 1682 of 2019 is in accordance with the settled principle of law.

The present case under revision is against a proceeding under Section 500 and 501 of the Indian Penal Code.

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.”*

In the present case, it prima facie appears that:-

- (a) The petitioner has **made** imputation concerning the complainant (by way of letters to persons of authority).
- (b) Such imputation has been **made by words intended to be read.**
- (c) Such imputation has been **made with the intent to harm and with knowledge and belief that it will harm the reputation of the complainant/opposite party.**

The facts in the case between the parties is also covered by explanation 4 of the Section 499 IPC.

Whether the conduct of the petitioner/accused is covered by any of the exceptions is subject to trial. This is not the appropriate forum, there being sufficient materials against the petitioner in respect of the offence alleged and prima facie evidence to go to trial in the present case.

The complaint in this case relates to the complainant/opposite party being a reputed public servant. The petitioner/accused has issued three letters of 27th February, 2018, 6th March, 2018 and 14th March, 2018 to various statutory authorities, high ranking officials and dignitaries making allegedly absolutely false and baseless allegations which prima facie lowers the moral or intellectual character of the complainant before others.

Since the complainant is part of an adjudicatory body and performs judicial duties as an “Accountant Member” of the Hon’ble Tribunal, the aspersions which have been made by the accused and others set up by him, has amounted to prima facie damaging the reputation of the complainant in the eyes of the members of the Bar and the Chartered Accountants and Taxation Practitioners as a whole. It is the case of the complainant that number of persons in whose eyes the complainant was held in highest regard and estimation has called upon the complainant to express their discontent and to communicate

that the reputation and estimation of the complainant would never be restored back to the positions, it originally used to be.

The criminal defamation caused by the petitioner was made and circulated in printed and engrafted form to various third parties and highly placed statutory and constitutional functionaries.

The alleged defamatory statements made by the petitioner are as follows:-

Sub:- “Information about the fraudulent documents submitted by Gayatri Towers constructed by Gayatri Estates rep. by its Partners Smt. Jeeri Padmaja Rani, W/o. Jeeri Sudhakara Reddy by colluding with Chilla Rama Rao Reddy and others who are not having any title over the property covered by T.S. NO. 52/1B1 of Waltair Ward Block No. IV, Peda Waltair, Visakhapatnam - as a citizen of India to save banks as well innocent general public- Reg.”

(a) To the Branch Manager Andhra Bank, Bullayya College Branch, Visakhapatnam with copy to Reserve Bank of India and Prime Minister of India.

*“.....It is further bring to your kind notice that Jeeri Sudhakara Reddy who is no other than husband of Jeeri Padmaja Rani, Partner of Gayatri Estates, is working as Income Tax Appellate Tribunal member at New Delhi and he is highly influenced person, by using his influence he is making his best efforts to get the loans to his project Gayatri Towers. If your officials grant any loans under the influence of the said Jeeri Sudhakara Reddy, your bank will also be in the list of banks who were **got cheated by Nirav Modi, Punjab National Bank for 11,000 crores and other***

banks cheated by Kotari for 800 crores and other persons. The copy of this letter also being sent to Reserve Bank of India and Prime Minister of India.”

- (b) To
The president,
Income Tax Appellate Tribunal,
Pratishtha Bhavan, 3rd and 4th floors, 001,
M.K. Road, Mumbai-400020

“Complaint about the black money holding by Jeeri Sudhakara Reddy, who is working as Accountant Member, Income Tax Appellate Tribunal presently working at Mumbai with that black money constructed 218 flats in the name and style of Gayatri Towers by constituting a firm Gayatri Estates in the name of his wife Jeeri Padmaja Rani and brother-in-law Marreddy Venkata Reddy – High Quality Construction at Visakhapatnam- Project value worth Rs. 245 crores without even taking single pie by way of bank loan-Reg.”

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.

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

Thus the case filed against the petitioner prima facie has the following materials on record/evidence.

- (a) The petitioner has **made** imputation concerning the complainant (by way of letters to persons of authority).
- (b) Such imputation has been **made by words intended to be read.**
- (c) Such imputation has been **made with the intent to harm and with knowledge and belief that it will harm the reputation of the complainant/opposite party.**

Accordingly the said materials make out a prima facie case against the petitioner, to proceed towards trial and this is not a fit case where the inherent powers of this Court should be exercised.

CRR 3815 of 2019 is dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)