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Parle (East), Mumbai – 400 057. On the ground floor of the said Bungalow, occupants are Ranjan Mangal Rajput, Prabhavati Prabhakar Mhatre and Rajesh Ram Mhatre. The premises which were rented to Ranjan Mangal Rajput, were occupied by Respondent No.2/Complainant who claimed to be niece of Mangal Rajput viz husband of Ranjan Rajput. According to Respondent No.2, she being niece and sub-tenant of Ranjan used to regularly visit the said premises. She claimed that her visits and intermittent stay at the said rented premises of her aunt was making the Petitioner uncomfortable.

4] On 10/10/2019, Respondent No.2/complainant alleged in her criminal complaint that she has filed complaint on 19/09/2019. In the said complaint, she has claimed that Petitioner is residing with his son Sanjay on the first floor. According to her, son of the Petitioner viz Sanjay on 04/01/2019, so also on some later date committed an offence of stalking by objectionably staring at her.

She has further claimed that the Petitioner on 29/01/2019 addressed a letter to Ranjan M Rajput through courier which she came across during her visit. After reading the contents of same, she

discovered that the Petitioner has mentioned about rent transaction between him and her aunt and she further noted that her daughter's reference is made alongwith her to be living a glamorous life. It is also noted by her that the Petitioner stated in the said letter that neighbours were making all sorts of inquiries about Respondent No.2/Complainant and her daughter who travel in two wheeler and four wheeler with others. It is claimed that use of such words not only amounts to defamation but also insults modesty of woman. It is further mentioned that Petitioner has installed CCTV in the premises and she felt that Petitioner might have watched her regularly through CCTV Camera.

5] Pursuant to aforesaid complaint, offence being Crime No. 416 of 2019 came to be registered on 10/10/2019 punishable under Sections 354D, 509 and 500 of the Indian Penal Code. Petitioner is questioning legality of the proceedings with a prayer for quashing of the charge-sheet and regular criminal case.

6] Counsel for the Petitioner Mr. Shukla would urge that perusal of the complaint does not reflect satisfaction of necessary ingredients of

the offence alleged against the Petitioner, particularly Section 354D i.e. stalking, Section 499 i.e. defamation and Section 509 i.e. insulting modesty of a woman. So as to substantiate his contention, Mr. Shukla would take us through contents of the FIR, alleged communication dated 29/01/2019 and supplementary statement of Respondent No.2/complainant recorded on 12/10/2019. Mr. Shukla would take us through aforesaid communication dated 29/01/2019, so also communications which are produced on record viz Exhibit-C i.e. letter dated 04/09/2019, Exhibit-D i.e. letter dated 24/07/2018, Exhibit-E i.e. letter dated 15/10/2016 and Exhibit-F i.e. letter dated 10/11/2013.

7] According to Mr. Shukla, Petitioner is regular in keeping/maintaining record in relation to tenant as could be inferred from plain reading of the aforesaid communications. According to him, relation of landlord and tenant between the Petitioner and original tenant Ranjan and her late husband were cordial. However, it is only because Petitioner has sought additional occupation charges to the tune of Rs 30,000/- from Ranjan as the premises were occupied by Respondent No.2/Complainant, a false complaint came to be

lodged. The communication which was never addressed to Respondent No.2/Complainant was read by her without any authority and by drawing incorrect inference by reading only part of such letters out of context, allegations of commission of offence are made. In this backdrop, his further contentions are, there is neither an act or intention of Petitioner to defame Respondent No.2/Complainant or her daughter, nor alleged material was placed in circulation or was meant for reading of others as it was purely a communication addressed to tenant viz Ranjan.

8] His further contentions are offence under Section 354D which provides punishment for stalking cannot be inferred in absence of allegations of Petitioner following the complainant or her daughter nor evidence is brought on record to that effect.

9] Learned Counsel, in addition to above, would invite attention of this Court to provisions of Section 199 of Cr.PC which provide for prosecution for the offence of defamation, so also provisions of Section 499 which defines “defamation” and Section 500 which provides for punishment for the offence of defamation. According to him, by no

stretch of imagination contents of letter referred in the FIR could be said to be defamatory, so as to infer offence of defamation against the Petitioner. Mr. Shukla would invite our attention to Explanation 4 to Section 499 which reads thus:-

“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 loathsome state, or in a state generally considered as disgraceful.”

In addition, he would also invite our attention to 8th Exception to Section 499 which reads thus :-

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

of accusation.”

Mr Shukla would further invite our attention to provisions of Section 509 of IPC and submits that there is presumption as to modesty of a woman. According to him, there is no gesture or an act attributed to present Petitioner so as to insult modesty of a woman i.e. Respondent No.2/Complainant. That being so, he would urge that prosecution against the Petitioner is liable to be quashed and set aside. He would further invite our attention to the fact that Petitioner is aged about 86 years and since 2019 his tenant Dr. Ranjan is not using the premises.

10] While countering aforesaid submissions, learned APP Mr. Patil would urge that perusal of the letter dated 29/1/2019 reflects that Petitioner has specifically mentioned about glamorous life style of the Respondent No.2/Complainant and the inquiries made by the neighbours. He would submit that since posting of letter by the Petitioner is not disputed, necessary ingredients of the offence alleged viz. outraging modesty, defamation and insulting modesty could be inferred. According to him, at this stage, Court is not required to look into defence of the Petitioner and that being so, Petition is liable to be

dismissed.

11] Mr. Sapre, learned Counsel for Respondent No.2/Complainant would invite our attention to observations made by Single Bench of Kerala High Court in the matter of *Haries vs. State of Kerala* in Cri. M.C. No.9717 of 2002 decided on 16/02/2005 reported in **2005(3) KLT 400**. According to him, intention of the Petitioner or motive cannot be looked into at this stage of the proceedings, once the complaint discloses cognizable offence. According to him, once it is presumed that woman had her modesty, the words employed in communication aptly substantiate the offence, not only of stalking but also defamation and insulting modesty. As such, he would submit that Petition is liable to be dismissed.

12] We have considered rival submissions.

13] At the outset, this Court will have to deal with the prosecution of the Petitioner under Section 354D i.e. stalking. Necessary ingredients for the said offence are that the man following a woman or contacting or attempting to contact such woman to foster personal interaction

repeatedly, despite a clear indication of disinterest by such woman or monitors the use by a woman of the internet, email or any other form of electronic communication.

14] Factual matrix narrated in the FIR only allege that Petitioner might have watched movement of Respondent No.2/Complainant through CCTV Camera on the monitor. Such claim of the Petitioner in the FIR is not supported by concrete statement. The language used in the FIR in support of the offence of stalking alleged against the Petitioner is that of installing CCTV Camera and there is likelihood of Respondent/Complainant being regularly watched by the Petitioner. There is neither iota of evidence nor concrete statement made to that effect by the Respondent No.2/Complainant in the FIR. Claim in the FIR qua offence of stalking is based on conjecture and surmises. In that view of the matter, it cannot be said that contents in the complaint preferred by Respondent No.2/complainant satisfy very ingredients of offence of stalking punishable under Section 354D of Indian Penal Code.

15] This takes us to next submission of Counsel for the Petitioner viz.

offence of defamation. It is claimed by the Petitioner that contents of the letter dated 29/01/2019 are defamatory in nature. If we look in the contents of the said communication dated 29/01/2019, what can be noticed is, said communication is addressed by the Petitioner to Ranjan, original tenant. Very opening of the said letter is about enhanced demand of rent. It is specifically mentioned in the said letter that Respondent No.2/Complainant is occupying the tenanted premises and if she intends to continue to stay in the said premises then additional payment of Rs 30,000/- per month be paid for inducing the sub-tenant. As such, demand of total rent of Rs 35,500/- was raised by the Petitioner to Ranjan. Petitioner has also objected stay of Respondent No.2/Complainant in the premises in question as he was misinformed about the same. Petitioner thereafter insisted that occupant's information and declaration to be furnished to the police authorities (which is mandatory act for a landlord like Petitioner) was not provided by the tenant Ranjan. Through the communication, Petitioner in the capacity of landlord has raised his suspicion about induction of Respondent No.2/Complainant as sub-tenant and particularly about her behaviour. As far as objectionable words, which according to Respondent No.2/Complainant, constitute offence of

defamation and insulting her modesty are, “glamorous living style” of the Respondent No.2/Complainant because of which unnecessary inquiries being made by the neighbours. It is also claimed that use of word that “Respondent No.2/Complainant alongwith her daughter moves on two wheeler and four wheeler at times with third person” is claimed to be amounting to insulting her modesty.

16] In the backdrop of aforesaid claim, if we appreciate very ingredients of offence, what is required to be noted is, so as to constitute offence of defamation, it is necessary that wordings, signs, imputations made by the accused must either be intended to harm reputation of the complainant or accused must be knowing that such conduct would cause harm to the reputation of the complainant. It has to be also considered whether there was intention i.e. *mens rea* to commit such offence.

17] Apart from above, offence of defamation under Section 499 of the IPC is made punishable under Section 500 only upon cognizance being taken by the Magistrate on complaint preferred by the complainant. It is only when parties like Respondent

No.2/Complainant produces material that supports prima facie case for a statutory offence, Magistrates can proceed to take cognizance of the same.

This Court at the stage of quashing is required to be sensitive to the principle that initiation of criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints. Apart from above, Court is equally required to be sensitive to the fact that it is for the prosecution to prove the case.

18] As far as offence of defamation alleged in the case in hand is concerned, fact remains that defamatory letter was never addressed to the Respondent No.2/Complainant and same was addressed to tenant Ranjan. Respondent No.2/Complainant by chance read the said letter and based on the contents an opinion of commission of offence of defamation and insulting modesty was formed. If we read the contents of communication, what can be noticed is, (a) Petitioner in the capacity of landlord was seeking enhanced rent from the tenant Ranjan since long which was not paid to him, (b) Petitioner has sought

additional rent of Rs 30,000/- since Respondent No.2/Complainant without permission of the Petitioner, was occupying the premises in the capacity of sub-tenant, (c) the said communication further contains material as to earlier cordial relations between the Petitioner and the late husband of Rajan viz. Mangal and about the relatives who stayed in the premises. It is also mentioned therein that Petitioner never demanded rent from earlier occupant whose behaviour was always up to the mark and respectable. It also contains very conduct of the Respondent No.2/Complainant i.e. unrespectful behaviour with landlord who is a senior citizen, her capacity to pay rent of Rs 30,000/- as is demanded, particularly in view of her financial background viz her husband serving in Canada, her daughter working as an actress in cinema and their glamorous life style. From above, it can be inferred that contents of the letter dated 29/01/2019 could never be said to be addressed to Respondent No.2/Complainant so as to defame her. The contents thereof were never meant to be for circulation. Fact remains that contents of the said letter are sought to be read out of context, as could be inferred from the plain reading of the same. The words “glamorous living style” cannot be said to be obscene or indecent. The use of said words in

the communication appear to be with intention to get enhanced rent from Respondent No.2/Complainant and from tenant Dr. Ranjan.

19] There is one more facet to the matter. Dr Ranjan has never objected to language employed in the communication dated 29/1/2019. It is only Respondent No.2/Complainant who claimed to have read the letter which was never addressed to her and formed an opinion of same being defamatory and insulting her modesty. The above letter dated 29/1/2019, if read in context of communications viz Annexures “C” to “F”, same appears to be in continuation of earlier communications.

20] As far as reliance placed by Counsel for the Petitioner on 8th Exception to Rule 499 of IPC is concerned, since same is in the form of defence, such defence can be considered only at the trial stage and not while deciding present Writ Petition. As such said contentions of Counsel for the Petitioner to that extent stands rejected. Fact remains that Court can look into satisfaction of necessary ingredients with aid of the Explanation-4 to Section 499. The said Explanation is already reproduced hereinabove. Communication in question was addressed

to authorized person as provided under Section 499 i.e. Dr. Ranjan and not to Respondent No.2/Complainant. It cannot be said to be containing such words which can be said to be imputations harming reputation of Respondent No.2/Complainant lowering her moral or intellectual character or credit. Even it cannot be said that use of the words by the Petitioner in the communication is disgraceful, hateful, offensive, nasty or disgusting. That being so, it cannot be said that necessary ingredients of offence of defamation can be inferred so as to justify registration of offence against the Petitioner.

21] This takes us to the next submission of Mr. Shukla qua the offence punishable under Section 509 of the IPC. Section 509 provides for punishment for insulting modesty of a woman. It contemplates that a person who intends to insult modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, is said to have committed offence of insulting modesty. The Apex Court while dealing with the issue of outraging modesty of female in its judgment in the matter of *Raju Pandurang*

Mahale vs. State of Maharashtra reported in **AIR 2004 SC 1677** has

observed thus: (para 12, 13, 14, 15)

“12. What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows"

"Decorous in manner and conduct; not forward or lowe; Shame-fast; Scrupulously chaste."

“13. Modesty is defined as the quality of being modest; and in relation to woman. "Womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions. As observed by Justice Patterson in *Rex v. James Llyod* (1876) 7 C and P 817. In order to find the accused guilty of an assault with intent to commit a rape, Court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part. The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.”

“14. Webster's Third New International Dictionary of the English Language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Edn.), the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".”

“15. In *State of Punjab v. Major Singh*, (AIR 1967 SC 63) a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question the majority view was that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354, IPC. Needless to say, the "common notions of mankind" referred to have to be gauged by contemporary societal standards. It was further observed in the said case that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in *Major Singh's case* (supra) the ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the sense of decency of a woman. The above position was noted in *Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another*, (1995 (6) SCC 194). When the above test is applied in the present case, keeping in view the total fact situation, the inevitable conclusion is that the acts of accused appellant and the concrete role he consistently played from the beginning proved combination of persons and minds as well and as such amounted to "outraging of her modesty" for it was an affront to the normal sense of feminine decency. It is further to be noted that Section 34 has been rightly pressed into service in the case to fasten guilt on the accused-appellant, for the active assistance he rendered and the role played by him, at all times sharing the common intention with A-4 and A-2 as well, till they completed effectively the crime of which the others were also found guilty.”

As such, this Court is required to prima facie find out, whether offence of insulting modesty of Respondent No.2 could have been said to be committed by the Petitioner in view of the language employed in communication dated 29/01/2019. From the reading of communication referred to above, we have already observed that intention of the Petitioner was to demand higher rent. Petitioner had no culpability to attack the character of Respondent

No.2/Complainant. Rather, the words used therein cannot be said to be attacking character of the Petitioner. The Petitioner was in communication with the tenant while exhibiting/complaining about conduct of Respondent No.2/Complainant for which he was required to face the neighbours and also how such conduct was disgraceful. As such, Petitioner cannot be said to have, by aforesaid conduct of writing a letter, insulted modesty of Respondent No.2/Complainant. Such words used therein cannot be termed as indecent as he was not objecting her chastity. Apart from above, Court is equally required to be sensitive to the fact that letter was never addressed to the Petitioner but to the tenant Dr. Ranjan. The words used therein by no stretch of imagination could be said to be insulting modesty of Respondent No.2 and in support thereof reliance can be placed on the following observations of the Apex Court in the matter of *S. Kushboo vs. Kanniammal and Anr* reported in AIR 2010 SC 3196 :-

“16. Coming to the substance of the complaints, we fail to see how the appellant's remarks amount to 'obscenity' in the context of Section 292 IPC. Clause (1) to Section 292 states that the publication of a book, pamphlet, paper, writing, drawing, painting, representation, figure, etc., will be deemed obscene, if –

- It is lascivious (i.e. expressing or causing sexual desire) or
- Appeals to the prurient interest (i.e. excessive interest in sexual matters), or

- If its effect, or the effect of any one of the items, tends to deprave and corrupt persons, who are likely to read, see, or hear the matter contained in such materials.

In the past, authors as well as publishers of artistic and literary works have been put to trial and punished under this section. In the present case, the appellant takes full responsibility for her statement which was published in 'India Today', a leading news magazine. It would be apt to refer back to the decision of this Court in *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881, wherein it was held that if a mere reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. It was observed that in the field of art and cinema, the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions, the same are taken for granted without in any way tending to debase or debauch the mind. What is to be considered is whether a class of persons, not an isolated case, into whose hands the book, article or story falls will suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. Even though the decision in that case had upheld a conviction for the sale of a literary work, it became clear that references to sex cannot be considered obscene in the legal sense without examining the context of the reference.”

“17. This position was later clarified in *Samaresh Bose v. Amal Mitra*, AIR 1986 SC 967, where the Court held that in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the viewpoint of the author, the judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary and artistic value. Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have on the minds of the reader.”

As such, from aforesaid observations of the Apex Court, it has to be inferred that the use of words “glamorous life style” or “Respondent No.2/Complainant moving around with her daughter on two wheeler or in four wheeler, at times with others” cannot be said to be an act of obscenity or outraging modesty of woman. We have also observed

hereinabove that Respondent No.2/Complainant has relied on only few statements in the communication dated 29/1/2019 by reading the same out of context, alleging commission of offence i.e. an act or instance of offending or commission of illegal act by illegal means. As such, we cannot infer that the Petitioner can be said to have committed offence of insulting modesty or stalking or defamation, as has been claimed.

22] Apart from above, we must place on record our observations about the conduct of Respondent No.2/Complainant. Communication in question was addressed to the tenant on 29/01/2019 whereby the Petitioner has demanded additional rent of Rs 30,000/- as admittedly Respondent No.2/Complainant was occupying the premises without paying rent. From the pleadings which are not disputed by Respondent No.2/Complainant, it is apparent that she has used the premises which were rented to her aunt not only for carrying out shooting of films but also for other purposes. Fact remains that Ranjan, original tenant, was not occupying the said premises but it was only Respondent No.2/Complainant alongwith her daughter were in continuous occupation of the same. Petitioner, in view of above, has

sought additional rent @ Rs 30,000/- per month in addition to original agreed rent. It is only thereafter Respondent No.2/Complainant has approached the police authorities and the police authorities have registered offence against the Petitioner, a senior citizen who is 85 years of age as on today.

23] Though Counsel for Respondent No.2 has relied on the judgment of Kerala High Court in the matter of *Haries*, cited supra, law laid down in the said judgment is based on the factual matrix of that case in which a letter was written by the accused to woman whereas in the case in hand, letter was never addressed to Respondent No.2/Complainant but it was addressed to tenant. In such a situation, on facts so also on law, as discussed hereinabove, said judgment will be hardly of any assistance in the case in hand.

24] In the aforesaid backdrop, we are of the view that offence alleged against the Petitioner cannot be inferred. The Court in such an eventuality cannot be said to be not armed with power to quash the proceedings. Inherent power conferred upon the High Court can be exercised in case if it is noticed that criminal law is set in motion in

mechanical manner and by no stretch of imagination offence could have been inferred from contents of the complaint. This Court, as such, is empowered to exercise inherent powers for quashing of criminal proceedings. The Apex Court in the matter of *State of Haryana and Ors v. Ch. Bhajan Lal and Ors* reported in **AIR 1992 SC 604** has observed that in case allegations made in the FIR or complaint even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, prosecution against the accused can be quashed. Not only above, but in case criminal proceedings are initiated with malafide intention or ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, proceedings can be quashed. As such, drawing support from the aforesaid judgment and also the judgment in the matter of *S. Khushboo*, cited supra, we are of the opinion that the case for quashing is made out. That being so present Petition stands allowed in terms of prayer clause (b).

(RAJESH S. PATIL, J.)

(NITIN W. SAMBRE, J.)