

**IN THE HIGH COURT AT CALCUTTA**  
**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1791 of 2023**

**(Assigned)**

**With**

**CRAN 3 of 2024**

**CRAN 5 of 2024**

**Sanjay Kumar Sharma**

**Vs**

**Krishnendu Narayan Choudhury**

**For the Petitioner**

: Mr. Ranojoy Chatterjee,  
Mr. Tamal Singha Roy.

**For the Opposite Party**

: Mr. Sekhar Kr. Basu, Ld. Sr. Adv.  
Ms. Sonal Sinha,  
Mr. Avishek Prasad,  
Mr. Agniswar Chowdhury.

**Hearing concluded on**

: 12.07.2024

**Judgment on**

: 05.08.2024

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred by the Accused/Petitioner praying for quashing of impugned Criminal Proceeding being 269C of 2023 under Section 200 of the Code Criminal Procedure, 1973 with respect to the alleged commission of the Offences under Sections 182/211/499/500/503/504 of the Indian Penal Code, 1860 presently pending before the Learned Judicial Magistrate, 1<sup>st</sup> Court, Malda, West Bengal.
2. **The case of the Opposite Party/Complainant** is that the petitioner stated in various applications/petitions including Writ Application(s) that the opposite party was a **“Corrupt Chairman”** and that a First Information Report was also filed against him, wherein he used such terms and that has harmed his reputation.
3. It is further stated that:-

*“The complainant currently serves as the chairman of the English Bazar Municipality, who had been elected for the first time to the position in 1995. He is also an ex-MLA and ex-Minister-in-Charge of the Department of Tourism for the Government of West Bengal. In the year 2004 he was awarded the "Environmental Excellency" award by Govt. of West Bengal and Central Govt. By virtue of his chairmanship, he represents the public in general and has gained immense knowledge of the political environment during his career. His distinguished personality and leadership style have earned him a reputation as a respected figure. As a representative of the public, he diligently performs his duty towards the development of society at large, which has garnered him widespread appreciation among the general public.”*

4. **The case of the accused/petitioner in short is that:-**

*“From the facts as mentioned in the petition itself, there is no whisper that the petitioner’s activities caused the opposite party to create a breach of peace and also nowhere has it been written that the petitioner threatened the opposite party with regards to his person or property as a result of which he did something which he was not supposed to do as per law and moreover the said Section 503 is a definition and not a punishment by virtue of which it could not never have been added as a Section in the Offences part of the petition of Complaint and the Cognizance taken by the Learned Chief Judicial Magistrate was also bad in law. The petitioner filed numerous complaints against the opposite party, because he in reality does nefarious and corrupt acts and only to coerce the petitioner to withdraw the said Complaint(s) such criminal proceedings have been brought forth.”*

5. The relevant extract from the **letter of complaint** dated 10.09.2022 **filed by the petitioner** before the Executive Officer, English Bazar Municipality, is as follows:-

- “i) That I would like to state that my building plan has been approved thrice from the English Bazar Municipality, Malda. First Plan was sanctioned on 07.03.2013, bearing sanction Number 14/2012-2013 (G+2 with one Mezzanine Floor), Second Plan was sanctioned on 22.08.2013, bearing sanction number 04/2023-2014 (G+3 with one Mezzanine Floor) and Third Plan was sanctioned on 16.11.2017, bearing sanction number 03/2017-2018 (G+3 with one Mezzanine Floor). Moreover Completion Certificate was issued by the English Bazar Municipality against holding number 789/7/490 on 04.01.2018 vide Memo Number 2579/IV-2/17-18.*
- ii) **That at the time of passing the extension plan dated 22.08.2013 the municipal officials visited the spot and imposed penalty amounting Rs. 10,000/- which I have deposited on 16.08.2013 vide receipt number 3755.***
- iii) That you are very well aware of the fact that **on 23.03.2014 an FIR was lodged against the then corrupt Chairman who is also the present***

**Chairman of English Bazar Municipality Mr. Krishnendu Narayan Choudhury** in English Bazar Police Station for making illegal demand amounting Rs. 2,00,00,000/-(Two Crores) against construction of my new residential building. Immediately after lodging the FIR the **stop construction notice was issued on 24.03.2014** in revenge without rejecting the Sanctioned Plans.

- iv) That I was compelled by the then **corrupt Chairman** to make two policies of HDFC Life Insurance Company prior to sanction of First Municipal Plan as well as the Second Municipal Plan in collusion with the then elected Councilor of EBM W-9, Smt. Prativa Singha. A diary in this regard had already been lodged at English Bazar Police Station against the then Chairman and the Councillor.
- v) That being aggrieved by the whimsical action of the then **corrupt Chairman**, I have filed one Writ Petition at Hon'ble Kolkata High Court [WP 30818(W) of 2014] and the Hon'ble High Court vide its judgment dated 04.12.2014 restrained the respondent municipality from taking any steps for demolition of the alleged unauthorized constructions without the leave of the Court.
- vi) That in the end of the year 2016, the **corrupt Chairman** Mr. Krishnendu Narayan Choudhury was removed from the post of the Chairman by passing "No Confidence Motion" by his own TMC Party Councillors and Mr. Nihar Ranjan Ghosh was replaced as Chairman. Thereafter in the year 2021 Mr. Suresh Chandra Rano, SDO, Malda Sadar and Ms. Sumala Agarwala were appointed as the administrators but none had issued such type of illegal notice."

6. Supplementary affidavit has been filed on behalf of the petitioner stating therein the status of the writ petitions filed by him.
7. Both parties have filed their written notes of argument.

8. The petitioner has relied upon the judgments of the Supreme Court in ***Kishore Balkrishna Nand Vs. State of Maharashtra & Anr.***, (Criminal Appeal No. 2291 of 2011, on 02.08.2023) that allegations in complaint made in good faith to lawful authority cannot attract offence of defamation and in ***Dipankar Bagchi Vs. The State of West Bengal & Anr.***, decided on 05.08.2009, 2009 SCC Online Cal 1877, that mere allegations without prima facie evidence do not constitute defamation.
9. The petitioner has further stressed that the ingredients required to constitute the offences alleged are absent in this case.
10. The opposite party/complainant filed the complaint in this case on 26.04.2023 and has filed copies of newspaper publication dated 24.03.2024, which are not subject matter of the complaint in this case.
11. Thus, it is now to be seen as to whether the contents in the letter dated 10.09.2022, addressed to the Executive Officer, English Bazar Municipality prime facie constitute the offences alleged.
12. In the said letter, it is alleged that the opposite party herein allegedly demanded bribe and was referred to as '**corrupt**' chairman.
13. It appears from the materials on record, that the **petitioner once had to pay penalty** to the Municipality and there is a dispute between the municipality and the petitioner, regarding **illegal constructions allegedly made by him. The complainant/opposite party herein**

**was the then Chairman of the said Municipality, holding a (public) post of importance.**

**14. The offences alleged against the petitioner are under Sections 182/211/499/500/503/504 of the Indian Penal Code.**

**15. Section 182 of IPC, lays down:-**

***“182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—***Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

*(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or*

*(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

***Ingredients of offence.-*** The essential ingredients of the offence under sec. 182 are as follows:-

*(1) The accused gave some information to a public servant;*

*(2) Such information was false;*

*(3) The accused knew or had reason to believe that such information was false;*

*(4) He did so intentionally to cause the public servant to act upon such information which the public servant would not have acted upon to the injury or annoyance of any person.*

*There are many ingredients set out in sec. 182, IPC. Unless all the ingredients are established by evidence, the offence cannot be treated to have been committed.”*

**16. In the present case,** the petitioner admittedly informed the Executive Officer of English Bazar Municipality (public servant) that the

complainant as Chairman demanded bribe, which was not substantiated and this was prima facie with the intention to injure the reputation of the complainant. The ingredients required to constitute the offence under Section 182 IPC is thus prima facie present against the petitioner.

**17. Section 211 of IPC, lays down:-**

***“211. False charge of offence made with intent to injure.—****Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

*and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

***Ingredients of offence.*** *-The essential ingredients of the offence under sec. 211 are as follows:*

- (1) Accused instituted a criminal proceeding;*
- (2) There was no just or lawful ground for such proceeding or the charge was false;*
- (3) Accused knew at the time of making the charge that there was no lawful ground;*
- (4) He made the charge intending to cause injury to the person against whom the charge was made.”*

**18. The allegations** in the said letter dated 10.09.2022 has been made by the petitioner in the letter of complaint, without any documents or evidence (even prima facie) in support of such allegations, which being

made against the opposite party being the chairman of the English Bazar Municipality is prima facie a statement as to his character, reputation and position.

**19. Section 499 of IPC, lays down:-**

**“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 expected, to defame that person.

*Explanation 1.*— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

*Explanation 3.*— An imputation in the form of an alternative or **expressed ironically, may amount to defamation.**

*Explanation 4.*— No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, **in the estimation of others, lowers the moral or intellectual character of that person,** or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

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

**Ninth Exception.— Imputation made in good faith by person for protection of his or other's interests.—** *It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

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

**20.** The Conduct of the petitioner as stated in the petition of complaint in the present case, **does not come under any of the exceptions under this Section.** Explanation 3 and 4 to Section 499 of IPC prima facie apply to the petitioner in the case filed by the complainant.

**21. Section 500 of IPC, lays down:-**

**“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.

**Ingredients of offence.** -The essential ingredients of the offence under sec. 500 are as follows:

(1) The accused made or published any imputation concerning any person;

(2) Such imputation was made by words either spoken or written with intent to be read, or by signs, or by visible representations;

(3) Such imputation must have been made with **intent to harm** or with knowledge or belief that it will **harm the reputation of the person concerned.**”

## 22. Section 503 of IPC, lays down:-

**“503. Criminal intimidation.**—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

## 23. Section 504 of IPC, lays down:-

**“504. Intentional insult with intent to provoke breach of the peace.**—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Ingredients of offence.**- The essential ingredients of the offence under sec. 504 are as follows:

(1) The accused intentionally insulted someone;

(2) He thereby intended to give him provocation;

*(3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence.”*

**24. In *Vikram Johar Vs The State of Uttar Pradesh & Anr.*, in Criminal Appeal no. 759 of 2019 (arising out of SLP (Crl.) no. 4820/2017), decided on April 26, 2019.**

**“21.** We need to notice Sections 503, 504 and 506 for appreciating the issues, which has come up for consideration, which are to the following effect:-

**“503. Criminal intimidation.—**Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.—* A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

**504. Intentional insult with intent to provoke breach of the peace.—**Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**506. Punishment for criminal intimidation.—**Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either

*description for a term which may extend to two years, or with fine, or with both;*

***If threat be to cause death or grievous hurt, etc.***—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

**22.** Section 504 of I.P.C. came up for consideration before this Court in **Fiona Shrikhande Vs. State of Maharashtra & Another, (2013) 14 SCC 44.** In the said case, this Court had occasion to examine ingredients of Section 504, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In paragraph No.11, following principles have been laid down:-

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a

*detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have.”*

**23.** *In paragraph No.13 of the judgment, this Court has noticed the ingredients of Section 504, which are to the following effect:-*

**“13.** *Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to*

*break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. **One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult** and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”*

- 25. In this case**, it appears that the petitioner initiated the complaint prima facie with intention to harm his (the complainant’s) reputation, so that his irregularities in construction activities might be overlooked.
- 26. 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.
- 27.** 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.

28. 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.
29. 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.
30. 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”.
31. 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.

32. 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:-

*“208. 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.*

*209. 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.*

**210.** *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.”*

**33. In *Mohammad Wajid & Anr. vs State of U.P. & Ors., Criminal Appeal No. 2340 of 2023 (arising out of SLP (Criminal) No. 10656 of 2022)*, on August 08, 2023, the Supreme Court held:-**

**“24.** *An offence under Section 503 has following essentials:-*

- 1) Threatening a person with any injury;*
  - (i) to his person, reputation or property; or*
  - (ii) to the person, or reputation of any one in whom that person is interested.*
- 2) The threat must be with intent;*
  - (i) to cause alarm to that person; or*
  - (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or*
  - (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.*

**25.** Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised selfcontrol or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

**26.** Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace or an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In **King Emperor v. Chunnibhai Dayabhai**, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

“To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.”

*(Emphasis supplied)”*

**34. 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.**

**35.** The facts in the case between the parties is also covered by explanation 3 & 4 of the Section 499 of IPC.

**36.** 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 offences alleged and prima facie evidence to go to trial in the present case.

**37.** The complaint in this case relates to the complainant/opposite party being a person of repute. The petitioner/accused has allegedly made derogatory, defamatory, absolutely false and baseless allegations (in writing) which prima facie lowers the moral or intellectual character of the complainant before others.

- 38.** Since the complainant is part of a public office and performs public duties, the aspersions which have been made by the accused has amounted to prima facie damaging the reputation of the complainant in the eyes of the members of the public. It is the case of the complainant that number of persons in whose eyes the complainant was held in highest regard, would never be restored back to the position, it originally used to be.
- 39.** The criminal defamation caused by the petitioner was made in printed form to highly placed statutory authority.
- 40. 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.**
- 41.** 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.
- 42.** The imputations in the present case, prima facie appears sufficient to harm the opposite party's reputation, who holds a responsible (public)

post being the chairman of the English Bazar Municipality and as such the case against the petitioner is to be permitted to proceed towards trial, in the interest of justice or else it shall be an abuse of the process of law.

**43. CRR 1791 of 2023 is thus dismissed.**

**44. Trial Court to proceed with the trial expeditiously in accordance with law, without being influenced by the observations in this judgment and order.**

**45.** All connected applications, if any, stand disposed of.

**46.** There will be no order as to costs.

**47.** Interim order, if any, stands vacated.

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

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

**(Shampa Dutt (Paul), J.)**