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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 29827 of 2018 (O&M)
Reserved on: 16.10.2023.
Pronounced on: 04.01.2024.

Jitender Awasthi and another

....Petitioners

Versus

Param Vir Rathee, IPS

....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manu K. Bhandari, Advocate
 for the petitioners.

 Mr. P.S. Poonia, Advocate, and
 Mr. Pulkit Dhanda, Advocate,
 for the respondent.

ANOOP CHITKARA, J.

Case no.	Dated	Sections	Court
Complaint No.556 of 2008	09.08.2008	499, 500, 501 IPC	Judicial Magistrate Ist Class, Gurgaon (now Gurugram)

Criminal Revision No.	Date of Decision	Court
53 of 2016 CIS No. CRR/281/2016 CNR No.HRGR01-006886-2016	04-06-2018	Additional Sessions Judge, Gurugram.

1. Petitioner No.1 Jitender Awasthi, the then News Editor of Dainik Tribune, and
Petitioner No.2 Naresh Kaushal, the then Editor of Dainik Tribune, the newspapers in
which the offending news articles were published, aggrieved by the dismissal of the
criminal revision petition by the Sessions Court refusing to quash the summons issued
in the above-captioned complaint filed for criminal defamation, had come up before
this Court by filing the present petition under Section 482 CrPC.
2. Petitioner No.1 states that in 2010, he was working as Editor of the Dainik
Tribune, and Petitioner No.2 states that he was News Editor in the Dainik Tribune.
Dainik Tribune is published by the “Tribune Trust”.

3. The publishing of a news item in Dainik Tribune, Haryana Edition, and with Dainik Tribune, Chandigarh aggrieves the complainant.

4. The petitioners are aggrieved by the issuance of summons and the upholding of the said order by the Sessions Court in the above-captioned complaint filed by the respondent, Mr. Param Vir Rathee, IPS, against many journalists and political leaders, in all thirty-four people. The petitioners rely on many grounds, including the issue of cause and jurisdiction, and that even if the complaint is accepted as true, there is still no violation of section 499 IPC, nor did the petitioners act with any malice or intention to defame the complainant. The petitioners' counsel submits that during the interregnum of pendency of this petition, the complainant has settled the matter with some of the respondents; however, no such settlement took place with the petitioners.

5. The complainant-respondent opposed the present petition and filed his detailed reply. Referring to the reply, the complainant's counsel contended that the newspaper had published a false and defamatory statement. Counsel for the complainant submits that the media must publish reports after verifying their correctness, as any false publication may affect the character and credibility of any respectable person in society. In the present news report, the petitioner did not take any corrective measures despite a clarification issued by the CBI, which was published in Times of India on 18.6.2008, denying the fact of Sandeep Sharma being taken into custody. Despite the clarificatory news published in the Times of India, the petitioner took no corrective measures. The complainant's counsel further submitted that the Magistrate had issued a summons after being fully satisfied and following the procedure under Section 202 CrPC. As such, there is no violation of Section 202 CrPC, and the Magistrate had examined six witnesses, gone through all the evidence, and, on finding sufficient *prima facie* material and applied his mind.

6. I have heard counsel for the parties and gone through the pleadings. An analysis of the pleadings, the submissions, and the applicability of judicial precedents will lead to the following outcome.

7. A news item was published in the Dainik Tribune (Haryana Edition) 19-06-2008, (Annexure P-1), which is extracted as follows: -

*Chautala will be contesting Vidhan Sabha Elections: Abhay
Dainik Tribune (Haryana Edition) 19.06.2008
Mandi Dabwali, 18th June: Today senior leader of I.N.L.O. and
former member legislative assembly Abhay Singh Chautala started*

its four days public relations programme from Village Jandwala Bishroiyan of Dabwali Constituency. Chautala in its today's public relations programme interacted directly with party workers of approximately a dozen villages and listened to the hardships, they are facing. In villages, people put fourth the problems mainly concerning with electricity and water.

During a press interaction at the residence of I.N.L.O. leader Charanjit Mehta in village Sukerakheda, Chautala criticized the present congress government as a failed government up till today and further added that people are facing the scarcity of water even before but in today's situation, it is regrettable that people are not getting even drinking water While talking about the law and order arrangement problems, he added that Dacoity, Murder, Theft and Rape like incidents is news of everyday. He said that working mechanism of the Haryana Government is out shattered in the matter of CID Officer Paramveer Rathi. He said that the Government should register a case against Rathi after dismissing him from service.

Chautala while taking the issue of inflation has badly criticized the State and Centre Governments and further added that every time the people suffer whenever the congress government comes into power either in Centre or State, only then the inflation shoots up.

In its today's round, Chautala told that the I.N.L.O. Supremo Om Parkash Chautala will be contesting election from the Dabwali Constituency. After clearing voices about the Dabwali Constituency in its today's round of campaigning, the workers were ever since demanding Chaudhary Om Parkash Chautala or Abhay Singh Chautala to contest the elections from this constituency.

On this occasion, the member legislative assembly Dr. Sita Ram, Former member legislative assembly Bhagi Ram, I.N.L.O. District President Padam Jain, Madan Sihag, Ranveer Singh Rana, Radhey Ram Godara, Lovely Mehta, R.K. Bhardwaj, Darshan Monga, Aasha Balmiki, Krishna Phogat, Narendra Brar, Kuldeep Singh Jammu and other dignitaries were present.

8. A news item was published in the Dainik Tribune (Chandigarh Edition) 19-06-2008, which is extracted as follows: -

“DAINIK TRIBUNE CHANDIGARH EDITION DATED 19.06.2008

Demanded action against the C.I.D. Chief

Chandigarh, 18 June: A storm has occurred in Haryana Politics after coming out of the report in C.B.I. Enquiry that after being arrested one Sandeep Sharma, a fictitious medical Officer, who revealed that he has paid bribe to the Additional Police Director or Haryana (CID) namely Parmveer Singh Rathi for deputing police officials for his security. And moreover, Haryana Janhit Congress (BL) (HAJKA) and I.N.L.O., both opposite parties demanded the dismissal of Paramveer Singh Rathi from the substantial post of CID Chief with immediate effect and also asked the Chief Minister Bhupendra Singh Huda to take moral responsibility of the same and demanded resignation. The HAJKA Supremo Kuldeep Bishnoi told in an interview that it is cast upon the CID Chief to take care

of the responsibility to have an eye on the law and order system for the security of the State and even after holding such a dignitary position, such officer comes in the trap of corruption, then he no more reserves his right to sustain on the post. He did not even ask for the dismissal of Paramveer Singh Rathi but he asked for his arrest on the charges of corruption.

Shri Bishnoi said that the above referred doctor has also confessed that the one I.P.S. Officer has misused his post & position and ordered for deposit of the amount of the government department in one bank for the purpose to advance loan of crores of rupees to the doctor. Shri Bishnoi has also asked for the arrest of this officer and strict action is demanded against him. He said that in the confessionals statement of the above referred doctor, it is revealed that the slogan of eliminating fear and corruption from the state is baseless and the police of the State while having hand in gloves with officers, gundas, land mafias and conspirators has destroyed the law and order mechanism of the State."

9. In *Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi*, (1996) 6 SCC 263, Supreme Court holds,

[13]. ...It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate.

10. The relevant portion of the complaint reads as follows:

... [5]. That on 17.06.2008 the complainant was shocked and deeply hurt to see a news item appearing in the "Indian Express" an English National Daily with a title "Accused says he bribed ADGP, sought police protection" along with a photograph of the complainant. In the said news item it was reported that one Dr. Sandeep Sharma, an accused in a criminal case, has confessed before the Central Bureau of Investigation that the complainant had recommended police protection to the said accused after taking bribe. A copy of the said news item which appeared in the "Indian Express" English National daily newspaper dated 17.06.2008 is being annexed herewith as Annexure P-1.

[6]. That the news item annexure P-1 is per-se defamatory. A bare reading of the news item makes it abundantly clear that the imputations made therein have intended to lower the reputation of the complainant in the estimation of everybody whoever happens to read the same.

[7]. That on verification by the complainant it transpired that the said Sandeep Sharma was yet to be taken into custody by the Central Bureau of Investigation and hence the question of Sandeep Sharma making confession before the C.B.I. that he bribed the complainant for seeking police protection does not arise at all. This factual aspect was clarified by the C.B.I. by way of a statement given to the Times of India an English National Daily and the same was published by the Time of India in its newspaper on 18.06.2008. A copy of the said news item, which appeared in the Times of India English daily on 18.06.2008 is being annexed herewith as Annexure P-2.

[8]. That similar publications containing above said malicious and factually incorrect imputations were published by the various newspapers. A list of newspapers, which published per-se defamatory

and factually incorrect imputations against the complainant is being referred and annexed below for convenient reference of this Hon'ble Court: -

Sr. No.	Name of the newspaper	Date on which the news item published	Annexure as annexed with the complaint
1	Dainik Jagran (Panipat Edition)	18.06.2008	Annexure P-3
2	Dainik Jagran (Ludhiana Edition)	18.06.2008	Annexure P-4
3	Punjab Kesari	18.06.2008	Annexure P-5
4	Punjab Kesari (Sirsa Edition)	19.06.2008	Annexure P-6
5	Dainik Tribune	19.06.2008	Annexure P-7
6	Amar Ujala (Sirsa Edition)	19.06.2008	Annexure P-8
7	Dainik Jagran	19.06.2008	Annexure P-9
8	Dainik Lahoo Ki Loo	19.06.2008	Annexure P-10
9	Dainik Seema Kesari	19.06.2008	Annexure P-11
10	Amar Ujala (Chandigarh Edition)	19.06.2008	Annexure P-12
11	Ajit Samachar	19.06.2008	Annexure P-13
12	Punjab Kesari	19.06.2008	Annexure P-14
13	Dainik Tribune	19.06.2008	Annexure P-15
14	Hindustan (HINDI)	19.06.2008	Annexure P-16
15	Ajit Samachar	24.06.2008	Annexure P-17
16	Punjab Kesari	24.06.2008	Annexure P-18
17	Dainik Jagran	24.06.2008	Annexure P-19
18	Amar Ujala	24.06.2008	Annexure P-20

[9]. That a bare reading of the news item, annexed hereinabove as Annexure P-1 and Annexure P-3 to Annexure P-19 go to show that imputations contained therein are per-se defamatory having tendency to lower the reputation of the complainant in the estimation of his friends, colleagues and public at large at Gurgaon wherein the complainant has the permanent residence and has served as a Police Officer on different positions, as enumerated hereinabove. In the above said publications the concerned accused responsible for the publications have published defamatory imputations against the complainant, which is factually incorrect. As a matter of fact Sandeep Sharma was provided security on interim basis in view of the threat perception assessed by the District Police, Panchkula and registration of a criminal case at his instance bearing FIR No.78 dated 09.07.2006 under Section 387 IPC, Police Station Sector 20, Panchkula wherein he had claimed threats to his life. Later on said FIR was cancelled and security provided to him was withdrawn against Rapat No.22 dated 20.09.2007 office of OHC, District Panchkula. The complainant had no role to play in granting police protection to said Sandeep Sharma, nor Sandeep Sharma ever confessed before C.B.I., which had registered case No.RCCHG2008A0011, dated 16.04.2008, Police Station CBI/ACP/CHG under section 120B, 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1) (d) Prevention of Corruption Act, 1988 against him (Dr. Sandeep Sharma) as the C.B.I. has not even arrested the said accused till date and the said accused is confined in Central Jail, Ambala. Thus, it is quite apparent that the

allegations/imputations published against the complainant are factually incorrect and have been made with an intention to lower the credit of the complainant as a police officer in the estimation of his colleagues, friends and the public, thereby rendering accused Nos.1 to 30, who have played their respective roles in the publication of the aforesaid offending news items, liable for punishment for defamation.

[10]. That the respondent No.31-Om Parkash Chautala has made defamatory statements against the complainant which have been published in various newspapers already annexed as Annexure P-20, Annexure P-17, annexure P-18 and annexure P-19. Om Parkash Chautala has issued statements, which have been published in the above said newspaper to the effect that an accused of criminal background with allegations of forgery and cheating has leveled allegations against the complainant of taking bribe for giving security guards. The said statements issued by Om Parkash Chautala being per-se defamatory and factually incorrect renders him liable for punishment under Section 500 IPC.

[11]. That the accused No.32-Ashok Arora has issued statements. which have been published in various newspapers already annexed as Annexure P-9, annexure P-12, P-13 and annexure P-14 & P-16. The statements issued to "Dainik Jagran" Hindi Daily, which was published in the said newspaper on 19.06.2008 shows that Mr. Ashok Arora has claimed that it has come in the CBI Inquiry that Dr. Sandeep Sharma has bribed the complainant for providing security whereas no such statement was made by Sandeep Sharma before the C.B.I. and the said imputation against the complainant given by Mr.Ashok Arora in his press statement is factually incorrect and per-se defamatory. Similar imputations have been made by Mr. Ashok Arora against the complainant in the other newspapers mentioned hereinabove which renders him liable for punishment under Section 500 IPC.

[12]. That the respondent accused No.33 - Mr.Abhay Singh Chautala has issued defamatory statement to the press against the complainant, which have been published by various newspapers as news items already placed on record as annexure P-3, P-4, P-6, annexure P-7, P-8, annexure P-10 and annexure P-11. Mr. Abhay Singh Chautala vide his statement, published in the aforesaid news items, has claimed that C.B.I. inquiry Dr. Sandeep Sharma has leveled allegations against the complainant for taking bribe for providing police protection. Mr. Abhay Singh Chautala on the strength of said allegation has demanded complainant's suspension and registration of a case against him. The said statements of Mr. Abhay Singh Chautala are again apparently defamatory having tendency to malign the image of the complainant besides being factually incorrect. Thus, Mr. Abhay Singh Chautala is liable to be punished for offence under Section 500 of IPC.

[13]. That the respondent No.34-Kuldeep Singh Bishnoi has also issued defamatory statements against the accused with ulterior motive. The statements of Mr. Kuldeep Singh Bishnoi issued to the press and published in the newspaper has already been annexed as annexure, P-5, P-3, P-4 & P-15. In his statement issued to "Punjab Kesari" a Hindi Daily newspaper Mr. Kuldeep Singh Bishnoi has claimed that an accused has made statement before C.B.I. to the effect that the complainant had accepted bribe for giving him security whereas no statement was ever given by any accused before C.B.I. The said statement of Kuldeep Singh

Bishnoi against the complainant is per-se defamatory being factually incorrect. Mr. Kuldeep Singh Bishnoi has issued the above statement against the complainant with ulterior motive of maligning the image of the complainant as an honest police officer and hence he is liable to be punished for the offence of defamation.

[14]. That the offences of the respondent-accused persons is further aggravated by the fact that the Central Bureau of Investigation in its statement, which was published in 'The Times of India' English National Daily newspaper on 18.06.2008 had clarified that Sandeep Sharma accused in the Subham Hospital case had not given any statement to the investigating agency claiming that he had bribed the complainant for getting security and that C.B.I. was yet to take Sandeep Sharma into custody. Despite the publication of the said stand of Central Bureau of Investigation the respondent-accused persons continued making defamatory statements and published in newspapers stating that Dr. Sandeep Sharma has made statement before the C.B.I. of having bribed the complainant for seeking police protection upto 24.06.2008. The said conduct of the respondent-accused persons goes a long way to show that the respondent-accused persons made their statements and publications with an ulterior motive to defame the complainant.

[15]. That on 17.6.2008 itself the complainant's old acquaintance, namely, Shri Mahesh Kumar s/o Late Shri Lal Chand, Phool Flour Mill, Rajiv Colony, Naharpura, Gurgaon, Police Station Sadar, Gurgaon, Shri Sohan Lal Saini s/o Shri Brij Lal Saini, Gandhi Colony, Kanheri Road, Near Jharsa, Sector-39, Gurgaon, Police Station Sadar, Gurgaon, Shri Satish Kumar s/o Shri Ram Avtar Swami, Near Hanuman Mandir Primary School, Jharsa, Gurgaon, Police Station Sadar, Gurgaon, read the aforesaid defamatory news items and conveyed their pain and agony of the complainant they suffered reading defamatory imputations made against him. They expressed in clear words that they had high opinion about the complainant as police officer of high integrity and honesty but now their faith is shaken.

[16]. That the accused no.3, 7, 11, 15, 18, 21, 22, 26 and 30 have knowingly made and reported; the accused no.1, 2, 4, 8, 12, 16, 19, 23 and 27 have knowingly published and printed the factually incorrect imputations against the complainant with an intention so as to harm his reputation and the accused no.5, 6, 9, 10, 13, 14, 17, 19, 20, 24, 25, 28 and 29 have played a vital role in selection of aforesaid defamatory and false news material for publication in their respective news papers. The said imputation has directly lowered his moral character as well as his credentials as an honest and good police officer, in the estimation of his colleagues, friends and the residents of Gurgaon in particular and the public in general.

[17]. That the offence has been partly committed within the area of Police Station Sadar, Gurgaon where the complainant's old acquaintance, namely Shri Mahesh Kumar s/o Late Shri Lal Chand, Phool Flour Mill, Rajiv Colony, Naharpura, Gurgaon, Police Station Sadar, Gurgaon, Shri Sohan Lal Saini s/o Shri Brij Lal Saini, Gandhi Colony, Kanheri Road Near Jharsa, Sector 39, Gurgaon, Police Station Sadar, Gurgaon, Shri Satish Kumar s/o Shri Ram Avtar Swami, Near Hanuman Mandir Primary School, Jharsa, Gurgaon, Police Station Sadar, Gurgaon, reside and therefore this Hon'ble Court has got the jurisdiction to entertain and try the present complaint.

It is therefore, respectfully prayed that this Hon'ble Court may be please to summon, try and punish all the accused for offences under Section 499, 500 and 501 IPC in the interest of justice, equity and fair play.”

11. In the complaint, Annexure P-2, filed before CJM Gurgaon [Now Gurugram], the complainant alleged that he is an IPS Officer of the 1997 batch and belongs to the Haryana cadre. He has been an honest officer, performing his duties with exemplary devotion and sincerity. His Annual Confidential Reports have rated him as an officer of integrity and honesty. At the time of the alleged defamation and the filing of the complaint, he claimed to be posted as Additional Director General of Police (CID), Haryana and asserted that a person of the highest integrity is posted on such a sensitive post as CID Chief of the State. The complainant further stated that he held a high reputation for honesty and integrity; for these reasons, he has earned respect in society, among his colleagues, and the State.

12. In paragraph no. 8, the complainant mentioned a list of newspapers that had published such news and gave the names of eighteen newspapers. In paragraph no. 9 of the complaint, the complainant stated that the imputations contained in the newspapers Annexure P-1, P-3 to P-19 therein showed that the contents were defamatory, which in turn lowered his reputation in the estimation of his friends, colleagues, and public at large, at his place of residence and wherever he served as a police officer. All such reports were factually incorrect because Sandeep Sharma had been provided security keeping in view the threat perception assessed by the District Police, Panchkula, based on the criminal complaint given by Sandeep Sharma wherein he had claimed threats to his life, based on which police registered an FIR. Later, the said FIR was canceled, and his security was withdrawn. Paragraph no. 9 of the complaint explicitly mentioned that the complainant had neither any role in granting such police protection nor Sandeep Sharma had confessed before the CBI because he was never arrested. Those allegations and imputations published against the complainant were factually incorrect and were intentionally made to lower the complainant's credit as a police officer in the estimation of colleagues, friends, and the public.

13. Paragraph 13 of the complaint attributes the allegations against the petitioners, in the following terms, “[13]. *That the respondent No.34-Kuldeep Singh Bishnoi has also issued defamatory statements against the accused with ulterior motive. The statements of Mr. Kuldeep Singh Bishnoi issued to the press and published in the newspaper has already been annexed as annexure, P-5, P-3, P-4 & P-15. In his statement issued to*

"Punjab Kesari" a Hindi Daily newspaper Mr. Kuldeep Singh Bishnoi has claimed that an accused has made statement before C.B.I. to the effect that the complainant had accepted bribe for giving him security whereas no statement was ever given by any accused before C.B.I. The said statement of Kuldeep Singh Bishnoi against the complainant is per-se defamatory being factually incorrect. Mr. Kuldeep Singh Bishnoi has issued the above statement against the complainant with ulterior motive of maligning the image of the complainant as an honest police officer and hence he is liable to be punished for the offence of defamation."

14. After filing the complaint, the complainant appeared as CW-1 before the concerned Court and on 09.08.2008, reiterated the allegations made in the complaint. It would be appropriate to extract the relevant portion of the said statement, which reads as follows: -

Accused No.34 Kuldeep Singh Bishnoi has also given false and defamatory statement with the intention to defame me, which is published in newspaper Punjab Kesari dated 18.06.08, copy of which is Ex.C-19 and related news is at Page NO.5 of Ex.C-19, which is Ex.C-19/A and newspaper Dainik Tribune dated 19.06.08, copy of which is Ex.C-20 and the related news is as Ex.C-20/A at Page No.9 of Ex.C-20. The statement Ex.C-12/A and C-13/A of accused Kuldeep Singh Bishnoi was also published.

Accused No.3, 7, 11, 15, 18, 21, 22, 26 & 30 have written false and defamatory news and Accused No.1, 2, 4, 8, 12, 16, 18, 23 & 45-27 have printed and published the false and defamatory news, Accused No.5, 6, 9, 10, 13, 14, 17, 19, 20, 24, 25, 28 & 29 are also responsible for the selection process of the above said false and defamatory news to be published. The above said news was written, got written and was printed and published by all the accused persons in collusion, with the intention to spoil my reputation. All the above news have destroyed my image and defamed by reputation of a honest and dutiful Police Officer in the eyes of my co-officers, friends, relatives, general public specially in the eyes of the residents of Gurgaon. The strongest action may be taken against all the accused persons and they may kindly be punished.

Sd/-
ACJM/GSN

15. The complainant also examined CW4 Sandeep Khirwal, S.P. Panchkula who testified that Sandeep Sharma had moved an application for threat perception (Ex.24). Based on the threat perception, the Panchkula police registered an FIR and also appointed one gun man for the personal security of Sandeep Sharma on 14.04.2006 and requisite entries were made in the record. Subsequently, the investigation did not find any substance in the allegation of threat perception and closure report was filed in

the said application and consequently, the personal security was withdrawn on 20.09.2007 (i.e. after 01 year 03 months). Referring to the record, CW4 further testified that Sandeep Sharma was given personal security because of the threat perception but later on it was withdrawn because the threat perception was not proved. He explicitly stated that no order was given to him to provide personal security from higher authorities. Thus, through CW4 the complainant tried to prove that the allegations that he had taken bribe from Sandeep Sharma were dis-proved by an IPS rank officer. Panchkula Police had deputed personal security w.e.f. 14-04-2006 to 20-09-2007, thus, CW-4 established that Panchkula police provided security during this period based on threat perception and not because of the complainant's intervention. However, the witness did not prove whether, after 20-09-2007, the Haryana Police had provided any personal security to Sandeep Sharma or not. CW5 testified that 10 cases of fraud against bank were registered against Sandeep Sharma. The complainant also examined the Inspector of CBI as CW-3, who testified that Sandeep Sharma was under arrest in another FIR and was lodged in Ambala Jail. He had applied for Sandeep's production warrants on Aug 20, 2008, and interrogated him on Aug 21, 2008; before that, he had not arrested him. Thus, the complainant established by leading evidence that on June 17, 2008, when the news items were published, Sandeep Sharma had not been interrogated or arrested by CBI, and thus, the basis for the news items was false and incorrect. The complainant examined CW-2 & CW-6 to prove that after reading the news in question, the complainant's image and reputation were lowered in their opinion.

16. Vide a detailed order dated 17.04.2010, learned Judicial Magistrate Ist Class found prima facie evidence for commission of offence punishable under Section 500 and 501 IPC and accordingly summoned accused no.1 to 34. In the complaint, the petitioners have been arraigned as accused no.16 and 17.

17. The petitioners challenged the summoning order by filing a petition under section 482 CrPC before this court. However, vide order dated 11-05-2016, a co-ordinate bench of this Court relegated the petitioner to the Court of first revision by observing that they should have availed the remedy of criminal revision before the Sessions Court and extended the limitation provided the revision is filed within 30 days. After that, the petitioner challenged the summoning order by filing a criminal revision under section 397 CrPC before the Gurgaon Sessions Court. Vide the impugned judgment dated 04-06-2018, the Additional Sessions Judge, Gurugram, dismissed the

revision petition. It would be appropriate to refer the reasoning given by Additional Sessions Judge which reads as follows: -

"[9]. More so, when any news regarding any person in the authority has been published in public domain without verification of facts and it has been found to be false, it cannot be said that the same has been published in good faith. When the clarification has been given by the CBI in news paper Ex.C2, published on 18.6.2008, it cannot be said on the face of it that the revisionist-accused on earlier occasion had acted without malafide intention. When said accused Sandeep Sharma has not made any statement before CBI and he was not ever been taken in custody by CBI in corruption related matter, the question of suffering of his statement before CBI does not arise at all. At least reasonable enquiry from all the concerned persons should have been made by the revisionist- accused before giving statement and publishing in news paper. Therefore, the learned trial court has rightly appreciated the evidence before summoning the accused.

[10]. More so, it is settled law that at the stage of summoning, the Magistrate has to evaluate the material placed before him from the prima- facie view and not from the point of view for conviction or acquittal of the accused. Even otherwise, it has been observed in U.P. Pollution Control Board Vs. M/s. Mohan Meakins Ltd. & ors., 2002(2) RCB. Criminal (421) that;

"In a summoning order, a Magistrate is not required to pass a speaking order but if complaint is dismissed, the Magistrate is to record reasons for dismissal and issuing process."

Similar view has been observed in S.W.P. Palantikar Vs. State of Bihar 2001(4) RCC 437 (SC) and in M/s Pepsi Foods Ltd. & anr. Vs. Special Judicial Magistrate & ors and in Shivjee Singh Versus Nagendra Tiwary and others 2010(2) CCJ 93.

In Bhushan Kumar and another Vs. State (NCT of Delhi) and another 2012(2) RCR (Criminal) 794, Hon'ble Supreme Court has held that:

"Once the Magistrate has exercised his discretion, it is not for the High Court or even Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits".

18. Feeling aggrieved, the petitioner came up before this court by filing this petition under section 482 CrPC, seeking to quash the summoning order and to set aside the dismissal of criminal revision.

19. Section 499¹ of the Indian Penal Code, 1860 [IPC], makes defamation an offense

¹ **499. Defamation.**--Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.--It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his

family or other near relatives.

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

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

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

Illustrations

(a) A says-"Z is an honest man; he never stole B's watch", intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

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 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. *Illustration* It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception. -Publication of reports of proceedings of courts- It is not defamation to publish a 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.

Illustrations (a) A says-"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther. (b) But if A says-"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

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 farther.

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.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z-"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says-"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

in terms of the legislative intent explicitly expressed and subject to the exceptions provided. It reads, "Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

20. In *N. Ram v. Rashtriya Swayamsewak Sangh*, 2012(3)RCR (Criminal)161, Punjab & Haryana High Court observed,

The essence of the offence of defamation must have been made either with the intention of causing harm, or knowing or having reason to believe that such imputation would cause harm to a person.

21. S. 499, 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.

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.

Illustration A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

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.

Illustration If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

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 interest of the person making it, or of any other person, or for the public good.

Illustrations (a) A, a shopkeeper, says to B, who manages his business-"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests. (b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

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.

22. The complainant did not explicitly refer to the news that was read, and after reading it, the complainant's reputation lowered amongst the public and his witnesses. After detailing the loss of reputation because of the news published in the Indian Express, the complainant stated as follows, "[8]. That similar publications containing above said malicious and factually incorrect imputations were published by the various newspapers. A list of newspapers, which published per-se defamatory and factually incorrect imputations against the complainant is being referred and annexed below for convenient reference of this Hon'ble Court: -." After that, the complaint has a table mentioning the names of the newspapers. Nothing had stopped the complainant to mention the news published by the petitioner's newspapers, which the people and the witnesses read and after reading the said news, in their opinion, adversely affected the complainant's esteem and reputation. On this count, the complaint did not disclose any offense committed by the petitioner, and there was no sufficient prima facie evidence based on which they could have been summoned.

23. To prove the loss of reputation, the complainant had mentioned such details in the complaint, and on being called by the concerned Magistrate, the complainant testified on oath and also examined CW-3 & CW-6 as members of the public and society to establish that after reading the news, the complainant's image lowered in their opinion. It would be relevant to refer to the newspaper that the witnesses had referred that had lowered the complainant's esteem in their eyes. The complainant appeared as CW-1 before the concerned Court, and on 09.08.2008, the statement's relevant portion reads as follows:

"On 17.06.08, I got mental shock and deep grief after reading an article alongwith my photo, published in an English Daily National Newspaper namely Indian Express. The heading of that news was Accused Says He bribed, ADGP, shought Police Problem. It was published in this article that Accused Dr.Sandeep Sharma has admitted the statement of accused C.B.I. that I (Complainant). have taken bribe from him to provide him police protection. The copy of the newspaper is Ex. C-1 and related newspaper is exhibited at Page-1 of Chandigarh News Line as Ex.C-1/A...."

(emphasis supplied)

24. To establish the lowering of the image, the complainant examined CW-2 Mahesh Kumar, whose relevant testimony is extracted as follows:

"...because of a good Police Officer. A great grief was caused to me after reading the news published in the newspaper dated 17.06.08 (Ex.C-1/A) that the person whom..."

(emphasis supplied)

25. To corroborate the lowering of the image, the complainant examined CW-6 Satish Kumar, whose entire testimony reads as follows:

“C.W.-6 -Satish Kumar, S/o Sh. Ram Avtar, aged 28 years, R/o Village Jhesar, P.S. Sector-20, Gurgaon, Advocate on S.A.

Stated that I know Sh. Param Vir Rathee personally from the last 9/10 years. Sh. P.V.Rathee was earlier posted as S.P. In Gurgaon and also as D.I.G. / Gurgaon and at present he is posted as ADJ / CBI. The reputation of Complainant Sh. P.V.Rathee, when he was in Gurgaon was of a very honest and dutiful officer. I know Sh. P.V.Rathee as a very honest and dutiful Police Officer and also use to meet him personally. **I read the news dated 17.06.08** and I was deeply shocked to know that the person whom I considered as a very honest and dutiful officer I told Sh. P.V.Rathi over the phone that I considered you as honest and dutiful officer. At that time one of my villagers Sh. Sohan Lal Saini was also there and he knows me very well. One Mahesh Kumar was also with us. All of us told Sh. P.V.Rathi over the phone that after reading the news about you, we are very shocked and in sorrow. After that this news came in various papers. After this our faith towards Sh. P.V. Rathi became shimmy.

RO & AC

Sd/-

Satish Kumar

13.09.08”

(emphasis supplied)

26. CW-2 and CW-3 testified that they had formed their opinion after reading Ex.C1/A, which is Indian Express and not the Dainik Tribune news, for which the complainant arraigned the petitions as accused in the complaint. CW-6 read the news dated 17-06-2008 and the present news was published on 19-06-2008, as such he did not read the news reported in “*Dainik Tribune*” Further, he did not refer to any specific newspaper. Thus, the complainant did not satisfy the fundamental requirements of Section 499 IPC, and despite there being no evidence that any member of the public had read the news published in the Dainik Tribune, the concerned Judicial Magistrate, without there being any material, summoned the petitioners, and the Sessions Court also upheld such illegal summoning. On this ground alone, the complaint, taking of cognizance, order of summoning, and dismissal of the revision petition, qua the petitioners, is liable to be quashed and set aside.

27. The other sections invoked against the petitioner are 500² & 501³ IPC that

² Punishment for defamation. 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.

³ Printing or engraving matter known to be defamatory. 501. Printing or engraving matter known to be

prescribe punishment for the offences committed under S. 499 IPC.

28. In addition to this there is another angle to disrupt the petitioners' criminal trial. A bare perusal of the complaint and the alleged offending portion is just a correct reporting of statements given by Sh. Kuldip Bishnoi and Sh. Ashok Arora; and the petitioners are entitled to protection under the first and ninth exceptions of Section 499 IPC.

29. The petitioners' counsel (without admitting any liability or conceding anything) states that the news reports contained the statement made by Sh. Kuldeep Bishnoi, a political leader, was elected as MLA in 1998 from Adampur and is the son of Chaudhary Bhajan Lal, Former Chief Minister of Haryana. In 2007, he left the Indian National Congress and founded the Haryana Janhit Congress. The newspapers published his statement and correctly reported it, and even the complaint does not mention wrong reporting. The complainant's grievance is that they should not have published the news, and the non-publication of such a statement would frustrate the purpose of running a newspaper.

30. An analysis of this submission establishes by pre-ponderance of probability that neither the newspaper, its reporter, nor the petitioner had made any personal or biased comments. The news item was published based on the statement of Kuldeep Singh Bishnoi, Member Parliament- accused no.34, and Ashok Arora, Haryana State President- accused no.32, and the petitioners and "*Dainik Tribune*" are squarely entitled to protection under the 1st and 2nd exceptions of Section 499 IPC.

31. Another reason to disrupt the criminal trial is that the newspapers had published the statement made by MLA Kuldeep Bishnoi, a political leader and founder of the Haryana Janhit Congress. The complaint does not mention wrong reporting. The complainant's grievance is that they should not have published the news, whereas the non-publication of such a statement would have frustrated the very purpose for which the newspapers are meant. The complainant did not attribute any change in the statement or version of Sh. Kuldeep Bishnoi, or that the newspaper, its reporter, or the petitioner had made any personal or biased comments. The correct reporting itself proves by a preponderance of probability of due care and caution, and there is no reason why it should not be accepted as the discharging of their burden by the

defamatory.-- Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

petitioner under S. 106 of the Indian Evidence Act, 1872. Consequently, Dainik Tribune, its report, and its Editors are entitled to benefit under the first and the ninth exceptions, to S. 499 IPC and the petitioners have discharged their primary burden by demonstrating the contents of the news report itself and is entitled to the benefit of the first and ninth exception of S. 499 IPC.

32. In Chaman Lal v. State of Punjab, AIR 1970 SC 1372, Supreme Court holds

[15]. In order to come within the First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant. ...

[17]. The Ninth Exception states that if the imputation is made in good faith for the protection of the person making it or for another person or for the public good it is not defamation.... Good faith requires care and caution and prudence in the background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution...

33. Section 52 of IPC reads as follows, "Good faith". —Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

34. In Harbhajan Singh v. State of Punjab, AIR 1966 SC 97, a three-member bench of Supreme Court holds,

[14]. It is true that under Section 105 of the Evidence Act, if an accused person claims the benefit of Exceptions, the burden of proving his plea that his case falls under the Exceptions is on the accused. But the question which often arises and has been frequently considered by judicial decisions is whether the nature and extent of the onus of proof placed on an accused person who claims the benefit of an Exception is exactly the same as the nature and extent of the onus placed on the prosecution in a criminal case; and there is consensus of judicial opinion in favour of the view that where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged if the accused person succeeds "in proving a preponderance of probability". As soon as the preponderance of probability is proved, the burden shifts to the prosecution which has still to discharge its original onus. It must be remembered that

basically, the original onus never shifts and the prosecution has, at all stages of the case, to prove the guilt of the accused beyond a reasonable doubt. As Phipson has observed, when the burden of an issue is upon the accused, he is not, in general, called on to prove it beyond a reasonable doubt or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a preponderance of probability, for then the burden is shifted to the prosecution which has still to discharge its original onus that never shifts, i.e., that of establishing, on the whole case, guilt beyond a reasonable doubt.

35. In *M.A. Rumugam v. Kittu*, (2009) 1 SCC 101, Supreme Court re-iterates,

[16]. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellant alone.

36. In *Aroon Purie v. State of NCT of Delhi*, 2022(4) Law Herald (SC) 3177, Supreme Court holds,

[18]. We now turn to the question: whether the benefit of any of the exceptions to Section 499 of the IPC can be availed of and on the strength of such exceptions, the proceedings can be quashed at the stage when an application moved under Section 482 of the Code is considered?

[21]. It is thus clear that in a given case, if the facts so justify, the benefit of an exception to Section 499 of the IPC has been extended and it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial.

[22]. Similarly, the law laid down in **K.M. Mathew, (2002) 6 SCC 670**, which has subsequently been followed, is to the effect that though the benefit of presumption under Section 7 of the 1867 Act is not applicable so far as Chief Editors or Editors-in-Chief are concerned, the matter would be required to be considered purely from the perspective of the allegations made in the complaint. If the allegations are sufficient and specific, no benefit can be extended to such Chief Editor or Editor-in-Chief. Conversely, it would logically follow that if there are no specific and sufficient allegations, the matter would stand reinforced by reason of the fact that no presumption can be invoked against such Chief Editor or Editor-in-Chief.

[23]. In light of these principles, if we consider the assertions and allegations made in the complaint, we find that nothing specific has been attributed to A-1, Editor-in-Chief. He cannot, therefore, be held liable for the acts committed by the author of the Article, namely, A-2. The allegations made in the complaint completely fall short of making out any case against A-1.

[24]. With regard to the role ascribed to A-2, it must be stated at this stage that as an author of the Article his case stands on a different footing. Whether what he did was an act which was justified or not would be a question of fact to be gone into only at the stage of trial.

37. Next submission is that because the petitioner resided at a place that was

beyond the territorial jurisdiction of the Magistrate before whom the complaint was filed, as the mandatory procedure prescribed under Section 202, CrPC was not complied with, and on this ground alone, the summoning order and dismissal of revision deserve to be set aside. Since the petitioners did not reside within the territorial jurisdiction of the Ld. Magistrate Gurugram, and the Ld. Magistrate did not comply with the mandatory provisions of Section 202 of the Code of Criminal Procedure, which requires the Ld. The Magistrate would either inquire about the case himself or direct an investigation by the Police Officer to determine whether there are sufficient grounds to proceed against the petitioners. In the absence of such an inquiry was made by the Ld. Magistrate, the summoning order is liable to be quashed on this short ground alone. However, since this Court has already given findings that would lead to the quashing of the complaint, there is no need to adjudicate this point, and even if this argument is rejected, it will not change the outcome; as such, this Court is not answering it.

38. In the light of judicial precedents and appreciation of the complaint, the preliminary evidence led by the complainant, and its analysis makes it clear that the petitioners are entitled to the benefit of the first and ninth exceptions to S. 499 IPC, which makes the order of summoning bad in law. Even if the allegations against the petitioners mentioned in the complaint and the preliminary evidence are accepted entirely, those does not point towards any actual violation of Section 499 IPC. In the facts and circumstances peculiar to this case, the court’s non-interference would result in a miscarriage of justice, and thus, this Court invokes the inherent jurisdiction under section 482 CrPC and quashes the summons and all subsequent proceedings as well as the judgment of revisional order, qua the petitioners, passed in the above captioned criminal revision. Bail bonds/surety bonds, if any furnished stands discharged.

Petition is allowed. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

January 04, 2024
Jyoti Sharma

Whether speaking/reasoned : Yes
Whether reportable : **NO**