



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 49 OF 2026

1. Nikhil M. Tarkunde
Aged about : 56 Years;
R/o 20, Shivaji Nagar, Cement Road,
Nagpur-10.
2. Venkatesh P. Buty
Aged about : 54 Years;
R/o Shraddhanand Peth, South Ambazari
Road, Nagpur-22.
3. Anuj V. Singhania
Aged about : 52 Years;
R/o Plot No. 79, Canal Road, Ramdaspath,
Nagpur.

... PETITIONERS

VERSUS

1. State of Maharashtra
through Police Station Officer,
Sadar Police Station, Nagpur.
2. Adeetya s/o Satish Mohta
Aged about : 43 Years; Occu : Business;
R/o 742-Aditya House, Nelson Square,
Chhindwara Road, Nagpur-13.

... RESPONDENTS

Mr. Sahil S. Dewani, Advocate for Petitioners.
Ms. Soniya Thakur, APP for Respondent No.1.
None for the Respondent No.2.

CORAM : PRAVIN S. PATIL, J.
DATE : FEBRUARY 18, 2026.

ORAL JUDGMENT

. Heard. **Rule.** Rule made returnable forthwith. Heard finally with consent of the learned Counsel for both sides.

2. On the merits of the matter, I have perused the record and found that though the service is effected on the Respondent No.2 by private mode and affidavit in that regard is placed on record by the Petitioners on 27/1/2026, he chose not to appear in the matter. So also it is stated in the affidavit that the message through Whatsapp has been delivered to the Respondent No.2 in regard to listing of this Petition. As such, in my opinion, proper steps have been taken by the Petitioners to serve the Respondent No.2. Hence, being satisfied that notice is properly served, I proceed to decide the present matter.

3. By the present Petition, the Petitioner takes exception to the Judgment and order dated 23/12/2025 passed by the District Judge and Additional Sessions Judge, Nagpur in Criminal Revision No. 493/2012, whereby the Revision filed by the Petitioners is dismissed.

4. The submission of the Petitioners in the present case is that, the Petitioners were the office bearers of Gondwana Club, Nagpur. According to

them, on 19/1/2009 the incident occurred at the Cricket Club of India (CCI), Mumbai during the Winter Bumper Housie Session, wherein the Respondent No.2, while attending as a reciprocal member of Gondwana Club, Nagpur, allegedly misbehaved with members and lady guests of CCI. Therefore, on 21/1/2009 complaint was lodged against the Respondent No.2 by several members of CCI regarding his misconduct, abusive behaviour and attempted physical aggression, requesting strict disciplinary action in the bye-laws. The CCI has forwarded the complaints to Gondwana Club, Nagpur, which is affiliated Club of CCI.

5. As per the Bye-laws of Gondwana Club, Nagpur if the Governing Body has decided to initiate the disciplinary enquiry, they are having the powers of suspension. As per Clause – (5) of the bye-laws, under the title of ‘Bye Laws for Regulating Disciplinary Enquiry’, the Managing Committee, after passing an order requires to display the order of suspension on the Notice Board of the Club and forward a copy thereof to the Member. Accordingly, as these complaints were received to them and decided to conduct disciplinary enquiry against the Respondent No.2, they have displayed the suspension notice on Notice Board of the Club.

6. The Respondent No.2, due to display of the suspension order on

the Notice Board, filed a private complaint before the Judicial Magistrate First Class, Nagpur alleging that the contents of the notice displayed by the office bearers of Gondwana Club, viz – “Your membership of Gondwana Club, Nagpur Membership No. M-178 is suspended, until further orders and pending a disciplinary inquiry into the allegation of misconduct, made by lady members of the Cricket Club of India Ltd. Mumbai.” is in the nature of defamation, and therefore, he prayed before the learned Magistrate to punish the present Petitioners along others for the offence punishable under Section 500 of Indian Penal Code.

7. The learned Magistrate, after receipt of this complaint, issued process against the present Petitioners along with others vide order dated 5/3/2012. Being aggrieved by the said order, the Petitioners have filed Criminal Revision Application NO. 100493/2012 before the District Judge and Additional Sessions Judge, Nagpur. The District Judge and Additional Sessions Judge, Nagpur vide Judgment and order dated 23/12/2025, by holding that the allegations, which are levelled against the Respondent No.2, are against his character, and therefore, the learned Magistrate was justified for issuance of process in the matter. Hence, the Revision preferred by the present Petitioners is dismissed.

8. The present Petition is filed against the decision of the District Judge of dismissal of Revision dated 23/12/2025. The first contention raised by the present Petitioners is that in the present case the disciplinary action was initiated against the present Respondent No.2 on the basis of Resolution of Gondwana Club. As such, the Gondwana Club is a necessary party to the proceeding before the learned Magistrate. However, without impleading Gondwana Club as party to the proceeding, complaint has been entertained by the learned Magistrate and process was issued. Hence, the same is illegal.

9. In support of this submission, the Petitioners have relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Aneeta Heda V/s Godfather Travels and Tours Private Limited, (2012) 5 Supreme Court Cases 661***, wherein the Hon'ble Supreme Court has observed in paragraph Nos.24 and 64 as under :

“24. Section 141 uses the term “person” and refers it to a company. There is no trace of doubt that the company is a juristic person. The concept of corporate criminal liability is attracted to a corporation and company and it is so luminescent from the language employed under Section 141 of the Act. It is apposite to note that the present enactment is one where the company itself and certain categories of officers in certain circumstances are deemed to be guilty of the offence.

64. Keeping in view the anatomy of the aforesaid provision, our analysis pertaining to Section 141 of the Act would squarely apply to the 2000 enactment. Thus adjudged, the Director could not have been held liable for the offence under Section 85 of the 2000 Act. Resultantly, Criminal Appeal No. 1483/2009 is allowed and the proceeding against the Appellant is quashed. As far as the Company is concerned, it was not arraigned as an accused. Ergo, the proceeding as initiated in the existing incarnation is not maintainable either against the company or against the Director. As a logical sequitur, the appeals are allowed and the proceedings initiated against Avnish Bajaj as well as the Company in the present form are quashed.”

10. The Petitioners have also relied upon the Judgment of Hon’ble Supreme Court of India in the case of ***S. K. Alagh V/s State of Uttar Pradesh and Others, (2008) 5 Supreme Court Cases 662***, wherein the Hon’ble Supreme Court has observed in paragraph No.19 as under :

“19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself.”

11. This proposition of law is not disputed by the learned APP. Hence, considering the settled principles of law in absence of the Club as a necessary

party to the complaint, the proceedings itself are not tenable and same are liable to be quashed and set aside.

12. The other ground which is raised by the present Petitioners is that on the basis of the complaints made by the office bearers in which the allegation against them is that they have displayed suspension order of the Respondent No.2 stating that in view of the complaint received from the lady members of the Cricket Club of India Limited, Mumbai, his membership has been suspended until further order. According to the Petitioners, this procedure is followed by them as per the bye-laws of the Club. He has specifically relied upon the bye-laws which were prepared by the Gondwana Club by its Resolution dated 10/10/2008, wherein under the title, "Bye Laws for Regulating Disciplinary Enquiry" under Clause – (5) of the said Rule reads as under :

"5) In the event Result of Preliminary Enquiry reveals that allegations are substantiated, then the Managing Committee shall pass an order and suspend the concerned member and display the order of suspension on the Notice Board of the Club and forward a copy thereof to the member after the suspension of the member he shall not be admitted to the facilities of the Club further; the Managing Committee shall cause a charge sheet to be served upon the concerned member by Registered Post or Hand delivery and also cause a copy thereof to be displayed at the Notice Board of the Club which shall be considered to be sufficient Notice of the charges and proof of service. The charge

sheet shall be accompanied with the statements of the imputation of the misconduct together with list of documents and list of witnesses the charge sheet should also be accompanied with the letter directing the member concerned to file his reply within 15 days from the date of charge sheet.”

13. The Applicants have relied upon Section 499 of IPC. On perusal of this provision it appears that mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned. Therefore, the intention or knowledge to cause harm are the essential ingredients to constitute the offence under Section 499 of IPC.

14. In the present matter, submission of the Applicants is that to execute the decision of managing committee as per Bye laws of the Club, notice of suspension was displayed. Hence, *prima facie*, the case of defamation is not made out against them.

15. In support of their submission, the Petitioners have rightly relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Rajendra Kumar Sitaram Pande and Others V/s Uttam and Another, (1999) 3 Supreme Court Cases 134***, wherein the Hon'ble Supreme Court has considered

the exception of Section 499 and observed in paragraph No.7 as under :

“7. The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201, can it be said that a prima facie case exists for trial or Exception 8 to Section 499 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office using filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold an enquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Penal Code, 1860 defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present

complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself.”

16. In the light of this factual as well as legal position in the matter, in my opinion, the learned Magistrate has committed an error by issuing process without considering the fact that as to whether ingredients of Section 499 of Indian Penal Code are satisfied in the matter or not. So also, the learned Sessions Judge failed to consider the factual as well as legal position, particularly of not impleading the Gondwana Club as necessary party to the proceeding and secondly, the bye-laws of the Club which permitted to display the suspension order on the Notice Board. Hence, in any case, the offence is not made out under Section 499 of IPC against the present Petitioners. Hence, considering this position, I am satisfied that it is a fit case to invoke the writ jurisdiction along with inherent powers provided under Section 528 of Bhartiya Nagrik Suraksha Sanhita.

17. For the reasons stated herein above, present Petition is allowed.

18. The Judgment and order dated 23/12/2025 passed by the District Judge and Additional Sessions Judge, Nagpur in Criminal Revision No. 493/2012 is hereby quashed and set aside. No order as to costs.

19. Needless to mention that the order of issuing process dated 5/3/2009 by Judicial Magistrate First Class, Nagpur in SCC No. 9502/2009 for the offence punishable under Section 500 of IPC against the Applicants only is also quashed and set aside.

[PRAVIN S. PATIL, J.]

vijaya