

Court No. - 15

Case :- APPLICATION U/S 482 No. - 1691 of 2024

Applicant :- Vartika Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy.

Deptt. Of Home. Lucknow And Another

Counsel for Applicant :- Rohit Kumar

Tripathi,Shamshad Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Mr. Shamshad Ahmad, learned counsel for the applicant, as well as Mr. V.K. Shahi, learned Additional Advocate General, assisted by Mr. Rajesh Singh, learned AGA, and perused the record.
2. This application has been filed by the applicant -Vartika Singh for quashing of the order dated 21.10.2022 passed by the learned Additional Chief Judicial Magistrate/Special Court MP/MLA, Sultanpur in Complaint Case No.01/2021 (Vartika Singh Vs. Present Union Minister of India, Smt. Smriti Irani).
3. Learned counsel for the applicant submits that the applicant before this court is an International Shooter and former President of India awardee. She has completed her post-graduate from Delhi University and has been invited as Chief Guest in so-many programmes organized by the Government of India as well as in many State Functions i.e. Ek Bharat Shresth Bharat, Ujjawala Yojana, Kaushal Vikas Yojana, Aparajita, Guest of Honour in various programmes of A.B.V.P. organized by Lucknow University, in the programme of RSS and she has also given free training of shooting to girls at the Doon School, Dehradun.
4. It is further submitted that the applicant had filed a criminal complaint against the opposite party no. 2-Smt. Smriti Zubain Irani, who is a Cabinet Minister of Union of India with regard to defamatory statements given by her to the print and electronic media about the applicant and the same has damaged the reputation of the applicant-complainant and

defamed her publicly by publishing and broadcasting the same on several news channels, social media and print media.

5. It is vehemently submitted that the opposite party number-2 has stated that the applicant-complainant is having a close association with Congress Party and also described her as a criminal element and has also addressed her as "pawns (piyada) of Congress" having direct relations with the Gandhi family. It is vehemently submitted that publication of this statement in the electronic and print media and at different social media platforms has damaged the reputation of the applicant-complainant and the said statements were also read and seen by the family members, relative and friends of the applicant-complainant and, her reputation has lowered in their eyes. It is vehemently submitted that in support of the allegations levelled in the complaint the applicant-complainant has presented herself as a witness and her statement was recorded under section 200 CrPC and of her witnesses under section 202 CrPC and thereafter the trial court has also directed investigation under section 202 CrPC and despite there being sufficient material to proceed further and to summon the opposite party no. 2, the trial court, without assigning cogent and acceptable reasons, has dismissed the complaint of the applicant-complainant under section 203 CrPC.

6. It is further submitted that at the stage of summoning meticulous exercise of appreciation of evidence is not warranted and the duty of the court is only to see if there is *prima facie* material available on the basis of which an accused person may be put on trial and the evidence is not required as it is warranted at the time of conviction of an accused person of the crime. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in ***Criminal Appeal No.34 of 2015 (Sunil Bharti Mittal Vs. Central Bureau of Investigation) and other connected appeals and in Criminal Appeal No.1231 of 2013 (Fiona Shrikhande Vs. State of Maharashtra and another)***.

7. On the other hand, learned A.G.A., relying on the counter affidavit filed on behalf of the State, submits that no illegality has been committed by the trial court in dismissing the complaint filed by the applicant-complainant as the applicant-complainant herself is an accused in five criminal cases, detail of which has been given in Annexure CA-1,

enclosed with the counter affidavit filed on behalf of the State, and it is stated that a person, who is herself having criminal history of five cases, may be termed as a person having criminal antecedents, moreover, even if the association of the applicant-complainant is shown with any political family, the same by itself may not be a defamatory statement. Thus, even if the allegations levelled in the complaint are taken on its face, the same may not attract necessary ingredients under section 499/500 IPC.

8. Having heard learned counsel for the parties and having perused the record, it is transpired that in order to assess as to whether any illegality has been committed by the trial court, it would be necessary to have a glance on the relevant law pertaining to the summoning in a compliant case.

9. In ***G.H.C.L.Employees Stock Option Trust VS. India Infaalin Ltd. 2013(4) SCC 505*** It was emphasized by the Hon'ble Supreme Court that *"summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record."*

10. In ***AIR 1998 S. C . 128 , M/s. Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others*** it was held as under:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the

Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

11. In **AIR 2012 SUPREME COURT 1747 "Bhushan Kumar and Anr v. State (NCT of Delhi) and Anr"** Hon'ble Apex Court has held that:-

"10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued."

12. In **AIR 1976 SUPREME COURT 1947, Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & others**, it is held by The Apex Court that:-

"It is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merit or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one."

"4.It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited - limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for

issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

"It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statement of the witness recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no

evidence or on materials which are wholly irrelevant or inadmissible and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

13. In ***AIR 2015 SUPREME COURT 923, Sunil Bharti Mittal v. Central Bureau of Investigation (Three Judges Bench)*** Hon,ble Apex Court held as under:

"45. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

46. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need

not contain detailed reasons. A fortiori, the order would be bad-in-law if the reason given turns out to be ex facie incorrect."

14. Now the material placed before the trial court and the allegations levelled by the applicant-complainant in her complaint are required to be sifted in the light of aforesaid law in order to assess sufficiency of grounds to proceed against opposite party no. 2.

15. In the complaint filed by the applicant-complainant, apart from alleging that the applicant-complainant is a reputed person and having a fame of international shooter and has been chief guest, guest of honour in many programmes which have been highlighted above, it is also stated that on 26.06.2020, the opposite party no. 2-Smt. Smriti Irani has given statement at her camp office at Amethi, Uttar Pradesh, which was also telecasted throughout the nation by electronic media and was also printed in the print media and in response to a question posed by a correspondent of a newspaper she has stated that the allegations have been levelled against her personal secretary in furtherance of a conspiracy with the Congress Party and this woman (applicant) is having a close association with the Congress Party and insisted her Congress friends not to use such persons against her who are themselves criminal elements. It is also alleged in the complaint that in response to another question posed by the same correspondent, opposite party no. 2 replied that she again insists that if the Congress Party wants to sarcasm her, they should not use such 'pawns' (*piyade*) who are having direct relation with 'Gandhi Family. It is also alleged that this statement of the opposite party no. 2 was telecasted throughout the nation by different TV channels and the same was heard and seen by many persons and the same has been given with an ulterior motive to tarnish the reputation of the applicant-complainant, given with the intention to defame her and has also been heard and seen by her family members, namely, Utkarsh, Vikram, Ajeet Pratap Singh, Brijesh Singh, Krishna Pratap Singh and Smt. Kiran Singh and other relatives, friends and followers. It is also stated that neither three criminal cases of forgery have been registered against her nor she is associated with the Congress Party and, thus, statements have been given intentionally by the opposite party no. 2 to lower her reputation in the eyes of general public, her relatives, friends and followers.

16. The statement of the applicant-complainant was recorded under section 200 CrPC wherein she reiterated the allegations, as levelled in the complaint. The applicant/complainant in support of her allegations has presented and testified seven prosecution witnesses under section 202 CrPC i.e. Utkarsh (PW-1), Pawan Shukla (PW-2), Raj Kumar Singh (PW-3), Brijesh Kumar Singh (PW-4), Bhupendra Singh (PW-5), Brijesh Kumar Singh (PW-6) and Rajesh Singh (PW-7).

17. At this juncture, it is important to notice the police report submitted by the in-charge SHO of police station, Gauriganj, district Amethi in pursuance of an order passed by the trial court under section 202(1) CrPC wherein it is submitted that the Central Minister- opposite party no. 2 has not taken name of any person in her statements and she has referred to a political party i.e. Congress Party and as the political parties are in a habit of alleging allegations and counter-allegations against each other, it appears to be a political subject. It is also stated in the report that three criminal cases i.e. (i) Crime/FIR No.99 of 2019, under Sections 452, 352, 504 and 506 IPC, (ii) Crime/FIR No.174 of 2020, under Sections 467, 471, 420 and 511 IPC and (iii) Crime/FIR No.09 of 2020, under Section 506 IPC have so far been registered against the applicant-complainant in different police stations. The said report has been submitted by the SHO of police station Gauriganj, district Amethi after witnessing the compact-disc which was provided by the applicant-complainant to the trial court.

18. Provisions of section 499 IPC is also important to be considered at this stage and the same is being reproduced as under:-

"499. 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."

19. It is also to be recalled that to constitute defamation under section 499 IPC, there has to be an imputation and such imputation must have been made with an intention of harming or having reason to believe that it will harm to the reputation of a person about whom it is made. It is

required to show that accused of defamation has intended or known or has a reason that imputation made by him/her would harm the reputation of complainant, irrespective of the fact that whether the complainant has actually suffered directly or indirectly from such imputation.

20. At this juncture, the statements given by the opposite party no. 2 are also required to be seen in order to assess as to whether the same may be termed as imputation sufficient enough to satisfy the conscious of a court in order to summon the opposite party no. 2 to face trial for committing an offence under section 499 IPC. The statement of opposite party no. 2 which has been referred to in para-3 of the complaint is being reproduced as under:-

3. यह कि प्रकरण इस प्रकार है कि दिनांक 26.06.2020 को माननीय स्मृति ईरानी केन्द्रीय मंत्री ने थाना गौरीगंज जनपद अमेठी स्थित सांसद आवास पर बहुत सारे मेडिया के समक्ष स्टेटमेंट दिया जिसका प्रसारण पूरे देश में हुआ जिसमे उनके द्वारा प्रार्थिनी/वादिनी के बारे में निम्न बातें कही।

पत्रकार का प्रश्न—एक अंतर्राष्ट्रीय शूटर ने आपके निजी सचिव के उपर गंभीर आरोप लगाए हैं, उस पर क्या प्रतिक्रिया है आपकी?

माननीय स्मृति ईरानी—एफ0आई0आर0 दर्ज हुई है भाईसाहब, तीन तीन फर्जी वाड़े की। मेरा आग्रह है कि उसको ठीक से पढा जाए, मैं ये भी जानती हूँ कि कांग्रेस का यह षड्यंत्र खिलेगा नहीं जनता के सामने क्योंकि इस महिला का कांग्रेस के साथ घनिष्ठ संबंध है। मेरा आग्रह है कि कांग्रेस के मित्रों से कि अगर मेरे पर कोई हमला करना है तो कम से कम ऐसे लोगों को खडा न करे जो खुद अपराधी तत्व है।

पत्रकार का प्रश्न— लेकिन उसके पिता आर0एस0एस0 के कार्यकर्ता बताए जाते हैं, और आर0एस0एस0 के कार्यकर्ता के रूप में अमेठी में काम कर सके, ऐसे में क्या प्रतिक्रिया होगी?

माननीय स्मृति ईरानी— मैं दोबारा कहती हूँ भाईसाहब तीन एफ.आई.आर. है फौरजरी की मुझे बहुत खुशी है कि आज आप मेरे घर के सामने मुझे रोक कर मुझे दीदी कह कर यह प्रश्न कर रहे हैं, मुझे भाई का ये आशीर्वाद सदैव याद रहेगा, लेकिन दोबारा कहती हूँ कि आप तीन फर्जीवाड़े के एफ0आई0आर0 न सिर्फ इस विषय में जहां पर भारत सरकार के उपक्रमों के आधार पर फर्जी दस्तावेज लिखे गए, साथ ही पहले से दो संदिग्ध अपराधों में इस व्यक्ति के उपर अयोध्या, लखनऊ में एफ0आई0आर0 दर्ज है, एक बार फिर कहती हूँ अमेठी कांग्रेस का गढ़ रहा था लेकिन कांग्रेस पार्टी को अगर मुझ पर कटाक्ष करना है तो कम से कम ऐसे प्यादे खड़े न करे जिसका डाइरेक्ट संबंध गांधी खानदान से है।”

21. If the statements, allegedly made by the opposite party no. 2 while responding to a query posed by a correspondent of a newspaper, are read conjointly with the report submitted by the police under section 202 CrPC, it would reveal that the aforesaid two statements given by the

opposite party no. 2 were part of long interaction with media persons. It is recalled that the report of the SHO, Gauriganj, district Amethi submitted under section 202(1) CrPC has been submitted in response to the compact-disc provided by the complainant and in its first part it has been said by the opposite party no. 2 that all must wear mask properly as the pandemic of 'corona virus' is still present and thereafter a question was posed by a correspondent with regard to the promise allegedly made by the opposite party no. 2 pertaining to selling of sugar for Rs. 13/- per kg. In response to which the opposite party no. 2 has given a long statement referring to the congress-party and other persons associated with it and thereafter the impugned statement was given by the opposite party no. 2 in response to the question posed by the media person and it is evident that in none of these two statements the name of the applicant-complainant has been taken by opposite party no. 2 and in response to the first question the opposite party no. 2 has criticized the political party, she in response to this question also criticised the same political party alleging that this is a conspiracy of that political party and the applicant-complainant is having close association with that political party and the said political party should not use such persons who are themselves criminal elements.

22. In response to the second question, the opposite party no. 2 has stated about two FIRs lodged against such person at Ayodhya and Lucknow and again by referring to the same political party she has stated that even if said political party wants to sarcasm her, such pawns must not be used, who are having direct relation with the Gandhi family. It is evident from the counter affidavit filed by the State, that there are five criminal cases registered against the applicant-complainant in different police stations, two of these cases are bearing case Crime/FIR No.0174 of 2020 lodged at police station Sansad Bhawan, New Delhi under Sections 467, 471, 420 and 511 IPC and Crime/FIR No.0402 of 2020 lodged at police station Musafirkhana, Amethi under Sections 509, 419, 420, 467, 468, 471, 120-B and 34 IPC read with Section 66 and 67C of I.T Act. Thus, out of these five criminal cases, two criminal cases have been lodged with regard to committing forgery and having regard to the first exception of section 499 IPC the same may not be termed as an

imputation and secondly, alleging association of the applicant-complainant with a political party by itself may not be termed as derogatory/defamatory or her alleged association even to the 'Gandhi Family', which is having a legacy of political personalities like Pandit Late (Shri) Jawahar Lal Nehru, Late (Smt.) Indira Gandhi and Late (Shri) Rajiv Gandhi and the alleged defamatory statements may not be read in piecemeal as the statement in whole is to be looked into in order to assess as to whether the same is defamatory or not. If both these statements given by the opposite party no. 2 are read conjointly, it would emerge that the intention of the opposite party no. 2 is/was to criticize a political party and not to make any imputation against the applicant-complainant.

23. It is also worthwhile to recall that summoning in a criminal trial is a serious business and it is not so that by referring the statements of complainant and few witnesses the trial court should summon the proposed accused person to face trial, as being summoned to face trial in a criminal case would also place a stigma on the person who is being summoned to face trial and even if he/she is acquitted of the charges after many years of painful trial, the same may not be of any use.

245. Thus, having perused the impugned judgment, I find that the trial court has given cogent reasons for not summoning the opposite party no. 2 to face trial under section 499/500 IPC, as according to the trial court, there was no sufficient material/ground for proceeding further. Thus, I am of the view that by doing-so, the trial court has not committed any illegality or to say any infirmity in passing the impugned judgment and order.

25. In result, the instant application under Section 482 CrPC, moved on behalf of the applicant-Vartika Singh, is hereby **dismissed**.

26. Before parting, it is to be highlighted that complainant appears to be a shooter of international fame and standard, she may be ideal to may youngsters, specially the girls and in the considered opinion of this Court by the impugned statements her reputation is not likely to be tarnished. A Single Judge of High Court of Gujarat has beautifully summarised the distinction between the term 'character' and 'reputation' in the case

reported in MANU/GJ/0106/1984 (*Narottamdas L. Shah Vs. Patel Maganbhai Revabhai and Ors*) in following words:-

21.The term "reputation" means, "what is generally said or believed about the persons or things" character". The two terms "character" and "reputation" are prone to be confused. Character, in the context, would mean, fortitude or moral constitution or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore, character is what a person "actually is", while "reputation" is what neighbours and others say "what he is". The man may have, in fact, a good character and yet suffer from bad reputation or vice versa. In short, 'reputation' is, what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is hold by others and not the opinion which he himself may have about himself. It may be said that 'reputation' is a composite hearsay, beign the community's opinion which implies the definite and final formation of belief by the community. By no stretch of reasoning the term 'reputation' can imply ones own belief about himself."

Order Date: 05.03.2024

MVS/-