



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF FEBRUARY, 2024

R

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

CRIMINAL PETITION NO. 11213 OF 2022 (482)

BETWEEN:

BHARATIYA JANATA PARTY
KARNATAKA STATE UNIT
NO.48, JAGGANATH BHAVAN,
TEMPEL STREET, MALLESHWARAM,
BENGALURU-560 055.
REPRESENTED BY ITS PRESIDENT
NALIN KUMAR KATEEL.

...PETITIONER

(BY SRI. DILLI RAJAN., ADVOCATE FOR
SRI. K N SUBBA REDDY.,ADVOCATE)

AND:

RIZWAN ARSHAD,
S/O R Q ARSHAD,
AGED ABOUT 39 YEARS,
R/AT NO.24, SRIDEVARU APARTMENTS,
FLAT NO.G2, BENSON A CROSS,
BENSON TOWN, BENGALURU-560 046.

...RESPONDENT

(BY SRI.S A AHMED.,ADVOCATE)

THIS CRL.P FILED U/S.482 CR.P.C PRAYING TO ALLOW THIS PETITION AND QUASH COMPLAINT AND ENTIRE PROCEEDINGS REGISTERED AND PENDING ON THE FILE OF THE LEARNED 42ND A.C.M.M., BENGALURU (SPECIAL COURT FOR TRIAL OF CASES AGAINST SITTING AS WELL AS FORMER MPs/MLAs, TRIABLE BY MAGISTRATE IN THE STATE OF KARNATAKA) OF C.C.NO.28124/2022 BY THE RESPONDENT FOR ALLEGED OFFENCE P/U/S 499,500 OF IPC.





THIS CRL.P COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is a registered & recognized national political party. It is invoking the inherent jurisdiction of this court u/s.482 of the Code of Criminal Procedure, 1973 seeking quashment of Criminal Proceedings in C.C.No.28124/2022 for the offence of defamation punishable u/s.500 of Indian Penal Code, 1860. The said proceedings are pending on the file of learned 42nd ACMM Court, Bangalore (ie., Special Court for the trial of cases of MPs/MLAs). The petitioner along with another happen to be accused therein.

II. FOUNDATIONAL FACTS OF THE CASE:

(1) The respondent herein had filed a private complaint in PCR No.41/2019 dated 22.05.2019 alleging that the accused had tweeted certain matter that are grossly defamatory of him. The said tweets are as under:

"a) "Congress Exposed – Youth Cong Nation Secretary Ibrahim Khaleelulla has been arrested after being caught printing fake voters ID cards. Bengaluru central candidate @ArshadRizwan is behind this racket"



b) *"Youth Congress National Secretary Ibrahim Khaleelulla was operating from prabhat complex, 3rd floor room no.507. They were caught red handed by BJP corporate and karyakarthis. It's speculated @INC India is printing fake voter cards in other parts of the country too."*

c) *"Congress party should be disqualified from contesting elections. They have challenged the very existence of democratic values in the country. Will @RahulGandhi come out in open and explain the neus between his party and the anti constitutional activities of his party members."*

d) *"Election Commission should ban @ArshadRizwan from contesting elections until the investigation is completed. The congress today stays exposed before the country. They have waged war on the democracy of this nation @RahulGandhi, do you any shame left? Speak out!!"*

(2) Learned Judge of the court below on perusal of the complaint took cognizance of the offence by the impugned order dated 02.11.2019 and further, having recorded the Sworn Statement of the complainant on 16.12.2019 & 09.01.2020, directed vide order dated 04.01.2020 registration of the *'criminal case against accused No.1 & 2 for the offence punishable u/s.499 r/w*



Sec.500 of Indian Penal Code' (sic). He also directed issue of summons to them. Accused has been admitted to bail vide order dated 10.03.2020 and the cash security of Rs.25,000/- was obtained as a condition for the enlargement on bail. Petitioner seeks quashment of the said proceedings.

III. SUBMISSION ON BEHALF OF PETITIONERS:

The petitioner-political party is not a 'person', the same being only a 'society' or 'association of persons'; such entities do not fit into the word 'whoever' employed in both the sections 499 & 500 of IPC and therefore, the proceedings of the kind are not maintainable. Secondly, a bare perusal of the complaint does not reflect the commission of any offence much less the one in question; Even otherwise, the complaint does not generate confidence in the mind of court; allowing the said proceedings to continue amounts to abuse of process of the court. That being the position, the same is liable to be quashed in terms of law declared by the Apex Court in **STATE OF HARYANA vs. BHAJAN LAL**, AIR 1992 SC 604.

IV. SUBMISSION ON BEHALF OF RESPONDENT:



The word 'person' employed in sections 499 & 500 is inclusively defined u/s 11 of IPC; even otherwise, section 3(42) of the General Clauses Act, 1897 expansively defines this word. The contents of the complaint taken at their face value reflect commission of the offence of defamation and therefore, learned Judge of the court below has rightly taken cognizance of the same. At that stage, it is not in the province of the court to have a mini-trial; all contentions are open to the petitioner in the pending proceedings in the court below. There is absolutely no case of abuse of process of court. So contending, he seeks dismissal of the petition.

V. Having heard the learned counsel for the parties and having perused the Petition Papers, this court declines interference in the matter for the following reasons:

(a) The right to reputation, like the right to personal security is very important to any person. The publication of defamatory words is so manifestly detrimental that a person publishes them at the peril of being able to justify



them in the sense in which the general public will understand them. Whenever words sound to the disreputation of an individual, they are said to be defamatory on their face. Injury to the reputation happens to be the gist of action.

(b) Winfield & Jolowicz on TORT, 13th Edition, Sweet & Maxwell, at page 294 say:

'Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.'

Reputation can be defined as 'the respect or esteem which a person enjoys in society'; in other words, *it is what people think of him* or the good esteem in which others hold him. Right not to be defamed. It is said in Latin that a good name is better than great riches. Shakespeare, in 'Othello' says:

*"Good name in man and woman, dear my lord,
Is the immediate jewel of their souls;
Who steals my purse, steals trash; 'tis
something, nothing;*



*'T was mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name,
Robs me of that which not enriches him,
And makes me poor indeed.'*

All civilized jurisdictions recognize reputation as an essential attribute of personality and therefore, it is jealously protected. Breach of this right is a tort or a crime or both.

(c) Section 499 of IPC defines the offence of defamation which reads as under:

"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."

The offence of defamation consists of three essential ingredients, namely, (i) making or publishing any imputation concerning any person, (ii) such imputation must have been made by words either spoken or by visible representations, and (iii) such imputation must be made with the intention to cause harm or with the knowledge or



having reasons to believe that it will harm reputation of the person concerned. Section 500 of IPC which prescribes punishment for the offence of defamation, reads as under:

"Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Insulting words are a form of uncivilised violence and intimidation. They are inconsistent with civilized standards of a community living. The subject provisions in a way intend to promote civilized standards and improve the quality of communication or expression.

(d) Ours is a constitutionally ordained democratic republic. Periodic elections to the legislative bodies and local bodies are a *basic feature* of our polity. Political parties and their candidates have a great role to play in deciding destiny of the nation. Generally, the freedom of political debate is at the very core of the concept of a democratic society. The U.S. Supreme Court in **NEW YORK TIMES vs. SULLIVAN, 376 U.S.254 (1964)** observed that a democratic polity should have "a profound national commitment to the principle that debate on public



issues should be uninhibited, robust and wide-open". This may be a bit broader proposition. However, truth remains that unlike private individuals, politicians and political parties consciously expose themselves to the close scrutiny by the public at large and therefore, they have to display a greater degree of tolerance. That being said, their image & reputation have a bearing on the electoral process and its product, cannot be disputed. Disreputing them or damaging their public image would not augur well to the system. A vibrant democracy like ours warrants a reasonable protection of reputation of political parties and elected representatives of the people. Therefore, the tort or offence of defamation cannot be viewed leniently merely because punishment prescribed for the offence is not stringent. Excluding political parties from the purview of Sections 499 & 500 would deleteriously mask this perspective.

(e) A bare perusal of the subject tweets which are reproduced herein above, by no stretch of imagination can



be said to be innocent/innocuous. The allegations are wild such as fabricating the fake voters ID cards and that the complainant is behind this racket. *'They were caught red handed by BJP corporate and karyakarthis. It's speculated @INCIndia is printing fake voter cards in other parts of the country too.'* The complainant claims to be the Vice President/President of Karnataka Pradesh Youth Congress Committee, National Secretary of Indian Youth Congress; he was elected to the Karnataka Legislative Council and thus, an MLC. That being the position, the subject tweets taken at their face value are defamatory of him. There is no scope for the invocation of any of the propositions in BHAJAN LAL *supra*. It hardly needs to be stated that at the stage of taking cognizance, learned Judge has done the exercise in a normative way, and rightly he did not hold the mini-trial. The prayer for quashment of impugned proceedings structured on a contra premise therefore is liable to be rejected.



(f) Petitioner's counsel contended that his client is only a registered society or an unincorporated association of individuals and therefore, it cannot be treated as a 'person' within the meaning of sections 499 & 500 of IPC. He argues that the expression 'whoever' employed in these provisions implies 'person' and any entity having no legal personality cannot fit into the precincts of these provisions. Learned counsel appearing for the respondent contradicts this submission. He is right in telling that section 11 of IPC defines 'person' in an inclusive way with the following text:

"The word "person" includes any Company or Association or body of persons, whether incorporated or not."

This definition is in *pari materia* with section 3(42) of the 1897 Act. In **N.D.P. NAMBOODRIPAD vs. UNION OF INDIA** (2007) 4 SCC 502, at para 19, it is observed as under:

"...Justice G. P. Singh in his treatise 'Principles of Statutory Interpretation', (Tenth Edition, 2006), has noticed that where a word defined is declared to 'include' such and such, the definition is prima facie extensive, but the word



'include' when used while defining a word or expression, may also be construed as equivalent to 'mean and include' in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression..."

(g) An unincorporated body of individuals also answers the definition of 'person' in terms of Section 11 of IPC. There is no difference between a corporate entity which obviously is a legal person and an unincorporated body of individuals, which fits into statutory inclusive definition of 'person'. Traditionally speaking, an unincorporated body of individuals may not have the attributes of a 'legal person' is true. However, Solmond's Jurisprudence, 12th Edition at paragraph 66, page 305 says:

" A legal person is any subject matter other than a human being to which the law attributes personality. This extension for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination..."



Thus, it is open to law to create fictions as of practical necessity and that is how personality is attributed to otherwise non-organic entities like companies, governments, deities, trade unions, etc.,. A contra contention cannot be countenanced without manhandling Section 11 of IPC.

(h) When an entity, whether incorporated or not, is inclusively defined by a statute as a 'person', it can maintain a proceeding for the offence of defamation; in other words, the idea of reputation is not 'natural person' specific. Even legal persons like governments, companies, deities, trade unions, can also have reputation. As a corollary of this, there can be a proceeding of the kind against such persons, as well. (Law can prescribe modalities for taking up such proceedings, is beside the point). An argument to the contrary does not stand to the rules of reason & justice. Therefore, I am of the considered opinion that the word 'whoever' *inter alia* employed in sections 499 & 500 of IPC implicitly includes



an association of individuals, whether incorporated or not, like the petitioner herein and such entities can be arrayed as accused in criminal proceedings of the kind.

(i) The vehement submission of learned counsel for the petitioner that his client is only an association of individuals, although it is registered as a Society and further, it is registered & recognized by the Election Commission of India, may be true. However, his further submission that intention cannot be attributed to it, is difficult to countenance in view of the inclusive definition of 'person' and there being a natural person as a co-accused in the impugned proceedings. The Apex Court in ***SUNIL BHARTI MITTAL vs. CENTRAL BUREAU OF INVESTIGATION***, (2015) 4 SCC 609 has observed at para 43 as under:

"Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent.."



Added, the contention of the petitioner that the idea of vicarious culpability should remain alien to criminal jurisprudence cannot come to his aid, there being a co-accused, who is alleged to have acted on behalf of the petitioner. In **STANDARD CHARTERED BANK vs. DIRECTORATE OF ENFORCEMENT** (2005) 4 SCC 530, it has been held that there is no immunity to the corporate entities from prosecution merely because it is in respect of offences for which the punishment is mandatory imprisonment and fine.

(j) The above view is supported by Solmond's Jurisprudence in paragraph 69, page 314 which reads as under:

"It is well settled in the law of England that a corporation may be held liable for wrongful acts, and that this liability extends even to those cases in which malice, fraud, or other wrongful motive or intent is a necessary element. A company may be sued for libel, malicious prosecution, or deceit (h). Nor is this responsibility civil only. Corporations, no less than men, are within reach of the arm of the criminal law. They may be indicted or otherwise prosecuted for a breach of their



statutory or common law duties, and punished by way of fine and forfeiture (i)."

It is relevant to mention that the prescribed punishment for the offence of defamation is *imprisonment or fine or both*. In fact, the 41st Report of the Law Commission had suggested the following amendment to section 62 of IPC:

"In every case in which the offence is only punishable with imprisonment or with imprisonment and fine and the offender is a company or other body corporate or an association of individuals, it shall be competent to the court to sentence such offender to fine only."

However, the above view has secured imprimatur in STANDARD CHARTERED BANK *supra* and therefore, need to amend the statute has arguably withered away.

In the above circumstances, this petition being devoid of merits, is liable to be & accordingly, dismissed, costs having been made easy.

It is clarified that the observations herein above made being confined to disposal of the petition, shall not prejudice any contention of the parties, that may be taken



up in the proceedings pending in the court below and further that all contentions are kept open.

This Court places on record its deep appreciation for the able research & assistance rendered by its official Law Clerk cum Research Assistant, Mr.Raghunandan K S.

**Sd/-
JUDGE**

Snb/cbc
List No.: 1 SI No.: 5