CRM-M No. 39604 of 2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 39604 of 2018 (O&M)
Reserved on: 16.10.2023.
Pronounced on: 04.01.2024

Vipin Pubby .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

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

Mr. Rajat Gautam, Addl. AG, Haryana.

Mr. P.S. Poonia, Advocate, and
Mr. Pulkit Dhanda, Advocate,
for respondent No.2.

****

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**
09 of 2016 CIS No. CRR/351/2016 CNR No.HRGR01-008822-2016	04-06-2018	Additional Sessions Judge, Gurugram.

1. An Editor of "The Indian Express" 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. As per paragraph 2 of the petition, the petitioner declares that he was working as Editor (Chandigarh) of "The Indian Express" (Chandigarh Edition), printed and published by The Indian Express Private Limited, and at that time, the petitioner was a resident of Chandigarh and now, a resident of Panchkula.

3. The petitioner is 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 petitioner relies 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 petitioner act with any malice or intention to defame the complainant. The petitioner's 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 petitioner.

4. The respondent-complainant has filed a reply and opposed the present petition because it was the duty of the petitioner to verify the correctness of the news, and without doing so, he let the news printed and published in Indian Express, which caused irreparable loss/damage to the complainant’s reputation and petitioner is liable to be prosecuted and punished under Sections 499 and 500 IPC.

5. In the complaint, Annexure P-2, 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.

6. As per paragraph no.5 of the complaint, it has been alleged that on June 17, 2008, the complainant noticed a news item in Indian Express with topic: "*Accused says he bribed ADGP, sought police protection*." The complainant further stated that in the news item, it was reported that Dr. Sandeep Sharma, an accused in the criminal case, had confessed before the Central Bureau of Investigation [CBI] that Param Vir Rathee had recommended Sandeep Sharma's police protection after taking a bribe. In the complaint, the copy of Indian Express dated June 17, 2008, was annexed [Annexure C-1]. In paragraph seven of the complaint, the complainant further declares that on verification, he came to know that said CBI had not arrested Sandeep Sharma, and as such, his confessing before CBI was out of the question, and consequently, there was no occasion to the complainant recommending his police protection. The next day, the CBI gave a statement, published in the Times of India on June 18, 2008, [C-2]/P-2], in which the CBI clarified this part. In paragraph no. 8, the complainant mentioned a list of

newspapers that had published such news and gave 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.

7. After filing the complaint, the complainant appeared as CW-1 before the concerned Court and reiterated the allegations made in the complaint. It would be appropriate to extract the relevant portion of the said statement, which 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, sought Police Protection. 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. This news was clearly the news to cause defamation. This was published with the intent to spoil my self-respect and image. On the next day i.e. on 18.06.08, C.B.I. Has clearly stated through an English National Newspaper Times of India that they have not arrested the accused Dr.Sandeep Sharma."*

8. 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 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.

9. 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 petitioner has been arraigned as Accused No.1.

10. The petitioner 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".*

11. 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.

12. The petitioner's counsel (without admitting any liability or conceding anything) states that the news report was carried out in good faith in the public interest and based on information provided by CBI officials and their report. Their journalist had not only interacted with the complainant but also mentioned his viewpoint. Neither the newspaper, its reporter, nor the petitioner had made any personal or biased comments.

13. Petitioner's counsel submitted that it is Delhi edition of The Indian Express which is circulated in National Capital Region, viz the metropolitan area encompassing the NCT of Delhi and adjoining urban areas including Gurgaon and the complainant did not lead any evidence to primafacie establish that the newspaper which is published in Gurgaon also carried the same news item because it was Chandigarh Edition, where it was published, which had no circulation in Gurgaon. The Chandigarh edition of the newspaper is meant for Chandigarh and adjoining areas of Chandigarh and carries, in addition to National news, news of local interest to Chandigarh and adjoining areas. The local edition covers news of local importance and relates to a specific city. The city editions are like pullout supplements with the leading Indian Express newspaper and carry the nomenclature of Newsline preceded by the name of the city, for example, Chandigarh Newsline. There is no averment that the complainant and the witnesses had read Chandigarh Newsline. 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.

14. 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.

15. An analysis of the pleadings, the submissions, and the applicability of judicial precedents will lead to the following outcome.

16. On June 17, 2008, the Indian Express, Chandigarh, published the following news report:

Shubham Hospital Case 'Sharma tried to influence officials'
Accused says he bribed ADGP, sought police protection

Varun Chadha
Chandigarh June 16,

Additional Director General of Police (Intelligence), Haryana, P. V Rathee, has come under the Central Bureau of Investigation's (CBI) scanner in the Shubham Hospital case after accused Sandeep Sharma confessed on Monday that he had bribed the officer. In return, Rathee had recommended police protection for the accused and provided him with two gunmen of the Haryana Police.

The Shubham Hospital and Diagnostic Centre in Sector 20 Panchkula, was sealed by the police after Sharma's certificates and documents turned out to be 'fake'. Sharma had claimed to possess an MBBS degree as well as an MS in Ophthalmology. He had also availed loans worth crores from different banks with the forged documents.

The gunmen came in handy when Sharma went to the bank or district administration offices to avail loans or get things done. He tried to exert influence on the officials by the these tactics," said a CBI Officer.

But Rathee claims he provided the security on the recommendations of district police officials who said Sharma faced "a threat to his life". Sharma confessed to the CBI that his life was not under threat.

Rathee refuted all allegations of receiving money from the accused. "I have never met the person. I don't know why he is leveling such allegations against me," said the ADGP.

On the other hand, SSP Sandeep Khirwar said the police cover was recommended only after Sharma lodged a police complaint against unknown persons threatening him over phone.

Sources claimed no police verification was conducted in the case as a senior police officer had made the recommendations. The accused has named many senior politicians and bureaucrats who used to loan him their official cars when Sharma had to visit the bank. Bank officials also disclosed the names of many senior bureaucrats and politician, who recommended Sharma's name for the loans, to the CBI. In March 2007, Punjab and Sind Bank officials reportedly went to him when they fell short of their annual investment target by Rs.5 Crore. "He called up an IAS officer of Haryana Dairy Development Federation Corporation and ordered him to deposit the money with the bank to oblige the bank officials. The very next day the money was deposited in the bank. Later, the IAS Officer forced the bank officials to pass a loan of the accused," bank officials told the CBI.

CBI officials said they will ask the bureaucrats and politicians named by the accused to join investigations after verifying the facts. "But one thing is certain many politicians and bureaucrats will find themselves in trouble soon." said a senior CBI

Officer.

17. On June 18, 2008, the Times of India published a news report containing the following clarification from CBI:

> **No record of accused bribing ADGP, says CBI**
>
> TIMES NEWS NETWORK
>
> Chandigarh: The central bureau of investigation (CBI), on Tuesday, said Dr Sandeep Sharma, accused in the Shubham Hospital case, hadn't given any statement to the investigation agency claiming that he had bribed an additional director general of police (ADGP) for getting security. "There is nothing on record about the accused bribing any Haryana police official. The accused, Dr. Sandeep Sharma is in Ambala Central Jail and yet to be taken into CBI custody" said a DIG rank official of CBI.
>
> However, sources in the crime branch of Haryana police maintained that the accused had been provided security in 2006 after he lodged an FIR in Sector 20 police station, alleging threat to his life.
>
> According to the FIR, which was registered on the complaint of accused doctor, he had received threat calls from a Shimla based STD. However, the first information report was later cancelled.
>
> The crime branch official maintained that a report – mentioning how Sharma obtained security – was sent to senior police officials in Haryana police headquarter, sector 6, two months back. Apart from this, Sharma had also filed an application regarding police security in the office of Haryana chief minister.
>
> A senior Haryana police official claimed that during the interrogation Sharma had made several claims like gifting a Scorpio to a senior politician of Punjab and bribing a number of senior medical officials and politicians but had failed to provide any proof.

18. 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.

19. 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 the 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 clarifies 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."

20. The petitioner's main concern is that this complaint has been pending since 2008, and the complainant delayed its proceedings. The petitioner is not at fault, and he is facing the trauma of criminal proceedings, which is causing mental agony, draining out finances, and affecting the reputation of the petitioner, who is a senior journalist and ex-editor of a respected newspaper 'Indian Express,' which has set standards in investigative and fearless journalism. As such, the criminal complaint violates the petitioner's fundamental rights, as provided under Article 19(1)(g) of the Constitution of India.

21. Journalism is civilization's mirror, and investigative journalism it's x-ray.

22. Avay Shukla, in *DeMocKrazy & MumboJumbo*, Pippa Rann Books & Media, 2020, [p.17] wrote, "*Writing should be an expression of freedom - of thoughts, views and statements. But this needs two prerequisites: an environment that does not censor, and a medium of expression*".

23. A bare reading of the news published in Indian Express points to investigative journalism where the complainant's version was also reflected. The complainant nowhere states that his version was incorrectly mentioned or that the journalist had withheld its material aspects. The complainant did not plead in the complaint or establish in his testimony in the preliminary evidence any reasons or objectives for any oblique motive, malice, ill-will, *mala fide* intention of the petitioner, or intention to

defame him. There is a conspicuous silence about it in the complaint, the statement before the court, and the reply filed to this petition. The following news extracts corroborate the unbiases and point out that the reporting had mentioned and highlighted the complainant's response and the supporting version of the Superintendent of Police, Panchkula. The other news is unrelated to the complainant as such qua that he should not grumble.

> "*But Rathee claims he provided the security on the recommendations of district police officials who said Sharma faced "a threat to his life*."
>
> "*Rathee refuted all allegations of receiving money from the accused. "I have never met the person. I don't know why he is leveling such allegations against me," said the ADGP*."
>
> "*On the other hand, SSP Sandeep Khirwar said the police cover was recommended only after Sharma lodged a police complaint against unknown persons threatening him over phone*".

24. Before the journalist wrote the news, he took the complaint's view into account and mentioned it in the news item, which shows that he adhered to the ethical standards of reasonableness and impartiality, which are key to journalism. One of the foundational responsibilities of a journalist is to seek the truth and report it with caution while not distorting or manipulating any facts. The respective journalist cross-checked the information, ascertained it, and explicitly mentioned the complainant's version to rule out whether the facts were true or mere concocted lies or rumors. This cross-checking and accurate reporting of the complainant's version demonstrates the journalist's sense of responsibility and decency while prudently discharging his duties. What more can be expected from a journalist? The 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 petitioner under S. 106 of the Indian Evidence Act, 1872. Consequently, the Indian Express, its reporter, and its Editors are entitled to benefit under the first and the ninth exceptions to S. 499 IPC, and the petitioner has discharged his 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.

25. 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…

26. 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.

27. 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.

28. In M.A. Rumugam v. Kittu, (2009)1SCC 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.

29. 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.

30. S. 499[1] of the Indian Penal Code, 1860 [IPC], makes defamation an offense in

[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 fellings 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 lothsome 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.

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,

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.”

31. 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.

32. 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 lothsome state, or in a state generally considered as disgraceful.

33. The reporter of Indian Express had explicitly mentioned the complainant’s denial and the corroboration of such denial from the SP Panchkula. A wholesome and complete reading by an ordinary prudent person would neither discredit nor lower the complainant’s image. However, if the witnesses read this news with colored spectacles,

---

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 cashierare 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.

the report cannot be made liable for such misunderstanding.

34. The First Exception to S. 499 reads as follows, “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”.

35. The Ninth Exception to S. 499 reads as follows, “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.”

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

> [12]. Section 499 of the Code defines defamation. It is unnecessary to set out the said definition, because it is common ground that the impugned statement published by the appellant is per se defamatory, and so, we must proceed to deal with the present appeal on the basis that the said statement would harm the reputation of the complainant. Exception 9 to Section 499 provides that it is not defamation to make an imputation on the character of another, provided the imputation be made in good faith for the protection of the interest of the person making it, or for any other person, or for the public good. In the present case, the ingredient of public good is satisfied, and the only question which arose for decision in the Courts below and which arises before us, is whether the imputation can be said to have been made in good faith. There is no doubt that the requirements of good faith and public good have both to be satisfied and so, the failure of the appellant to prove good faith would exclude the application of the Ninth Exception in his favour even if the requirement of public good is satisfied.
>
> [19]. That takes us to the question as to what the requirement of good faith means. Good faith is defined by Section 52 of the Code. Nothing, says Section 52, is said to be done or believed in 'good faith' which is done or believed without due care and attention. It will be recalled that under the General Clauses Act, "A thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not". The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the Code; and we are governed by the definition prescribed by Section 52 of the Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to enquire whether he acted with due care and attention. There is no doubt that the mere plea, that the

> accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith. But it must be remembered that good faith does not require logical infallibility. As was held by the Calcutta High Court in the matter of the Petition of Shibo Prosad Pandah, ILR 4 Calcutta 124, in dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason after due care and attention to believe that such allegations were true.
>
> [21]. Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case - what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation, was there any malice in his mind when be made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true ? These and other considerations would be relevant in deciding the plea of good faith by an accused person who claims the benefit of the Ninth Exception.

37. In Sukro Mahto v. Basdeo Kumar Mahto, (1971) Supp SCR 329 at p. 332, Supreme Court holds,

> [10]. The second ingredient in the Ninth Exception is that the imputation is to be made for the protection of the interest. The protection of interest contemplated in the Ninth Exception is that communication must be made bonafide upon a subject in which the person making the communication has an interest or duty and the person to whom the communication is made has a corresponding interest or duty….

38. Journalism is the fourth pillar of any Democracy. As a journalist, the reporter's sacrosanct duty is loyalty towards the citizenry. They serve as independent monitors of power, reporting information for public good and safety, addressing any problems or lacunae in the public system for its effective functioning and immediate redressal. In the fearless pursuit of their duties to uncover the truth and report such facts to the masses through media, these brave journalists do face various hurdles, e.g., pressures from influential parties, groups, or government agencies etc. To ensure honest and correct reporting of actual events, such journalists require the protection of courts, especially

constitutional courts, to enable them to publish news without fear of harmful consequences. Thus, all courts must be more vigilant and proactive while safeguarding the interests of such courageous humans.

39. The reporter and the newspaper did their jobs without committing any offense under section 499 IPC because they exercised restraints, and the news had the inbuilt safeguards, due care and caution, and reasonableness in the reported news. The reporter, Varun Chaddha, and the publisher, Indian Express, acted within the parameters of prudency and reasonableness, and whatever they wrote, they were entitled to publish under Articles 19 and 21 of the Constitution of India.

40. In Indian Express Newspapers (Bombay) Private Ltd. v. Union of India, (1985) 1 SCC 641, a three-member bench of Supreme Court of India, holds,

> [31]. ... The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments…
> [63]. Newspaper industry enjoys two of the fundamental rights namely the freedom of speech and expression guaranteed under Article 19(1)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1) (g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is an invasion of trade, business and industry into that field where freedom of expression is being exercised.

41. In S Rangarajan v. P Jagjivan Ram, (1989) 2 SCC 574, a three-judge bench of Hon’ble Supreme court, holds,

> [45]. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19 (2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

42. In Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal, (1995) 2 SCC 161, a three-member bench of Supreme Court of

India, holds,

> [9]. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of free speech and expression….

43. In Sanjoy Narayan Editor in Chief Hindustan v. High Court of Allahabad, 2011(13) SCC 155, Supreme Court holds,

> [5]. The media, be it electronic or print media, is generally called the fourth pillar of democracy. The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed.
> [6]. The impact of media is far-reaching as it reaches not only the people physically but also influences them mentally. It creates opinions, broadcasts different points of view, brings to the fore wrongs and lapses of the Government and all other governing bodies and is an important tool in restraining corruption and other ill-effects of society. The media ensures that the individual actively participates in the decision-making process. The right to information is fundamental in encouraging the individual to be a part of the governing process. The enactment of the Right to Information Act is the most empowering step in this direction. The role of people in a democracy and that of active debate is essential for the functioning of a vibrant democracy.
> [7]. With this immense power, comes the burden of responsibility. With the huge amount of information that they process, it is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong, biased or simply unverified information. The right to freedom of speech is enshrined in Article 19(1)(a) of the Constitution. However, this right is restricted by Article 19(2) in the interest of the sovereignty and integrity of
> India, security of the State, public order, decency and morality and also Contempt of Courts Act and defamation.
> [8]. The unbridled power of the media can become dangerous if check and balance is not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must
> reconcile with a person's fundamental right to privacy. Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported. Pre-judging the issues and rushing to conclusions must be avoided.

44. In Subramanian Swamy v. Union of India, 2016(7) SCC 221, Supreme Court holds,

> [91]. Freedom of speech and expression in a spirited democracy is a highly treasured value. Authors, philosophers and thinkers have considered it as a prized asset to the individuality and overall progression of a thinking society, as it permits argument, allows dissent to have a respectable place, and honours contrary stances. There are proponents who have set it on a higher pedestal than

> life and not hesitated to barter death for it. Some have condemned compelled silence to ruthless treatment. William Dougles has denounced regulation of free speech like regulating diseased cattle and impure butter. The Court has in many an authority having realized its precious nature and seemly glorified sanctity has put it in a meticulously structured pyramid. Freedom of speech is treated as the thought of the freest who has not mortgaged his ideas, may be wild, to the artificially cultivated social norms; and transgression thereof is not perceived as a folly. Needless to emphasise, freedom of speech has to be allowed specious castle, but the question is should it be so specious or regarded as so righteous that it would make reputation of another individual or a group or a collection of persons absolutely ephemeral, so as to hold that criminal prosecution on account of defamation negates and violates right to free speech and expression of opinion. Keeping in view what we have stated hereinabove, we are required to see how the constitutional conception has been understood by the Court where democracy and rule of law prevail.
>
> [186]. One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 I.P.C. is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest. Thus, we are unable to accept that provisions relating to criminal defamation are not saved by doctrine of proportionality because it determines a limit which is not impermissible within the criterion of reasonable restriction.

45. A complete reading of the news, which contained the complainant's rebuttal, his version, the version of the police, can be stated to have been published in good faith and discharge of their functions in a democracy, and if restrictions are created to publish such news, it would be just like killing a mockingbird.

46. The other sections invoked against the petitioner are 500[2] & 501[3] IPC that prescribe punishment for the offences committed under S. 499 IPC.

47. Regarding the publication by the accused some of the other accused in their respective newspapers, neither the Indian Express nor its Editor (Petitioner) can be held responsible for the subsequent news reports, published in such newspapers.

---

[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 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.

48. The next ground on which the petitioner seeks quashing of the criminal complaint is because he has been arrayed as accused of being the newspaper's Chief Editor. The only averment against him is that he printed and published a news report, which is incorrect, but the petitioner was neither the designated Printer nor the Publisher of the impugned news report. In paragraph 9 of the petition, the petitioner explicitly declares that there is no specific averment in the complaint that the petitioner - Vipin Pubby, had played any role in selecting the alleged matter for publication in the newspaper. The only averment against the petitioner is that the petitioner published and printed a news report, which was prima facie false. However, the petitioner declared that he was neither the Publisher nor the Printer of the newspaper, as was evident from the statutory imprint line, which disclosed that the issue of Chandigarh Newsline dated 17.6.2008 had nothing to do with Gurgaon and the same was circulated only in the Chandigarh area. He further submits that the newspaper in Gurgaon is printed from the Delhi edition, which is under separate control. The news item published in Chandigarh Newsline dated 17.06.2008 is published by Varun Chadha.

49. In Haji C.H. Mohammad Koya Vs. T.K.S.M.A. Muthukoya, MANU/SC/0240/1978 : (1979)2SC C 8, Supreme Court holds,

> [37]. …It is obvious that a presumption under Section 7 of the Press Act could be drawn only if the person concerned was an editor within the meaning of Section 1 of the Press Act. Where however a person does not fulfil the conditions of Section 1 of the Press Act and does not perform the functions of an editor whatever may be his description or designation, the provisions of the Press Act would have no application.

50. The petitioner's next argument is that the Magistrate erred in arriving at a finding that the offense was committed within the area of Gurgaon without appreciating the fact that the newspaper 'Chandigarh Newsline,' in which the alleged defamatory news report was published is a Chandigarh city supplement and is not circulated outside. He refers to the statutory declaration, which reads as follows:

> IMPRINT LINE
>
> Printed and Published by Manjit Chopra on behalf of Indian Express Newspapers (Mumbai) Limited and printed at i.e. Press at C-5, Institutional Area, Sector - 6, Panchkula - 134109 (Haryana) and Published at SCO 309-10, Sector 35-B, Chandigarh-160022. Chairman of Board: Vivek Goenka, Editor in Chief: Shekhar Gupta, Managing Editor - Raj Kamal Jha, Executive Editor - Unni Rajen Shankar, Editor (Punjab, Haryana, Himachal Pradesh and Chandigarh) Vipin * * Pubby Responsible for selection of news under the PRB Act.

51. Petitioner's plea that none of the complainant's witnesses at Gurgaon explicitly mentioned that they had read Chandigarh Newsline. As such, there is no cognizable evidence that can be accepted primafacie to establish that the complainant's reputation was lowered in their eyes by reading such news because Chandigarh Newsline is circulated only in the Chandigarh area. The complainant did not say that somebody had passed on or supplied such news to the complainant's witnesses. An analysis of the complaint and the complainant's evidence and the reply establishes that there is no averment in the complaint, and in the testimony of the witnesses examined in the preliminary inquiry, of how these persons got access to the newspaper published for circulation in the Chandigarh region. Those days, WhatsApp and Instagram were unavailable, and there is no statement that the witnesses had read it from other social media such as Facebook or Twitter or received it through E-mail or post. The primary burden to meet the requirements of S. 202 CrPC was on the complainant, and the satisfaction was of the concerned Court because the accused was residing in Chandigarh, far away from Gurgaon, and not on the accused. It is not that the concerned Judicial Magistrate disallowed any such evidence, question, or examination of any such witness or restricted the complainant from proving its *prima facie* case in compliance with section 202 CrPC. The complaint also fails on this count.

52. In M/s Pepsi Foods Ltd v. Special Judicial Magistrate, (1998) 5 SCC 749, a three Judges Bench of Hon'ble Supreme Court holds,

> [26]. 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 that would 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 scrutinise 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.
>
> [27]. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High

> Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial…

53. The last argument on behalf of the petitioner is the protection under Section 7 of the Press and Registration of Books Act, 1867. Section 7 of the Press and Registration of Books Act of 1867 raises the presumption regarding a person named the Editor and printed as such on every newspaper copy. The Act does not recognize any other legal entity for raising the presumption. 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.

54. 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 petitioner is 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 petitioner mentioned in the complaint and the preliminary evidence are accepted entirely, those fails to 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 passed in the above captioned criminal revision. Bail bond(s)/surety Bond(s), if any, furnished, shall stand discharged.

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

January 04, 2024 (ANOOP CHITKARA)
Anju Saini/ Jyoti-II / Jyoti Sharma/ AK JUDGE

Whether speaking/reasoned : : Yes
Whether reportable : **YES**