



2024 :DHC :6529



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 29, 2024

+ CRL.M.C.1394/2020, CRL.M.A.5381/2020

DR.SHASHI THAROOR

.....Petitioner

Through: Mr. Kapil Sibal, Sr. Advocate with
Mr. Muhammad Ali Khan, Mr. Abhik
Chimni, Mr. Omar Hoda, Ms. Eesha
Bakshi, Mr. Uday Bhatia, Mr. Arjun
Sharma and Mr. Kamran Khan,
Advocates.

versus

STATE & ANR.

.....Respondent

Through: Ms. Nandita Rao, ASC (CrI) with Mr.
Amit Peshwani, Advocate for the
State/R-1.
Ms. Pinky Anand, Sr. Advocate with
Mr. Piyush Beriwal, Mr. Neeraj, Ms.
Saudamini Sharma, Mr. Samrath
Pasricha and Ms. Ojasvi, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. A petition under Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred on behalf of the petitioner/Dr. Shashi Tharoor, a Member of Parliament and leader of Indian National Congress, assailing order dated 27.04.2019 passed by learned ACMM-I, Rouse Avenue Courts, New Delhi whereby the petitioner has been summoned for commission of offence under Section 500 Indian Penal Code, 1860 (IPC).



2. In brief, on 28.10.2018, petitioner while addressing the audience at Bangalore Literature Festival made a defamatory imputation in following terms:

"... and this personality cult has not sat very well with many in the RSS establishment. There's an extraordinarily striking metaphor expressed by an unnamed RSS source to journalist Vinod Jose of The Caravan which I quote here, in which they express their frustration with their inability to curb Mr. Modi, And the man says, "Mr. Modi", he says is like a "scorpion sitting on a Shivling; you cannot remove him with your hand, and you cannot hit it with a chappal either."

Petitioner further stated :

"And if you think about it, that's a very profound understanding of the relationship. Because if you remove a scorpion with your hand you will get stung very badly, but if you hit a Shivling with a chappal, then you have undermined all the sacred tenets of the faith that you hold in that the scorpion is sitting on. So, ultimately, you live with it with seething frustration. That may well be a very interesting clue to the rather complex dynamics that exist between the Hindutva movement and the Moditva expression of it."

3. A complaint under Section 200 Cr.P.C. for commission of offence under Section 499/500 IPC was filed by respondent No.2/complainant, claiming to be one of the Vice President of Bharatiya Janata Party, Delhi Pradesh, an identified worker and supporter of Mr. Narendra Modi. Apart from being in politics, respondent No.2 also claimed to be a staunch devotee of Lord Shiva.

4. The case of respondent No.2/complainant is that Mr. Narendra Modi (Hon'ble Prime Minister of India) is a supreme leader of the Party and the said statement made by the petitioner is baseless, unfounded, misleading and defamatory. While making the said statement, petitioner referred to an article published in a magazine, wherein some unknown RSS source had



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allegedly made the remarks in 2012, which may not be of consequence at that time, but the date on which the statement has been made by the petitioner in October, 2018 is deliberate, since then Mr. Narendra Modi was leading the country as Hon'ble Prime Minister of India. The imputation is stated to have been made defaming Mr. Narendra Modi, hurting the sentiments of crores of devotees of Lord Shiva, both in and outside the country outraging their religious beliefs, apart from lowering down the credit and image of the complainant/respondent No.2, RSS, as well as tarnished the image of BJP, its leaders, supporters and workers in the eyes of general public.

5. The speech is claimed to be an intolerable abuse and absolute vilification of the faith of millions of devotees of Lord Shiva. Further, the said speech is stated to have been widely reported and is also available on various links of websites of newspapers and video clippings.

6. It is further the case of respondent No.2/complainant that since the media houses carried the stories and published the speech given by the petitioner, on 01.11.2018, one Sanjeev Khandari came to the party office to discuss some personal work and showed the clippings of the publication in presence of other persons and told respondent No.2 that he is associated with a bad party and said “*Tum Bhajpa wale Modi ka fauz banke ghum rehe ho..ae dekho...Tumhara neta Modi bichu hai...dansh lega..bada jeherila inshaan hai wo..ab Bhajpa choddo..apni kaam dhanda mein dhyaan do*”. As such, respondent No.2/complainant claims that the speech, which had been conveyed in the presence of other persons has lowered down the credit and image of respondent No.2/complainant in the eyes of others.



CONTENTIONS ON BEHALF OF THE PETITIONER

7. Shri Kapil Sibal, learned Sr. Advocate for the petitioner submits that
- (i) Petitioner is a Writer, former Diplomat serving Member of Parliament and has previously served as Minister for State for External Affairs with the Government of India. It is pointed out that an article titled "*The Emperor Uncrowned: The Rise of Narendra Modi*" was written by a journalist *Vinod K. Jose*, which was published by the Caravan magazine, wherein the author had interviewed an unnamed RSS worker who had made the remark on Mr. Narendra Modi "*Mr. Modi, he is like a scorpion sitting on a Shivling; you cannot remove him with your hand, and you cannot hit it with a chappal either..*" Later on, BJP/RSS worker, who had made the statement was identified as Mr. Gordhan Zadaphia. The said article is stated to have been merely quoted by the petitioner at the Bangalore Literature Festival.

It may be appropriate to reflect at this stage itself that the original quote in Caravan magazine as pointed out by learned counsel for respondent No.2 is as under:

"Shivling mein bichhu baitha hai. Na usko haath se utaar sakte ho, na usko joota maar sakte ho." A scorpion is sitting on Shivling, the holy phallus of Lord Shiva. It can neither be removed by hand nor slapped with a shoe."

Apparently, the name "**Mr.Modi**" as quoted by petitioner is not reflected in the original quote.

- (ii) Learned Counsel for the petitioner further urges that respondent No.2/complainant is not an "*aggrieved person*" as per the provisions



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of Section 199 Cr.P.C., 1973. It is emphasized that respondent No.2 claims to be a devoted worker and believer of Mr. Narendra Modi but has failed to show how an “identifiable group” or “collection of people” has been defamed by the petitioner. No cause of action is stated to have arisen between the petitioner and respondent No.2. It is contended that reputation of respondent No.2 cannot be tarnished by a mere referral to a journalistic article by the petitioner and the said fact has been completely overlooked by the learned Judicial Magistrate. Petitioner is claimed to be present at the Bangalore Literature Festival to present his book “The Paradoxical Prime Minister” which is a deeply researched and documented work of analysis, citing multiple published sources about the life and career of Mr. Narendra Modi. In support of the contention that respondent No.2/complainant does not fall within the category of “aggrieved person” and the imputation was not personal to respondent No.2, following authorities are relied upon:

“Laxminarayan Singh & Anr v. Shriram Sharma, 1985 M.P.L.J. 187, Ganesh Anand Chela v. Swami Divyanand, 1980 SCC Online Del 66, Maulik Kotak v. State of Maharashtra, 2013 SCC OnLine Bom 2014, V. Radhakrishna & Ors. v. Alla Rama Krishna Reddy, 2018 SCC OnLine Hyd 98, Bhagwan Shree Rajneesh v. State of Bihar, 1986 SCC OnLine Pat 174, Raj Kumar Saini v. Sant Kunwar, 2020 SCC OnLine P&H 2165, Dhirendra Nath Sen v. Rajat Kanti Bhadra, 1969 SCC Online Cal 81, Narottamdas L Shah v. Patel Maganbhai Revabhai & Anr., 1984 SCC OnLine Guj



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100, Prabhu Chawla And Ors. v. Shivnath Soni & Anr, RLW 1988 (2) 359”.

- (iii) In support of the contention that the impugned statement of the petitioner could not be considered against any “identifiable group” and speech as a whole did not refer to any kind of group whatsoever to which respondent No.2 could have belonged, reliance is placed upon *Aruna Asaf Ali & Ors. v Purna Narayan Sinha, 1983 SCC Online Gau 35, Raj Kapoor v. Narendra & Ors., MANU/GJ/0138/1973, Prem Pal Singh &v. Ors. v. Phool Singh & Ors., MANU/RH/0149/1980*. Learned counsel for the petitioner relying upon *Aroon Purie v. Sukhbir Singh Wahla, CRM No. M-12372/2016 (O&M)* decided by Punjab & Haryana High Court on 17.01.2017 and *Shri Kalyan Bandyopadhyaya v. Shri Mridul De, CRR-1856/2009* decided by High Court of Calcutta on 30.10.2015, also submits that political party not being a determinable, definite or identifiable group, cannot be defamed.
- (iv) Learned counsel for petitioner further submits that respondent No.2/complainant has not proceeded against the original author of the comment or the person who reported it and also failed to provide the reasons for the same. The prosecution is stated to have been launched frivolously in order to cause political and personal discomfort. He further adds that a fair comment or an honest opinion cannot be considered as defamation or libel. Further, the petitioner did not give any false opinion or comments and only quoted a direct statement from an already published piece of journalistic work



which can be regarded in good faith, falling under 9th Exception to Section 499 IPC. Relying upon *Shah Rukh Khan v. State of Rajasthan, 2007 SCC OnLine Raj 733*, he emphasizes that intention to harm is *sine qua non* for offence under Section 499 IPC.

- (v) Relying upon *Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, (2017) 7 SCC 760*, he further points out that insults to religion offered unwittingly or carelessly or without any malicious or deliberate intention to outrage feelings of that class are not culpable as held in aforesaid case. He further submits that Magistrate conferred with power of taking cognizance and issuing summons must scrutinize whether allegations made in the complaint meet basic ingredients of offence.
- (vi) Reference is also made to *R. P. Goenka v. State of U.P., 2019 SCC OnLine All 3815* to submit that a newspaper report by itself does not constitute an evidence of the contents thereof and is only hearsay evidence.
- (vii) Learned counsel for the petitioner also contends that not only the bar under Section 199(1) Cr.P.C. is attracted in the present case but also the bar under Section 199(2) Cr.P.C. is attracted as special procedure envisaged therein has not been followed.

CONTENTIONS ON BEHALF OF RESPONDENT NO.2/COMPLAINANT

8. On the other hand, the contentions are vehemently opposed by Ms. Pinky Anand, learned Sr. Advocate on behalf of respondent No.2/complainant.



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- (i) At the outset, she vehemently challenges the maintainability of petition on the grounds of delay and *laches* and submits that the proceedings under section 482 Cr.P.C. have been initiated with the intent of delaying the trial. Reliance is further placed upon *Bata v. Anama Behera*, 1989 SCC OnLine Ori 325, *Rajesh Chetwal v. State*, CRL MC 1656 of 2011, decided by Delhi High Court on 24.08.2011, *Vandana Agarwal v. The State of West Bengal*, 2015 SCC OnLine Cal 3372, *Londhe Prakash Bhagwan v. Dattatraya Eknath Mane*, (2013) 10 SCC 627, *Ajay Kumar Das v. State of Jharkhand and Anr.*, (2011) 12 SCC 319, *M. Krishnan v. Vijay Singh*, (2001) 8 SCC 645, *CBI v. Aryan Singh*, 2023 SCC OnLine SC 379, *Vedavaag Systems v. Ricoh India*, MANU/DE/0718/2020, *Queen Empress v. Taki Hussain*, 1885 (4) All 141 and *Vipin Kumar Gupta v. Sarvesh Mahajan*, MANU/DE/0418/2019.
- (ii) On merits, it is urged that the complainant/respondent No. 2 is the Vice President of BJP, Delhi Pradesh, who was in-charge of call centre in Varanasi where Mr. Narendra Modi contested as a candidate in 2014 Lok Sabha Elections and with whom respondent No.2 worked very closely, and ever since respondent No.2 has been identified as a supporter of Mr. Modi. Further, he was appointed as a key person for social media team at National level of BJP and, therefore, respondent No.2 is much aggrieved by statement made by the petitioner. She contends that the statement made by the petitioner has lowered the reputation of the complainant/respondent No.2 as well as other persons associated with Bharatiya Janata Party and



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therefore, the complaint under Section 200 of Cr.P.C. is maintainable. It is pointed out that the article in Caravan dated 01.03.2012 by Vinod K. Jose to which reference is made by the accused does not name any source and the quote in Caravan itself is defamatory in nature. Moreover, one is liable for publishing a defamatory statement made by someone else, even if one quotes it accurately. It is emphasized that the defamatory imputation is to be read as conveyed to a common person and the repetition of a defamatory statement, however prevalent, is not an excuse for its further promulgation. Reliance is placed upon *Re Howard v. Unknown, (1889) ILR 12 Bom 167*.

- (iii) Learned counsel for respondent No.2 further submits that the quote in Caravan neither named Mr. Modi nor expressly mentioned that it is for Mr. Modi. Thus, the basis on which the petitioner presumed that the quote is regarding Mr. Modi needs to be proved by leading evidence in defence. She emphasized that the stand taken by the petitioner that the statement was not intended to harm, nor it was likely to cause harm is a question of fact which can only be considered at the stage of trial. Further, the defence of publication in good faith as claimed by the petitioner, is a defence covered by the statutory exceptions provided under Section 499 IPC, and cannot be adjudicated in a petition under section 482 Cr.P.C. She reiterates that nothing has been brought on record to show that there is an abuse of the process of Court or that the interference of this Court is necessary under Section 482 Cr.P.C. to secure the ends of justice or



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that there has been grave injustice. In support of the contentions, reliance is placed upon *Raj Kapoor v. State*, 1980 (1) SCC 43, *Nagawwa v. V.S. Konjalgi*, (1976) 3 SCC 736, *Fiona Shrikhande v. State of Maharashtra and Others*, MANU/SC/0853/2013, *M.N. Damani v. S.K. Sinha*, (2001) 5 SCC 156 and *State of MP v. Yogendra Singh Jadon*, Criminal Appeal 175/2020 decided by Hon'ble Supreme Court on 31.01.2020, *Jeffrey J. Diermeier v. State of W.B.*, (2010) 6 SCC 243 and *A. Selvam v. State*, Crl. O.P.(MD) No.15034/2017 decided on 21.05.2021 by High Court of Madras.

- (iv) She further vehemently argues that procedure under section 199(2) Cr.P.C. is not applicable in the instant case as the comments by the petitioner have not been made in respect of conduct of Mr. Modi in the discharge of his public functions as the Prime Minister of India.
- (v) She submits that the expression “*some person aggrieved*” in section 199 Cr.P.C. is not necessarily limited to the person defamed. Placing reliance upon *John Thomas v. K. Jagadeesan (Dr)*, (2001) 6 SCC 30, it is contended that the collocation of the words “by some persons aggrieved” indicates that the complainant need not necessarily be the defamed person himself and whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. Reliance is further placed upon *Chhotalal Lallubhai v. Nathabhai Bechar*, ILR (1901) 25 Bom 151, *Gurdit Singh v. Crown*, ILR (1924) 5 Lah 301, *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, *R. Rajagopal v. V. Sathyamoorthy*, 2002



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5 CTC 579 and ***O. Varadarajan v. G. K. Mani*, 2006 SCC OnLine Mad 1217**. Reliance is also placed upon ***Rahul Gandhi v. State of Jharkhand*, 2024 SCC OnLine Jhar 563** to contend that respondent No.2 being a party worker & Vice-President of Bharatiya Janata Party, Delhi Pradesh has *locus standi* to file the complaint case under Section 499/500 IPC.

9. In rebuttal, Shri Kapil Sibal, learned Sr. Advocate for the petitioner submits that petition is maintainable under Section 482 Cr.P.C. and is not barred by limitation since the exercise of inherent powers under Section 482 Cr.P.C. is to prevent an abuse of process of law. Further, it has been held by the Hon'ble Apex Court in ***Arvind Kejriwal & Anr. v. State NCT of Delhi*, (2020) SCC OnLine Del 1362** that considering the non-obstante clause in Section 482 Cr.P.C., the aspect of limitation would have no applicability on the powers of High Court under Section 482 Cr.P.C. It is also emphasized relying upon ***Dhariwal Tobacco Products v. State of Maharashtra*, (2009) 2 SCC 370** that summons is not an interlocutory order within meaning of Section 397 Cr.P.C. and an application of revision being barred for some reason would not act an embargo on the exercise of the inherent powers of the High Court under Section 482 Cr.P.C. Placing reliance upon ***Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.*, (1998) 5 SCC 749**, it is further urged that petitioner cannot be made to go through the agony of trial as a matter of course in a scenario where the trial is instituted against an accused merely on the basis of a complaint, supported by one or two statements.



Reliance is also placed upon *Inder Mohan v. State*, 1972 SCC OnLine Del 78, *Collector (LA) v. Katiji*, (1987) 2 SCC 107, *Enforcement Directorate v. Ajay Bakliwal*, 2002 SCC OnLine Del 1166 and *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1.

Apart from above, he reiterates the contentions which were made on behalf of the petitioner.

FINDINGS

10. Maintainability of petition under Section 482 Cr.P.C.

Learned counsel for respondent No.2 at the outset challenges the maintainability of petition on the grounds of delay and *laches* and submits that the proceedings under section 482 Cr.P.C. have been initiated with the intent of delaying the trial. Reliance is further placed upon *Bata v. Anama Behera* (supra), *Rajesh Chetwal v. State* (supra), *Vandana Agarwal v. The State of West Bengal* (supra), *Londhe Prakash Bhagwan v. Dattatraya Eknath Mane* (supra), *Ajay Kumar Das v. State of Jharkhand and Anr.* (supra), *M. Krishnan v. Vijay Singh* (supra), *CBI v. Aryan Singh* (supra), *Vedavaag Systems v. Ricoh India* (supra) and *Queen Empress v. Taki Hussain* (supra).

11. On the other hand, Shri Kapil Sibal, learned Sr. Advocate for the petitioner submits that petition is maintainable under Section 482 Cr.P.C. and is not barred by limitation since the exercise of inherent powers under Section 482 Cr.P.C. is to prevent an abuse of process of law. Reliance is placed upon *Arvind Kejriwal & Anr. v. State NCT of Delhi* (supra), *Dhariwal Tobacco Products v. State of Maharashtra* (supra), *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* (supra), *Inder*



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Mohan v. State (supra), *Collector (LA) v. Katiji* (supra), *Enforcement Directorate v. Ajay Bakliwal* (supra) and *Inder Mohan Goswami v. State of Uttaranchal* (supra).

12. It is well settled that when substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done. Keeping in perspective the same, the underlying object for exercising powers under Section 482 Cr.P.C. is to secure the ends of justice and there is no limitation prescribed for seeking the relief under Section 482 Cr.P.C. Since the offence under Section 500 IPC has a significant bearing on the person's right to life and liberty and if a complaint is made of defamation, the Court exercising powers under Section 482 Cr.P.C. or in writ jurisdiction under Article 226 of the Constitution of India, may interfere, if a clear case of abuse of process of law is made out. The petition cannot be thrown out at the threshold on technical objection itself and the issues should be examined, to determine, if a case of abuse of process has been made out or not. In view of above, the objections raised on behalf of respondent No.2 as to the non-maintainability of the petition under Section 482 Cr.P.C. on the grounds of limitation or availability of remedy of revision, is without any merits.

13. **Is the statement made by petitioner *prima facie* defamatory within the ambit of Section 500 IPC for the purpose of issue of process? Further if the defence of the petitioner that statement has been made in good faith can be considered, at the stage of summoning?**



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There can be no second opinion that good reputation is protected by the Constitution of India equally with the right to life, liberty and property and is a necessary element of life of a citizen. Reputation is an essential attribute of personality and the violation of this right is actionable both as a tort as well as a crime.

The offence of defamation under Section 500 IPC primarily consists of three essential ingredients, namely, (i) making or publishing of an 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 intention to cause harm or with the knowledge or having reasons to believe that it will harm reputation of the person concerned.

14. Section 499 IPC envisages that the statements of imputation must be with intent of causing harm or having reason to believe that such imputation will harm reputation of the person/s spoken about, which can only be gathered by assessing the reaction of a reasonable person or a right-thinking member of the society of the words spoken or the imputation made in the statement.

In an offence of defamation, it is important to underline that the statements need to be considered in entirety, and the manner the statement would be read or understood by a common person of ordinary prudence. Adding something to an original quote and giving it a selective context, supplying the missing meaning and messages, is a crucial aspect which cannot be ignored. In case the imputation of deceptiveness, poisonous or stinging character or any other adverse qualification is attributed by the



petitioner with intent to harm or lower the reputation or knowing or having reason to believe that such imputation will harm the reputation of such person, the same would amount to defamation.

15. Reverting back to the facts of the case, it is crucial to notice that the Article in Caravan dated 01.03.2012 by Vinod K. Jose which is referred to by the petitioner refers to the relevant excerpt as under:

“Shortly before I left Gujarat, one RSS leader described his own feelings in a bitter sigh: “Shivling mein bichhu baitha hai. Na usko haath se utar sakte ho, na usko joota mar sakte ho.” A scorpion is sitting on Shivling, the holy phallus of lord Shiva. It can neither be removed by hand nor slapped with a shoe.”

Apparently, the said quote in Caravan does not name ‘any source’ which is relied upon by the petitioner. Further, when the same metaphor is quoted by the petitioner in 2018, he refers to “**Mr. Modi**” as the said person which was referred by the concerned RSS leader as “*a scorpion sitting on a Shivling, you cannot remove him with your hand and cannot hit it with a chappal either*”. The understanding of the said metaphor is also exemplified by the petitioner by further stating that this personality cult has not sat well with many in RSS establishment and express their frustration with their inability to curb Modi and further also linked it with the complex dynamics existing between Hindutva movement and Moditva expression of it. The statement has to be seen from the perspective as to what an ordinary person would read and understand and as to the actual message being conveyed in between the lines.

16. On the face of record, “Mr. Modi” has a direct reference to the then sitting Hon’ble Prime Minister of India in 2018, who also represents the Bharatiya Janata Party (BJP) as the legislative Head. The imputation further



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compares “Mr. Modi” to a “scorpion” sitting on a Shivling (manifestation of a holy phallus), which cannot be dealt in any manner, as it cannot be removed by hand or struck with a chappal (footwear).

17. It is also important to notice that the comment exemplifies that Shri Narendra Modi is unacceptable with many in the RSS establishment and compares the expression of their frustration, as dealing with a leader with the characteristics of a scorpion possessing a venomous instinct. The comments apparently not only defame Shri Narendra Modi but the party represented by him i.e. BJP, including RSS and the members of the party for having accepted the leadership.

It cannot be ignored that the imputation against the legislative Head of a political party and the sitting Prime Minister of India has an important bearing on the image of the party, functionaries and the members of the party concerned and does not augur well to the system as it also impacts the electoral process.

18. This Court is of the considered view that the propagation of original comments in the manner done by the petitioner amounts to defamation, considering the text and the relevant period during which the defamatory imputation is made by modifications and additions. The contention raised on behalf of the petitioner that present complaint is not maintainable since no proceedings were initiated either against the concerned RSS worker or the Caravan magazine is without any merit since the imputations have been admittedly made by the petitioner in 2018 while the original quote as made in 2012 may not be of the same significance as then Shri Narendra Modi did not hold the same position. The comments also obliquely hurt the Hindu



sentiments. The complainant/respondent No.2 duly deals with as to how the said article has been viewed by the partymen and the party, which may not be necessary to be looked into in detail at this stage and any objection to the same can be only dealt with during the course of trial.

19. In the aforesaid context, it may also be appropriate to notice that for the purpose of bringing the case within the purview of Eighth and Ninth Exception appended to Section 499 IPC, the burden lies on the petitioner to prove good faith and *bonafide*, for the protection of the interest of the person making it or other persons or for the public good. The defence of the petitioner could not have been considered by the learned MM at the stage of summoning itself.

20. In *Nagawwa v. V. S. Konjalgi* (supra), Hon'ble Apex Court observed that in proceedings under Section 202 Cr.P.C., the accused **has no locus standi at the stage of issue of process and is not entitled to be heard on the question whether the process should be issued against him or not.** Further, the guidelines were laid down for setting aside an order of the Magistrate issuing process against the accused:

- i. *Where the allegations made in the complaint or the statements of the witnesses 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;*
- ii. *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;*
- iii. *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*



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- iv. *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.”*

In the aforesaid case, the order of the Magistrate issuing the process under Section 204(1)(b) of Cr.P.C. to respondent No.1 & 2 therein, who had not been chargesheeted, was challenged by them before the High Court and the same was quashed. However, the Hon'ble Apex Court allowed the appeal and set aside the order of the High Court, holding that the scope of inquiry under Section 202 Cr.P.C. is extremely limited only to ascertainment of truth or falsehood of the allegation made in the complaint on the materials placed by the complainant before the Court for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out and for deciding the question purely from the point of view of the complainant without at all advertng to any defence that the accused may have. Further, it is not the province of the Magistrate to enter into a detailed discussion of merits or demerits of the case, nor High Court can go into the matter in its revisional jurisdiction which is a very limited purpose. However, the Magistrate in such proceedings 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 very thin line of demarcation between a probability of conviction of the accused and establishment of a *prima facie* case against him. Further, once the Magistrate has exercised his jurisdiction, it is not for the High Court or even for 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 of the complaint, if proved, would ultimately end in conviction of accused.

21. Reference in this regard may be further made to ***M.A Rumugam v. Kittu @ Krishnamoorthy, (2009) 1 SCC 101***, wherein it was held that for the purpose of bringing a case within the purview of the Eighth and the Ninth Exception appended to Section 499 of the Indian Penal Code, it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good. It was further emphasized that the law is well settled that those who plead exception must prove it.

22. It may also be appropriate to notice that in ***M.N Damani v. S.K. Sinha*** (supra), the appellant had filed a private complaint against the respondent for making defamatory imputations that appellant had removed the cheque book by forcibly opening the drawer and forced respondent to write/sign the cheques. The grievance of the appellant was that by such imputations by respondent, the reputation of appellant has been lowered in the eyes of partners, staff and workers of the factory. Aggrieved against quashing of complaint by the High Court, proceedings were preferred before the Apex Court.

Hon'ble Apex Court held that High Court wrongly quashed the complaint, after referring to observations in para 13 in ***Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi, (1996) 6 SCC 263*** as under:

“13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of



and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. 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. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

23. ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar*** (supra), relied by the petitioner is distinguishable on facts. The issue for consideration before the Hon'ble Apex Court was, whether the allegations constituted an offence under Section 295-A IPC and whether the Court should relegate the trial at some other place or petitioner be granted liberty to file an application under Section 482 Cr.P.C. for quashing. Hon'ble Apex Court quashed the proceedings against the petitioner as well as co-accused (Editor) and held that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a



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class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section.

24. In the facts and circumstances of the present case, this Court is of the considered opinion that the defence of the petitioner that the imputation was in good faith and a fair reproduction of an earlier published article is a question of fact which can only be decided during the course of trial. In exercise of powers under Section 482 Cr.P.C., it may be premature to give a definite finding on the basis of material on record that there was no element of bad faith on the part of the petitioner while imputing the aforesaid statement in the Literary Festival. There was sufficient material before the learned Judicial Magistrate for summoning the petitioner under Section 500 of IPC.

25. The observations made in para 31, 38 & 39 of *Shah Rukh Khan v. State of Rajasthan and Others* (supra), (a single Judge judgment by the High Court of Rajasthan) relied by the learned counsel for the petitioner that the intention to harm is a *sine qua non* for the offence under Section 499 IPC, are not disputed, since the making or publication of an imputation must be with an intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned as provided in the section itself.

Petitioner therein challenged an order passed by Additional Chief Judicial Magistrate whereby his application for discharge from offence



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under section 500, 501 and 120-B IPC was dismissed. Complainants, who were the lawyers therein alleged that in a film titled as 'Ram Jaane', a dialogue had been delivered criticizing the conduct of lawyers, which was defamatory. The contention raised by the petitioner that offence of defamation cannot be committed against a class, the identity of whose members remains general and unspecific was accepted in the context of lawyers. High Court after dealing with the contentions observed that the intention to cause harm is a *sine qua non* of the offence under Section 499 IPC, which is not disputed. It was further held that the lawyers as a class is unidentifiable and indeterminate body being spread over length and breadth of the country.

The factual position in aforesaid judgment is distinguishable and does not further the case of the petitioner in any manner since therein imputations were made against lawyers in general and the imputations were also *per se* held to be not defamatory.

26. Whether summoning order could have been issued without proving the newspaper report or video clipping?

A contention has further been raised on behalf of the petitioner relying upon *R.P. Goenka v. State of U.P.* (supra) that a newspaper report by itself does not constitute an evidence of the contents thereof and is only hearsay evidence. Further, the summoning order is urged to be bad in law since the alleged newspaper reports were not proved by summoning the relevant witness.

There is no doubt as to the proposition of law that Trial Court cannot treat newspaper report as duly proved only by production of copies of



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newspaper and the same is required to be proved by examining the reporter who heard the statement and production of editorial office of the newspaper or publisher to prove such report. Newspaper report by itself, at the best, may be a secondary evidence.

However, this Court is of the considered opinion that the evidence by way of video clippings which has also been relied by respondent No.2 and widely circulated on internet, which depicts the petitioner delivering the speech, cannot be overlooked at this stage. The summoning order cannot be held to be premature merely on the ground that the newspaper reports have not been proved by summoning the relevant witness at pre-summoning stage. The alleged imputations are admitted by the petitioner and the possibility of any manipulation in the imputations is ruled out since the same is *verbatim* available by way of video clippings on the internet. The complainant has duly cited the Editor/Reporter of the news channel as well as the Editor/Reporter of the newspapers in the list of witnesses, who can be summoned in the post-summoning evidence to prove the same in accordance with law.

27. Whether the complaint is not maintainable in view of sub-Sections (2) & (4) of Section 199 Cr.P.C.?

Learned counsel for the petitioner contends that the complaint is not maintainable since sub-section (4) of Section 199 Cr.P.C. provides that if defamation is committed against the constitutional functionaries and public servants mentioned therein, no complaint shall be made by the Public Prosecutor in the absence of the previous sanction of the Competent Authority in the State/Central Government.



On the other hand, learned counsel for respondent No.2 vehemently argues that the bar under Section 199(2) Cr.P.C. is not applicable in the instant case as the comments by the petitioner have not been made in respect of conduct in the discharge of public functions by the Prime Minister of the Nation. Reliance is also placed upon ***K.K. Mishra v. State of M.P., (2018) 6 SCC 676.***

28. In order to appreciate the contentions raised on behalf of the petitioner, Section 199 Cr.P.C. may be beneficially referred:

“199. Prosecution for defamation.

*(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by **some person aggrieved** by the offence :Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.*

*(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory, **or a Minister of the Union or of a State, or any other public servant employed** in connection with the affairs of the Union or of a State **in respect of his conduct in the discharge of his public functions** a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.*

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

*(4) **No complaint under sub-section (2) shall be made by the***



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Public Prosecutor except with the previous sanction –

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

29. A mere reading of sub-section (6) of Section 199 Cr.P.C. reflects that the right of a person against whom the offence of defamation is committed to file a complaint independently is saved, and is not barred by sub-section (2) and sub-section (4) of Section 199 Cr.P.C. Section 199(2) Cr.P.C. requires the complaint to be initiated by the Public Prosecutor on receipt of previous sanction of the Competent Authority in the State/Central Government **in case the offence of defamation is alleged to have been committed in respect of the acts and conduct in the discharge of public functions by the concerned person.** The logic behind Exception under sub-section (2) of Section 199 Cr.P.C. is that the State would be interested in prosecution, in case the offence is committed in respect of the discharge of functions by a government functionary. The aforesaid legal position stands



affirmed in ***K.K. Mishra v. State of M.P.*** (supra) and the observations in para 7 to 9 may be beneficially reproduced:

“7. Section 199(2) CrPC provides for a special procedure with regard to initiation of a prosecution for the offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the functionary or public servant concerned, as may be. The prosecution under Section 199(2) CrPC is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the competent authority in the State/Central Government under Section 199(4) of the Code. Such a complaint is required to be filed in a Court of Session that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate court. Section 199(2) CrPC read with Section 199(4) CrPC, therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub-section (2) of Section 199 CrPC by sub-section (6) thereof.

8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi v. State of U.P. [P.C. Joshi v. State of U.P., AIR 1961 SC 387 : (1961) 1 Cri LJ 566] (AIR pp. 391-92, para 9) The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) CrPC is that the offence of defamation committed against the functionaries mentioned therein is really an offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure.

9.P.C. Joshi [P.C. Joshi v. State of U.P., AIR 1961 SC 387 : (1961) 1 Cri LJ 566] , however, specifically dealt with the provisions of Section 198-B of the Code of Criminal Procedure, 1898 (the old Code) which are parimateria with the provisions of Section 199 CrPC (the new Code).”

30. Reference may also be made to ***Manoj Kumar Tiwari v. Manish Sisodia***, (2022) SCC OnLine SC 1434, wherein the accused (appellants



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therein) challenged the order of summoning for the offences under Section 499 and 500 read with Sections 34 and 35 of IPC, by way of petitions under Section 482 of the Cr.P.C. before the High Court of Delhi. The petitions were dismissed by the High Court whereupon the instant appeals were preferred before the Hon'ble Apex Court. Petitioner assailed the summoning order on the ground that the Court ought not to have entertained a private complaint under Section 200 Cr.P.C. especially from a person covered by Section 199(2) of the Code, without following the procedure prescribed in sub-section (4) of Section 199 and also contended that the protection available under Section 237 of the Code to the accused, will be lost if the public servant avoids the special procedure and lodges a complaint individually.

On the other hand, the summoning order was sought to be defended by Dr. A.M. Singhvi on the ground that what is prescribed by Section 199(2) of the Code is a special procedure which does not exclude the general procedure prescribed under Section 199(6), and the right of a public servant as an individual, to prosecute a person for defamation is guaranteed by Section 199(6) to which the provisions of sub-section (2) of Section 199 have no application.

Hon'ble Apex Court after referring to ***K.K. Mishra v. State of M.P.*** (supra) held that the right of an individual is saved under sub-section (6) even if he falls under the category of persons mentioned in sub-section (2). Further, the observations in para 51 and 52 may be beneficially referred:

“51. As seen from the portion of K.K. Mishra (supra) extracted above, the right of an individual is saved, under sub-section (6), even if he falls under the category of persons mentioned in subsection (2).



*52. The long history of the evolution of the legislation relating to prosecution for the offence of defamation of public servants shows that the special procedure introduced in 1955 and fine-tuned in 1964 and overhauled in 1973 was in addition to and not in derogation of the right that a public servant always had as an individual. He never lost his right merely because he became a public servant and merely because the allegations related to official discharge of his duties. Sub-section (6) of Section 199 which is a reproduction of what was recommended in the 41st Report of the Law Commission to be made sub-section (13) of Section 198B, cannot be made a dead letter by holding that persons covered by sub-section (2) of Section 199 may have to invariably follow only the procedure prescribed by sub-section (4) of Section 199. Therefore, the common ground raised by both the appellants is liable to be rejected. **A person falling under the category of persons mentioned in sub-section (2) of Section 199 can either take the route specified in sub-section (4) or take the route specified in sub-Section (6) of Section 199.***

In view of the aforesaid settled position of law referred to above, the complaint filed on behalf of respondent No.2 is not barred by sub-section (2) and sub-section (4) of Section 199 Cr.P.C.

31. Whether the political party is a determinable, definite or identifiable group? Further, if respondent No.2 falls within the ambit of “some aggrieved person” and is competent to file the complaint under Section 199 Cr.P.C.?

Learned counsel for the petitioner vehemently contends that respondent No.2 does not fall within the expression “*person aggrieved*” under Section 199 Cr.P.C., 1973. Reliance is further placed upon *Prabhu Chawla and Ors. v. Shivnath Soni and Anr.* (supra), (a single Judge judgment of the High Court of Rajasthan), wherein a complaint filed by a person after reading an article in a magazine, alleged to be defamatory against the Prime Minister and President of the country, was held to be not maintainable as the



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complainant did not fall within the ambit of “*aggrieved person*” provided in Section 199 Cr.P.C. It is urged that the reputation of a person should be directly or indirectly affected in order to make a person aggrieved.

Reliance is also placed upon *Laxminarayan Singh & Anr v. Shriram Sharma* (supra), *Ganesh Anand Chela v. Swami Divyanand* (supra), *Maulik Kotak v. State of Maharashtra* (supra), *V Radhakrishna & Ors. v. Alla Rama Krishna Reddy* (supra), *Bhagwan Shree Rajneesh v. State of Bihar* (supra), *Raj Kumar Saini v. Sant Kunwar* (supra), *Dhirendra Nath Sen v. Rajat Kanti Bhadra* (supra) and *Narottamdas L Shah v. Patel Maganbhai Revabhai & Anr.* (supra).

32. In support of the contention that the impugned statement of the petitioner could not be considered against any “identifiable group” and speech as a whole did not refer to any kind of group whatsoever to which respondent No.2 could have belonged, reliance is placed upon *Aruna Asaf Ali & Ors. v. Purna Narayan Sinha* (supra), *Raj Kapoor v. Narendra & Ors.* (supra), *Prem Pal Singh & Ors. v. Phool Singh & Ors.* (supra). Learned counsel for the petitioner relying upon *Aroon Purie v. Sukhbir Singh Wahla* (supra), decided by Punjab & Haryana High Court on 17.01.2017 and *Shri Kalyan Bandyopadhyaya v. Shri Mridul De* (supra) also submits that political party not being a determinable, definite or identifiable group, cannot be defamed.

33. On the other hand, learned counsel for respondent No.2 submits that the expression “*some person aggrieved*” in Section 199 Cr.P.C. is not necessarily limited to the “person defamed”. Placing reliance upon *Chhotalal Lallubhai v. Nathabhai Bechar*, ILR (1901) 25 Bom 151, it is



urged that if the complaint could be filed only by the person defamed, Explanation 1 to Section 499 of Indian Penal Code would become a dead letter and, as such, the expression “*some person aggrieved*” is not necessarily limited to the “person defamed”. The aforesaid proposition is stated to have been further referred in ***Gurdit Singh v. Crown, ILR (1924) 5 Lah 301*** which was referred to the Division Bench of the High Court and the view taken in ***Chhotalal Lallubhai v. Nathabhai Bechar*** (supra) was upheld. Reference is further made to observations in ***John Thomas v. K Jagadeesan (Dr)*** (supra), ***Subramanian Swamy v. Union of India*** (supra) and ***R. Rajagopal v. V Sathyamoorthy*** (supra).

34. The issue for consideration is whether the political party can be considered as an identifiable, definite and determinate body and if the complainant/respondent No.2 falls within ambit of “*person aggrieved*”.

35. **Section 499 IPC** provides for defamation of “*any person*” and Explanation 2 states that it may amount to defamation to make an imputation concerning a ‘company’ or ‘an association’ or ‘collection of persons’ as such. In terms of **Explanation 2** referred to above, any member of such group or class can bring an action for defamation subject to it being determinate and identifiable. Also, under Section 11 IPC, the word ‘*person*’ includes any company or association or body of persons whether incorporated or not.

The term ‘association’ in Explanation 2 to Section 499 IPC connotes a juristic personality and like a ‘company’ can sue and be sued in the name of the ‘association’. It is important to underline that if a collection of persons or an association or company is defamed, any of the members representing



such company or association or collection of persons, may file a complaint but the imputation must be shown to be defamatory to the persons constituting the ‘company’ or ‘association’ or ‘collection of persons’.

36. In the aforesaid background, it may be noticed that a political party under paragraph **2(1)(h) of the Election Symbols (Reservation and Allotment) Order, 1968** means an **association or body of individual citizens** of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. Under the aforesaid Order, a symbol is reserved for a recognized political party for exclusive allotment. Further, if a member of the party contests an election he is required to make a declaration in his nomination papers that he has been set up by that party in the election and the party also fulfils the requirement of the conditions stated in the Order. Thus, a member of the party is provided with certain rights and liabilities in law. Even under **Section 29A of the Representation of the People Act, 1951** as amended up-to-date, a political party may also be registered with the Election Commission of India. Further, **under Section 13A of the Income Tax Act, 1961**, a political party is also liable to file return of income. The political party, as such, is a distinct definite identity which may expand or contract with addition or deletion of the members but in no way is indeterminate, as the members at any point of time can be determined and are definite. A constitutional recognition is enjoined on the political party and is also a separate person apart from its members.

In view of above, this Court is of the considered opinion that “BJP” is a determinate and identifiable body and the complaint for defamation under



Section 500 IPC is maintainable. It may further be observed that if a well defined class is defamed, each and every member of that class can maintain a complaint.

37. The further question for consideration in the present case is, whether in the facts and circumstances, only Shri Narendra Modi stands defamed in person or if the imputations also defames the political party i.e. BJP along with the members of the party and if respondent No.2 being the Vice President, BJP, Delhi Pradesh is competent to file the complaint for defamation.

38. **Sub-section (1) of Section 199 Cr.P.C.** provides that no Court shall take cognizance of an offence punishable under Chapter XXI of IPC which includes defamation under Section 499/500 IPC except on a complaint made by “*some person aggrieved*” by the offence.

39. Section 199 Cr.P.C. lays down an exception to the general rule that a complaint can be filed by any person whether he is “*aggrieved person*” or not, and permits the filing of complaint for defamation only by an “*aggrieved person*”. Consequently, in terms of sub-section (1) of Section 199 Cr.P.C., cognizance of the offence of defamation on a complaint by a person who is not an “*aggrieved person*”, the trial and conviction would be void. The same also stands authoritatively reiterated in *G. Narasimhan v. T.V. Chokkappa* (supra).

40. It may also be appropriate to notice that in *John Thomas v. K. Jagadeesan (Dr)* (supra), it was observed that “*some person aggrieved*” indicates that the complainant need not necessarily be the defamed person himself. **Further, whether the complainant has reason to feel hurt on**



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account of the publication is a matter to be determined by the Court depending upon the facts of each case. It was further held that if a company is described as engaging itself in nefarious activities, its impact would certainly fall on every director of the company and, hence, he can legitimately feel the pinch of it. Similarly, it was observed that if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. In the light of observations made in *John Thomas v. K. Jagadeesan (Dr.)* (supra), it is implicit that if a political party is defamed, a complaint by a high-ranking functionary, who may be President or Secretary of the party or any of the senior functionary heading the State unit as the President, Vice President or Secretary, in accordance with the constitution of the party may maintain the complaint. The members of the party may also file the complaint if they can prove that the members also stand defamed.

41. In *Sahib Singh Mehra v. State of Uttar Pradesh, AIR 1965 SC 1451*, in the context of defamatory imputation made against the prosecution staff at Aligarh in respect of their alleged involvement in corruption, the Hon'ble Apex Court considered Explanation 2 to Section 499 IPC and observed that if a collection of persons which is identifiable with certainty, has been defamed, as distinguished from rest of the community, the prosecution would be maintainable. It was held that within this group of Public Prosecutors of UP, there is an identifiable group of prosecuting staff consisting of Public Prosecutors and Assistant Public Prosecutors at Aligarh and would be covered by Explanation 2 and, therefore, subject to defamation. The complaint filed on behalf of the prosecution staff at Aligarh



for the offence of defamation was accordingly held to be maintainable. The observations in para 9 may be beneficially reproduced:

“9.....*The language of Explanation 2 is general and any collection of persons would be covered by it. Of course, that collection of persons must be identifiable in the sense that one could, with certainty, say that this group of particular people has been defamed, as distinguished from the rest of the community. The prosecuting staff of Aligarh or, as a matter of fact, the prosecuting staff in the State of Uttar Pradesh, is certainly such an identifiable group or collection of persons. There is nothing indefinite about it. This group consists of all members of the prosecuting staff in the service of the Government of Uttar Pradesh. Within this general group of Public Prosecutors of U.P. there is again an identifiable group of prosecuting staff, consisting of Public Prosecutors and Assistant Public Prosecutors, at Aligarh. This group of persons would be covered by Explanation 2 and could therefore be the subject of defamation.*”

42. At this stage, it may also be appropriate to notice that in *The Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr.*, CRL.M.C. No.6574/2014 decided by High Court of Kerala on 07.01.2022, a complaint was filed by first respondent, who was the State Secretary of the Rashtriya Swayamsevak Sangh (RSS), alleging offences punishable under Sections 120B, 153A, 500 read with Section 34 IPC against the petitioners. The article written by A8, translated by A9 and published by first accused Mathrubhoomi weekly was alleged to contain imputations, which were defamatory, misleading and lowered the reputation of RSS in the public.

A contention was raised that first respondent i.e. State Secretary of RSS has no *locus standi* to represent the RSS since it cannot be said that RSS is a definite and determinable body. The article was further contended to be based upon a research study without any intention to defame or injure the respondent or anybody else.



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With reference to the contention whether the State Secretary of RSS had *locus standi* to file the complaint of defamation, it was observed that Section 199 Cr.P.C. lays down an exception to the general rule that a complaint can be filed by anybody, whether a person is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move to a Magistrate in case of defamation. It was further observed that Section 199 Cr.P.C. is mandatory so that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one, who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Further, noticing Explanation 2 to Section 499 IPC wherein, it has been provided that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such, it was held that if a well-defined class is defamed, each and every member of that class can file a complaint. Further, where the words reflect on each and every member of a certain number or class, each and all can sue. But this principle depends upon the determination of the number of persons of the class. However, if the collection of persons is an indeterminate and indefinite collection of body, it could not be said that each and every member of that body could maintain an action under Section 500 IPC, unless the complainant was referred to as a person who had been defamed under the imputation.

Taking note of the judgments in *Krishnaswami v. C. H. Kanaran*, 1971 KLT 145, *Achuthanandan v. Varugheese*, 1993 (2) KLT 737, *G. Narasimhan v. T. V. Chokkappa*, (1972) 2 SCC 680 and *Tek Chand Gupta v. R. K. Karanjia and Others*, 1969 CrL.L.J 536 (Allahabad High Court), it



was observed in para 17 to 19 as under:

“17. In Tek Chand Gupta vs. R.K. Karanjia and others reported in 1967 SCC Online All.282 (1969 Cr.L.J 536), the Allahabad High Court held that, Rashtriya Swayamsevak Sangh (RSS) is a definite and identifiable class or body. So, when an article is published in a newspaper containing imputations meant to harm the reputation of Rashtriya Swayamsevak Sangh (RSS), complaint by individual member of RSS is maintainable under Explanation 2 to Section 499 of IPC. It is not necessary that the imputations in the article individually affected the reputation of the complainant. The Apex Court in G.Narasimhan's case (supra) made mention regarding TeK Chand Gupta's case (supra) asserting that Rashtriya Swayamsevak Sangh (RSS) was a determinate body just like the body of public prosecutors mentioned in Sahib Singh Mehra's case (AIR 1965 SC 1451). When the association was a determinate and an identifiable body, the defamatory words used against that association could be treated as defamation of the individuals who composed it. So, any member of that association can maintain a complaint under Section 500 of IPC.

18. The de facto complainant/1st respondent claims to be the State Secretary of RSS and that fact is not seen disputed by the petitioners. Even if the petitioners have got any challenge regarding the membership of the complainant in RSS, they are at liberty to make that plea before the trial court.

19. Since Rashtriya Swayamsevak Sangh (RSS) is a definite and identifiable body as held by the High Court of Allahabad and asserted by the Apex Court vide decisions cited supra, the contention of the petitioners that the 1st respondent has no locus standi to maintain a complaint under Section 500 of IPC is not tenable. So this Crl.M.C is liable to be dismissed.....”

It is pertinent to note that **SLP (Crl.) No.2368/2022** preferred on behalf of **Mathrubhoomi Printing and Publishing Co. Ltd. & Ors.** was dismissed by the Hon’ble Apex Court vide order dated **25.03.2022**.

43. It may further be observed that in **Rahul Gandhi v. State of Jharkhand** (supra), it was held that respondent No.2 being a party worker of



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Bharatiya Janata Party had *locus standi* to file the complaint under Section 499/500 IPC wherein imputation had been made by the petitioner that Bharatiya Janata Party leadership was drunk with powers and composed of liars and would accept a man accused of murder as the President of Bharatiya Janata Party.

44. Also, in ***K. Pawan Kalyan v. D. Kiran Kumar & Ors.***, **MANU/AP/0654/2010**, the complaint filed by a Congress party worker who also claimed to be an earlier Youth Congress President of Wanaparthy Mandal and Sitting general Secretary of District Youth Congress, was held to be maintainable against the alleged derogatory remarks/imputations against not only the named Congress persons but also Congressmen in general. It was held that membership of Indian National Congress party is verifiable and ascertainable and it could not be said that complaint is not maintainable on the ground that complainant therein is not an “*aggrieved person*”.

45. In ***R. Rajagopal @ R.R. Gopal & Anr. v. Sathya Moorthy*** (supra), complainant an elected MLA and a Minister/Headquarters Secretary of the concerned political party (AIADMK) in the previous rule of the party filed the complaint for defamation against the Publisher and Editor for publication of an article. A contention was raised that the article never revealed a direct or indirect imputation against the complainant and, as such, the complainant was not competent to file the complaint and only Jayalalitha alone could have filed the complaint. Reliance was further placed on behalf of accused on ***Ganesh Anand Chela v. Swami Divyanand*** (supra),



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Dhirendra Nath Sen v. Rajat Kanti Bhadra (supra), and ***G. Narasimhan and Ors. v. T. V. Chokkappa*** (supra).

Relying upon observations in ***John Thomas v. K. Jagadeesan (Dr)*** (supra), it was held that since the article was apparently defamatory, it would be proper that the objections be decided during the course of trial. The AIADMK party was further held to be an identifiable party to file the complaint keeping in view the observations in ***G. Narasimhan and Ors. v. T. V. Chokkappa*** (supra), wherein it was held that if a defamatory article has been published in relation to the party, the concerned Secretary or the office bearer can file a complaint. Though, in the said case, since defamatory article was published against the persons attending the conference, the Hon'ble Apex Court held that the complaint was not maintainable.

Referring to ***John Thomas v. K. Jagadeesan (Dr)*** (supra), it was further observed that the term 'some person aggrieved' by the offence has been dealt with in *extenso* and their Lordships have held that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the Court depending upon the facts of each case.

46. This Court is of the considered opinion that considering the dictum of law as laid down in the judgments referred to above, if a well defined class is defamed, which is identifiable, definite and determinate, each and every member of that class can file a complaint. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the Court depending upon the facts of each case.



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Prima facie, the imputations against a sitting Prime Minister are despicable and deplorable and apart from defaming Shri Narendra Modi, Hon'ble Prime Minister of India, also defame the Bharatiya Janata Party as well its office bearers and members. Since the complaint has been filed by the Vice President, BJP, Delhi Pradesh, he falls within the ambit of "some person aggrieved" under Section 199 Cr.P.C. The objection raised by the petitioner that respondent No.2/complainant has no reason to feel hurt by the said imputation as the same was not targeted towards the members of the party and was made in good faith, is a matter to be determined during the course of trial.

47. The judgments relied upon by the learned counsel for the petitioner are factually distinguishable.

- (i) In ***Prabhu Chawla And Ors. v. Shivnath Soni & Anr.*** (supra), a complaint filed by a person after reading an article in a magazine, alleged to be defamatory against the Prime Minister and President of the country, was held to be not maintainable as admittedly the complainant did not fall within the ambit of "aggrieved person" provided in Section 199 Cr.P.C.
- (ii) In ***Ganesh Anand Chela v. Swami Divyanand*** (supra), petitioner challenged the summoning order under Section 500 IPC in a complaint instituted by respondent alleging that petitioner had made malicious statements both verbal and in writing against the head of the Ashram and a woman follower in order to defame them and with a view to appropriate the Guru's property. Petitioner approached the High Court for quashing of complaint



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on the ground that cognizance for offence punishable under Section 500 IPC could not be taken as the complainant was not an aggrieved person per se within the ambit of Section 199 Cr.P.C. The High Court held that complainant had not been able to prove if the imputations in question were levelled against him personally or that he was the person aimed at and accordingly the complaint was quashed.

- (iii) In *Laxminarayan Singh &Anr. V. Shri Ram Sharma* (supra), an article written by petitioner was published under the caption ‘Tulsi Ke Ram’ criticising Tulsidas for depicting Ram, the hero of the epic ‘Ramayana’, in such a manner that though Ram was intended to be an incarnation of God, he was shown as an ordinary mortal with all the human weaknesses. Complainant claiming himself to be a traditionalist Hindu, a scholar, a teacher and a devotee of ‘Shri Ram’, as depicted in by Tulsidas in ‘Ramcharit Manas’ and having profound regard for Sant Tulsidas, filed a complaint against the publisher and writer of the article. High Court observed that Section 199(1) of the Code of Criminal Procedure provides that no Court shall take cognizance of an offence punishable under Chapter XXI of the Penal Code, 1860 i.e. for defamation, except upon a complaint made by some person aggrieved by the offence. The complaint proceedings initiated by the complainant were quashed observing that though the complainant may be devotee of Lord Shri Ram and an admirer and follower of Sant Tulsidas, he is not an aggrieved person within the



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meaning of section 199(1) Cr.P.C. and, as such, no cognizance of the offence under Section 500 IPC can be taken on his complaint and the trial is void and illegal.

- (iv) In ***Bhagwan Shree Rajneesh v. State of Bihar*** (supra), the issue for consideration before the Patna High Court was as to who can prosecute under Section 500 IPC when a deceased is defamed. The complainant, a Congress worker and devotee of Mahatma Gandhi, felt hurt on reading a speech of Shree Rajneesh published in a Hindi weekly news magazine 'Current' from Bombay, in its issue dated the 02.09.1978, that "*Mahatma Gandhi ko Rashtra Pita kahna chor den. Apane antim dinon men wey ek naya yuwati ke saath soya karte the. Umra ke sattarwen varsh men bhi wey swapandosh aur kaam wasana se pirit they*".

The Court observed that though generally the person defamed is the person aggrieved, but in the case of a deceased person an exception is made in favour of living persons limited only to members of the family or near relatives whose feeling is hurt by the defamatory statement, and none else. The mere fact that the feelings of the complainant have been injured in consequence of a defamatory statement made against the Father of the Nation affords the complainant no ground under law to prosecute the petitioner for defamation, he being neither a family member nor a near relative of the deceased but only a Congress worker and devotee of Mahatma Gandhi. If it is a question of hurt, we are no less hurt than the complainant, but the law prohibits action against



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the accused by any person hurt and, therefore, petition filed under Section 482 Cr.P.C by the accused seeking quashing of the order dated the 10.11.1979, taking cognizance, was allowed.

- (v) In *Maulik Kotak v. State of Maharashtra* (supra), proceedings under section 482 of Cr.P.C. were initiated for quashing of complaint with respect to defamatory article published on 8.7.2002 in Marathi weekly “Chitralekha”, making certain allegations against Pandurangshastri Athawale, known as “Dada” and Jayshree Didi (Dhanashri Talwalkar) of “Swadhyaya Pariwar.” Petitioners contended that the respondents-complainant had no locus to challenge the article as they were not the aggrieved persons as only “Dada” and “Didi” could have filed the defamation case individually as “persons aggrieved” and the article was published on information and evidence given by the Swadhyayees themselves. The proceedings were quashed by the High Court on the ground that individual complainants professing membership of Swadhyaya Pariwar are not competent to maintain the complaint as aggrieved persons merely because their feelings have been injured due to publication of article in respect of their religious heads “Dada” and “Didi”. Further, no material could be pointed out to show prima facie that Swadhyaya Pariwar is a determinate and identifiable legal body so as to constitute the words used in the article as defamatory of each individual professing as its member.



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- (vi) In *Raj Kumar Saini v. Sant Kanwar* (supra), complaint was instituted by respondent who claimed to be a follower of late Chaudhary Matu Ram Hooda, an Arya Samajist and freedom fighter. He alleged that petitioner had made several defamatory statements against late Chaudhary Matu Ram Hooda in newspapers on 02.04.2018 and 03.04.2018. Petitioner pleaded for quashing of complaint proceedings contending that the complainant had no locus to file the complaint as he was not the ‘person aggrieved’. High Court allowed the petition and observed that Explanation 1 to Section 499 IPC makes perspicuous that it is only the ‘family members’ or ‘near relatives’ of the deceased person, against whom imputations have been made, who can claim to be ‘persons aggrieved’ and the respondent-complainant, not being a ‘family member’ or ‘near relative’ of late Chaudhary Matu Ram Hooda, cannot unilaterally assume unto himself the status of an ‘aggrieved person’ under Section 199 Cr.P.C., on the ground that his feelings were hurt and maintain the subject complaint against the petitioner before the learned Magistrate for the alleged offence of defamation.
- (vii) In *Raj Kapoor v. Narendra Desai* (supra), complainant filed a complaint under Section 500 IPC against deceased Prithviraj Kapoor and petitioner Raj Kapoor alleging that a scene in film “Kal, Aaj Aur Kal” was an insult to the Bhangi Community. High Court quashed the order on charge and held that merely because a particular scene in the said picture objected to by the complainant



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depicted some orthodox section of Brahmin community uttering contemptuous words against Bhangi community in general, that would not amount to an act of defamation against the Bhangi community much less against the complainant personally. It was further observed that there is no imputation against the complainant as an individual and if he feels that as a member of the Bhangi Community, he was defamed, that would not entitle him to maintain a prosecution for defamation unless the imputation is against him personally.

- (viii) In ***Prem Pal Singh and Ors. v. Phool Singh and Ors.*** (supra), a complaint was instituted by the complainant alleging that in order to defame Shri Satpal Singh and Divine Light Mission, his defamatory photographs were circulated in which he was shown with some woman in an indecent posture. Complainant claimed to be staunch follower of the organization. High Court quashed the complaint observing that Satpal Singh had not come forward to file the complaint or even cited as a witness and held that the grievance of Phool Singh in his individual capacity cannot be more than a pain or hurting his sentiments like any other ordinary member of the society. As such, he cannot be considered as 'an aggrieved person under Section 199 Cr. P.C'.
- (ix) In ***Aruna Asaf Ali v. Purna Narayan Sinha*** (supra), respondent therein being an agitationist filed a complaint against petitioners who were functionaries of Link News Magazine alleging that two defamatory articles titled as “Improving the Body Politic” , “Case



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of an Enchained Eagle” and a photograph of agitationists captioned as “Assam agitationists - Threat to National Security from inside” were published in the said magazine in order to sabotage Assam agitation and lower the reputation of Assam agitationists in the eyes of public. The contention of the petitioners therein was that the complainant cannot be said to be ‘person aggrieved’ under the ambit of section 199 Cr.P.C. since the term ‘agitationists’ implies an indefinite and unidentifiable group and that such a group of “agitationists” cannot be taken as a fixed one but has an inherent ever changing nature, in the way that many agitationists cease to be so, and many unconnected persons turn to be agitationist with variation of time. High Court agreeing with the contention of petitioners held that complainant therein is not an ‘aggrieved person’ and quashed the proceedings pending before the Trial Court.

- (x) In *Narottamdas L. Shah v. Patel Maganbhai Revabhai* (supra), a complaint for offence of defamation under Section 500 IPC was filed aggrieved against the statements by the petitioner in the article “Whither the Dispute-Brokers (Kajia Dalals)” in the issue of Jay Hind Daily against the lawyers’ agitation. The complaint was challenged on the ground that the editorial is referable to entire class of lawyers and is not referable to any particular person or a determinate group-class of persons. Proceedings were quashed by the High Court observing that the editorial does not refer to any specific individual whomsoever but refers to lawyers



in general. It was also observed that in order to make out an offence of defamation, the writing should be such that a person/persons to whom the writing is relatable can be identified. Since the imputation is in respect of the lawyers' as a whole and is not referable to a person or a group of persons who can be identified and can be distinguished from the rest of the members of the legal profession, there is no offence of defamation. Further, the complainant was held to not be an aggrieved person since the writing did not relate to him individually.

- (xi) In ***Murlidhar Jeramdass v. Narayendas*** (supra), it was observed that the general impression conveyed by the letter published in the gazette was practically the same, which questions complainant Narayendas intended to put with an obvious innuendo defamatory of Mr. Murlidhar. As such, on the basis of same, Mr. Murlidhar could not be properly convicted of defamation. Further, it was observed that there was a deliberate abuse of criminal procedure as the object of the complainant is not to vindicate his own character but to subject him to heavy financial loss and a serious and long continued annoyance by the very process of trial itself.
- (xii) In ***Aroon Purie and Another v. Sukhbir Singh Wahla*** (supra), a complaint was filed against the accused for presenting a false and fabricated report to defame Shiromani Akali Dal and its leaders in the eyes of general public. The Chairman and Managing Director of TV Today and Living Media India Limited, Editor and local correspondent were alleged to have aired a news programme as



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‘Centre Stage Akali’s Dal Shielding Drug Lords’. Further, the accused are alleged to have made imputations on senior leaders of Shiromani Akali Dal on the basis of impudent presumptions and indulged in character assassination of senior leaders of Shiromani Akali Dal damaging their reputation in the eyes of law.

Petitioners (accused before learned Trial Court) contended that the complainant had no locus standi to file the complaint as the complainant had not been named in the telecast and the observations were against Akali Dal political party or Cabinet Minister. It was argued that political party has many workers and members and as such, is not a determined, definite and identifiable body. Further, the complaint was not maintainable at instance of a member of a party as he has not been individually defamed.

The question whether the worker of political party can be treated to be defamed and has locus to file the complaint if the defamatory statement has been given against a political party was considered in the light of CRR No. 1856/2009 passed by the Calcutta High Court in judgment dated 13.10.2015 titled as ‘*Shri Kalyan Bandyopadhyay v. Shri Mridul De*’, wherein, reliance in turn was placed upon “*Krishnaswami v. C.H. Kanaran* (supra).”

Taking note of aforesaid judgment, it was observed that political party is not a determinable, definite or identifiable body or association of such nature that each and every member of the same stands to get individually defamed when any defamation is made against the political party as a whole. It was held that



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complainant/respondent had no locus standi to present the complaint and does not fall within the category of aggrieved person. The judgments passed by the Hon'ble Apex Court in *John Thomas v. K. Jagadeesan (Dr)* (supra) and *G. Narasimhan and Ors. v. T. V. Chokkappa* (supra), were observed to be distinguishable.

- (xiii) In *Shri Kalyan Bandhopadhyay v. Shri Mridul De, CRR/1856/2009*, serious allegations were made against Shri Buddhadeb Bhattacharyya, the then Chief Minister and to a lesser extent towards CPI(M) which was the ruling party at the relevant time. The question for consideration before the Court was whether Kalyan Bandhopadhyay was an aggrieved person since the defamatory statements were made against a political party {CPI(M)}. The High Court of Calcutta after referring to a line of judgments held that the petitioner by his derogatory statement caused defamation of the Communist Party of India (Marxist) and only identifiable member of the political party in the entire complaint happens to be Buddhadeb Bhattacharyya, the then Chief Minister of West Bengal. Relying upon the series of judgments and agreeing with the decision of Kerala High Court, it was held that Communist Party of India (Marxist) is not a determinable, definite or identifiable body or association of such nature that each and every member of the same stands to get individually defamed when an insinuation is made against the party as a whole. As such,



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it was held that complainant is not an aggrieved person and the proceedings were quashed.

- (xiv) In *V. Radhakrishna v. Alla Rama Krishna Reddy* (supra), complainant who was an MLA of YSR Congress party and active functionary aggrieved by the defamatory, derogatory and venomous news published by the petitioners in Andhra Jyothi Telugu Daily filed a complaint under Section 500 and 501 IPC. The complaint was quashed by the High Court and it was observed that to file a complaint for offence punishable under Section 500 and 501 of the IPC, the person must be an aggrieved person who felt hurt or pained on account of such defamatory statement but an individual representing a group cannot maintain a complaint against any individual or unidentifiable or indeterminate group of persons. It was further noticed in para 67 that Secretary or President of political party can maintain a private complaint for the offence punishable under Section 500 and 501 of IPC but none else when defamatory allegation is made against the political party.

So far as the facts of the case are concerned, it was observed that since respondent No.1 is only a member of an unidentifiable or indeterminate group of persons i.e. YSR Congress Party and has not explained in the complaint as to how he is an aggrieved person since no defamatory imputations were made against YSR Congress Party or any of its members except the President, he is not entitled to maintain the complaint.



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48. Respectfully, this Court is of the considered opinion that findings in *Aroon Purie and Another v. Sukhbir Singh Wahla* (supra), *Shri Kalyan Bandhyopadhyay v. Shri Mridul De* (supra) and *V. Radhakrishna v. Alla Rama Krishna Reddy* (supra) need to be seen in the light of observations in *John Thomas v. K. Jagadeesan (Dr)* (supra) and *G. Narasimhan and Ors. v. T. V. Chokkappa* (supra) referred to above and are fundamental to the issue under consideration. Further, in *Mathrubhoomi Illustrated Weekly & Ors. v. P. Gopalankutty & Anr.* (supra) after referring to *G. Narasimhan's* case (supra) and *Sahib Singh Mehra's* case (supra), it has been held that when an association is a determinate and identifiable body, the defamatory words used against the association could be treated as defamation of the individuals, who composed it. So, any member of the association can maintain a complaint under Section 500 IPC. The **SLP (Crl.) No.2368/2022** preferred by the accused against judgment passed by Kerala High Court has been dismissed by the Hon'ble Apex Court vide order dated 25.03.2022.

49. For the foregoing reasons, no grounds are made out for quashing the proceedings, at this stage, under Section 482 Cr.P.C. It is expedient in the interest of justice to permit the proceedings before the learned Trial Court to continue. The defence, if any, that the defamatory imputations were covered by the Exceptions to Section 499 IPC needs to be considered on the basis of evidence in the trial. Interim orders are hereby vacated. Parties are directed to appear before the learned Trial Court on **10th September, 2024**. Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.



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Nothing stated herein shall tantamount to an expression of opinion on the merits of the case.

A copy of this judgment be forwarded to the learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

AUGUST 29, 2024/sd