

MHPU040820772024



SCC No. 73377/2024

Satyaki Savarkar Vs. Rahul Gandhi

**Order Below Exh. 49**

1. The Accused filed this application to conduct the trial of this case as summons trial. He stated that, the complainant had filed a private complaint bearing number Cri. M.A. No. 1186/2024 under section 499, 500 of the Indian Penal Code, 1860 (in short IPC). The complainant was examined and thereafter report under section 202 of the Code of Criminal Procedure (in short Cr.P.C.) was called. After hearing the argument of the complainant, my Ld. Predecessor issued process against the accused under section 500 of the I.P.C. After issuance of summons, the Predecessor passed the order below Exh. 1 on 30.5.2024 that “In view of order of issuance of summons, the case be re-registered as per rules.” After the order, the case was re-registered as Summary Criminal Case No. 73377/2024 in the relevant register. The order of re-registration has been passed without hearing the parties.

2. The complainant is required to prove the contents of the alleged speech to have been made by the accused at the gathering of diaspora at London on 5.3.2023. The contents of the speech are also stated to be content in an electronic documents viz. C.D. or Pen drive. The main issue involved in this case will be determined on certain historical facts on which the parties are at variance. Therefore, the major part of evidence would comprise material of historical nature entailing an academic enquiry. In the present case complex question of fact as well as law are raised. Therefore, it requires searching and detail cross examination which may not be permissible if this case is tried as

summarily. No prejudice would be caused to any party. Accused relied on following citations.

- a. Issur Chundar Munde and others. V/s. Rohime Sheik and others. (Criminal Rule No. 176/1876) the weekly reporter 1876.
- b. Emperor Vs. dinnanath and others (Allahabad Series 1913 Judgement dated 31.01.1913 of Indian Law)
- c. Rahimtullah Ibrahim Vs. Emperor (Criminal Revision Application No. 49 of 1924 Judgement dated 30.06.1924 of Sind Judicial Commissioner Court) 1926 Criminal Law Journal Page 1925. Where owing to the bulk of evidence or the complication of the matters or owing to the difficult nature of points at issue, it is not possible for the magistrate to keep in his mind without making exhaustive notes the evidence of important facts then even though the offence may be technical and be punishable only with slight sentence, the magistrate is not acting properly if he applies the summary procedure to such a trial and should be in so important a case apply the summary procedure, then, no doubt, the appellate or revisional court will redirect the retrial of the case in a more appropriate form.
- d. Shio Nath and others Vs. The State (Allahabad High Court, 1975 Criminal Law Journal 463.)
- e. Bhim Bahadur Singh VS. Emperor of Patna High Court (1920 criminal Law Journal reports)
- f. Empeor Vs. Rustomji Mancherji (1921 Bombay Law Reporter Volume XXIII)
- g. J.V. Bharuni and others Vs. State of Gujrat and others (2015) I Supreme Court Cases (Cri.) 1. Where in a case that can be tried

summarily, court records evidence elaborately and in verbatim and gives defence full scope to cross examine witnesses, such procedure adopted is indicative that it is not summary procedure. Before arriving at any conclusion with regard to nature of trial, there should be proper application of judicial mind and evidence on record must be thoroughly perused thus, when case in substance is not tried in summary way, though triable summarily and is tried as regular summons case, Successor Magistrate need not to hear the case de-novo and can act on evidence recorded by his predecessor to decide the case.

Lastly, the accused prayed to allow the application and prayed to conduct the trial of this case as summons trial.

3. The complainant filed his reply Exh. 50 and strongly objected to the contents of the application. He stated that, the application is filed with an ulterior motive to harass the complainant and to delay the proceeding. The complainant had no role to play at the time when the order of re-registration of the case was passed by the Ld. Predecessor of this court. The contentions raised in para 8 of the application are inferences drawn by the accused without any evident basis. Complainant has produced the electronic evidence i.e. C.D. containing the speech as well as its transcript. The you tube link of the defamatory speech is also produced. The accused is attempting to divert the case by historical angle. The speech holds no historical significance and such an argument is merely a tactic to prolong the case. There are multiple cases pending against the accused and its details are filed on record. In one case the accused was convicted and sentenced for two years imprisonment. The accused has raised issues regarding certain

historical facts, which are irrelevant to the core subject matter of this case. The judgements relied upon by the accused do not apply to this case. Lastly, he submitted that, the trial should proceed without further hindrance ensuring that justice is not delayed due to baseless objections. Lastly, complainant prayed to reject the application.

4. Learned Advocate Milind D. Pawar filed his written notes of argument and orally argued that, the case is re-registered as summary case No. 73377/2024 after issuance of process in Criminal Misc Application 1186/2023. The punishment for the offence under section 500 of the IPC is with simple imprisonment up to two years or fine or both. Therefore, the case prima facie falls in the category of summons case. In view of classification based on section 2(x) and 2(w) of the Cr.PC. The issues involved in the case be determined by historical facts. No prejudice would be caused to any party if this case is tried as summons case. In summons case there is no need to frame the charge. The trial of summons case has been dealt under Chapter 20 of the Cr.PC. from sections 251 to 259. There is no specific provision in Cr.PC. for conversion of trial from summary trial to summons trial. The accused has a right of fair trial. If this case is tried as summons case the accused would have a right to cross examine the witnesses of the complainant thoroughly. Then truth will come on record after the detail recording of the evidence. The present case raises complex questions of facts, thoughts of the defamed person, as well as law. Hence, it requires searching and detailed cross examination which may not be permissible if this case is tried summarily. It is argued further by the accused that the accused has a fundamental right of freedom of speech and expressions. The purpose of criminal process is to discover the truth of

the crime committed. The complainant has to prove his case beyond reasonable doubt. The complainant must prove that defamatory statement caused actual harm to their reputation. Lastly, he argued to allow the application.

5. Learned Advocate Sangram A. Kolhatkar for the complainant argued that, the accused has filed this application to prolong the matter. The complainant has no role to play in the registration of the case. It is up to the court whether this case is to be tried as summons trial or summary trial. The complainant has filed sufficient evidence on record which shows that, the defamatory statement has been made by the accused without any basis. The citations relied by the accused are not applicable to this case. He has filed on record the cases pending against the accused in different courts. Lastly, he prayed to pass the necessary order.

6. Heard Learned Advocates of the parties, perused the written argument of the accused at Exh. 53. Perused the application, say, record, documents and Citations. Complainant had filed a Cri. Mis. Application No. 1186/2024 which was a private complaint. After that, court took verification of the complainant and his witnesses. Then report under section 202 of the Cr.P.C. was called. After argument of the complainant and considering the record my Ld. Predecessor issued process against the accused. After that, court passed an order below Exh. 1 on 30.05.2024 to re-register the case as per rules. Here this court finds that, the order has been passed without hearing the parties.

7. Section 260 of the Cr.P.C. permits the competent Magistrate to try certain class of cases as set out in the provision, in a summary way 'if he thinks fit'. That means while passing an order for summary

trial it is necessary to disclose reasons for adopting such a course. The offences alleged in the complaint under section 500 of the IPC is punishable with simple imprisonment up to two years or with fine or with both. Therefore, the case prima facie falls in the category of a summons case in view of the classification based on section 2(x) and 2(w) of the Cr.P.C. In the present case accused is claiming and raised questions of facts as well as law which are complex in nature. The accused also raised certain issues which will be determined on historical facts. Therefore, in my view it is undesirable to try this case as a summary. Because in summary trial detail evidence, cross examination is not taken. In this case, accused has to lead detail evidence and has to cross examine the witnesses of the complainant thoroughly. As per section 260(2) of the Cr.P.C. provides and facilitates the court that, even during the course of trial it appears that, it is undesirable to try summarily, then Magistrate can re-hear the case. Hence, it shall be incumbent in the interest of justice that, the matter should be tried as a summons case. No prejudice would be caused to any party, if the present case is tried as a summons case. In the result, I pass following order.

### **ORDER**

1. Application (Exh. 49) is hereby allowed.
2. The trial of this case is conducted as Summons Trial.

**(Pronounced in Open Court)**

Pune.

Date : 07/04/2025

**(Amol Shriram Shinde)**

Judicial Magistrate First Class,

Court No.9, Pune.