

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3615 OF 2022

NIKHIL RUIA

VS

THE STATE OF WEST BENGAL & Anr.

For the Petitioner : Mr. Sudipta Kr. Bose, Adv.
Ms. Lipika Nath, Adv.

For the Opposite : Mr. Arik Banerjee, Adv.
Party no. 2 Mr. Pijush Chatterjee, Adv.
Mr. Sutosom Bhattacharyaa, Adv.
Mr. Nilabhra Bhattacharyaa, Adv.

Last heard on : 23.06.2026
Judgement on : 28.08.2026
Uploaded on : 28.08.2026

CHAITALI CHATTERJEE DAS:-

1. This Revisional Application has been filed for quashing of proceedings of case no. CN/279/2022, under section 500/501 of the IPC, 1860 pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta.

The case of the petitioner in brief

- 2.** On the basis of a complaint lodged by the Opposite Party no. 2, the case started against the present petitioner alleging against the present petitioner of imputing reputation and prestige of opposite party no.2 and thereby committed an offence of defamation. The further case of the petitioner is that the petitioner filed a complaint case under Section 200 of Cr.P.C prior to the instant complaint, before the learned Additional Chief Metropolitan Magistrate at Calcutta against the Opposite Party no. 2 with a prayer to issue process against the accused persons complaining of committing offences under Section 420/406/120 B/34 of Indian Penal Code. The learned Court took cognizance of the offence and fixed August 7, 2021 for S/A. The petitioner was also examined before the learned Magistrate and after perusing initial deposition of the petitioner and considering the materials issued process against the accused persons, being the present Opposite party no. 2 and fixed the date on September 7, 2021 for appearance. The accused company appeared before the court, filed an application under Section 305 of Cr.P.C, 1973, which was fixed for hearing before the learned Court .The Opposite Party no.2 preferred a revisional application before the High Court at Calcutta being C.R. no. 1877 of 2021, under Section 482 of Cr.P.C for quashing of the said proceeding.
- 3.** At the time of admission an order of stay of all for the proceedings of aforesaid case was obtained by the opposite party no.2. The interim order of stay as passed was extended from time to time. After obtaining such order of stay the opposite party no.2, filed the instant complaint, alleging committing

offences under Section 500/501 IPC and the Learned Court took cognizance and issued summon. Hence the petitioner has come before this court for quashing of the said proceeding.

Submissions

4. The learned advocate appearing on behalf of the petitioner argued that on Dec 5, 2014 the OP2/LWG Limited, entered into six different development agreement with one M/S MHKS Realty Limited, Kolkata for development of project, The Pyramid-Energy. The petitioner/Nikhil Ruia entered into agreement for sale on November 9, 2015, with OP no. 2 and the Developer M/S MKHS Reality LLP Developer for purchase of a flat being flat number 7E on the 7th floor of Tower no. 7. On August 2, 2021 the petitioner filed the complaint under Section 200 Cr.P.C against them since the developer and owner did not complete the project as agreed by May 2017, or handover the possession of the flat to the petitioner. The petitioner paid advance amount on several dates and money receipts were issued in favour of him on such dates after receiving the payment and on good faith the present petitioner having complete trust on the accused persons waited for completion of the project. The project was not even properly started even on the date of completion as per the agreement and on being asked about the delay assurances were given to complete the project sometimes on November 2017. From March 2020, the pandemic situation and lockdown started throughout the country due to COVID-19 virus outbreak and after such lockdown was called off sometime in November 2020, the present petition/complainant intended to meet the accused persons at the project

site at Rajarhat to recall the contract and to seek refund of money paid towards advance but to his utter shock it was discovered that they have removed the project site office and upon being contacted over mobile, it was found to be switched off. Therefore, the accused persons clearly cheated the complainant as well as hundred other investors, in complete criminal breach of trust and in criminal conspiracy with each other .Hence the complaint had to be lodged.

5. The learned Advocate further contended that during pendency of the criminal revisional application filed by the opposite party no. 2 , he lodged the complaint against the petitioner only to save himself from the prosecution and out of grudge. It is his further contention that the defamation is of two types, which is slander and libel but the instant dispute between the parties, do not constitute any offence under the aforesaid provisions as there is absolutely no ingredients to constitute such offence and it has been filed only with a deliberate intention to escape prosecution in the complaint case being instituted by the present petitioner against Opposite party no.2. It is further submitted by filing supplementary affidavit on behalf of the petitioner that the Opposite Party no. 2 preferred a revisional application and by an order dated December 1, 2022, the Hon'ble Justice Tirthankar Ghosh passed certain orders for certain clarification in respect of order passed by the learned Magistrate, but refused to quash the proceeding. The Opposite party no. 2 also filed an application for discharge, which was also turned down by the Learned Magistrate, and then it was assailed before the 3rd Metropolitan Magistrate at Calcutta by filing criminal

revisional application, which was transferred before learned Special Judge, Bench1, NDPS Court for disposal and the learned Court rejected the said revisional application on August 27, 2025, and thereby affirmed the order of learned 3rd Metropolitan Magistrate at Calcutta. Therefore, primarily both before the learned Magistrate as well as before this High Court at Calcutta, the Opposite Party no. 2/company failed to convince the court regarding absence of any prime facie case against him with regard to the allegations made against opposite party no 2 by the present petitioner .

6. The learned advocate in support of his contention put reliance upon the decisions reported in ***Shahed Kamal and others versus A. Surti Developers Private Ltd and others***¹, ***Rubi Adhikari Sehgal and another versus Yashpal Joshi***² on September 10, 2024 passed by the court of Punjab and Haryana at Chandigarh. , ***State of Haryana and others versus Bhajanlal and others***.³ and prayed for quashing of the Complaint and the proceeding.

7. Per Contra the learned Advocate representing the opposite parties opposed the contention of the learned Counsel of the petitioner and filed affidavit in opposition as well as supplementary affidavit in opposition against the averments made in the Revisional application. It is the case of the opposite party no.2 that admittedly LGW limited is the owner of the land and an agreement was entered into between developer, MKHS Realty LLP and the opposite party no.2 being the owner on December 5, 2014. Pursuant to the

¹ (2025) 9 SCC 547

² 2024:PHHC:118695

³ 1992 (Supp) 1 SCC 335

development agreement, the project consisting of 17 Towers to be constructed within a period of 5 and ½ years from the date of agreement. A power of attorney was also executed by the opposite party no.2 in favour of such developer for construction of the project. Subsequently after the Execution of development agreement and power of attorney the allocation agreement was also entered on the same date which disclose the allocation of flats falling under the owners allocation and developers allocation.

8. The complaint case has been filed by the petitioner under section 420/ 406 of IPC alleging of booking a flat in the said project after entering into an agreement for sale on November 9, 2015 with the developer where it did not contain the signature of the opposite party no.2 therein. It is further submitted that the flat in respect of which the petitioner is claiming right falls under the developer's allocation, which will be evident from the allocation agreement. Thus, the developer was solely responsible for constructing the flat and handing over the same to the proposed purchasers, including the petitioner herein. In terms of clause 8 of development agreement a period of five and half years was given to the developer for completion of the said project subject to maximum extension of six months after which the owner LGW was entitled to interest. Therefore, the liability of completing the construction and handing over the flats were on the developer as they received the entire money and the opposite party no.2 did not receive any money from the petitioner. There was no transaction between the opposite party no.2 and the petitioner. The learned advocate further argued that the opposite party no.2 , on other on the other hand has obtained various accolades and awards in its field of business and in

financial year 2009-2010 on account of its business abilities and turnover achieved every year its reputation and Goodwill and received an award Niryat Shree.

9. The petitioner with an intention of causing harm and to tarnish the reputation and image of the opposite party no.2 has made out a false case against the present opposite party no.2. It is a pure civil dispute arising out of an alleged breach of obligation under agreement for sale with the developer for which legal remedies are available in civil suit and there is no need to file a criminal case. The present opposite party no.2 shocked to receive a summon from the learned Additional Chief Metropolitan Magistrate, Calcutta in connection with a criminal case, instituted by the present petitioner against the developer when the opposite party no.2 for commission of offence punishable under Section 420/406/120B/34 IPC. The writ of summons along with a copy of the complaint was received first by the security staff of receiving section who after going through the same handed over to Jaideep Bhattacharya, being a responsible officer of the complainant company and finally reached to the hands of the management of this company.

10. It is the further contention of the learned advocate that in the complaint lodged by the petitioner against the accused persons, mention the present opposite party no.2 as a criminal, cheater, outrageously malevolent, blatantly false, mala fide, mischievous in nature and this type of statement ridiculed the opposite party no.2 and jeopardise the integrity, prestige, repute, and good name and good will of the present company in the society and business community. The specific word used *“someday the accused persons would*

jointly cheat the complainant and every other person who had invested in the said project without completing the projects. Persons would skip out from the area and their office.”, “ the accused persons clearly cheating the complainant and all other investors of his money and had removed the project site and incomplete criminal breach of trust and criminal conspiracy with each other and with a common intention to commit the crime.” are absolutely omnibus in nature, highly derogatory, fake, concocted, manufactured, and malicious, and these are defamatory imputations with the intention to harm the reputation of the present opposite party no.2 . Therefore, by using such sentences and words in the complaint lodged by the petitioner against the opposite party no.2 has seriously defamed the complainant company in the society, business community, and market, and hence committed the offence of defamation punishable under section 500 / 501 of the Indian Penal code, 1860 and the petitioner is liable to be prosecuted and punished appropriately.

11. The learned advocate has relied upon the decisions reported ***Dhanalakshmi versus R. Prasanna Kumar and others*⁴, *Deepika Lal and another versus Vipin Kumar and other*⁵, *Rocky vs. State of Telengana and Anr.*⁶, *Komal Prasad Shakya versus Rajendra Singh others*⁷, *PS Meherhomji versus K.T Vijay Kumar and others*⁸.**

⁴ 1990(SUPP) SCC 686

⁵ 2008(106) DRJ 266

⁶ 2025 SCC online SC 2713

⁷ 2025SCC OnLine SC 2225

⁸ (2015) 1 SSC 788

Analysis

12. Heard the submissions of both the learned advocates. From the materials on record and the submissions advanced by both the learned Counsel as well, as the factual matrix it is apparently visible that the root cause of the dispute between the parties part pertains to an agreement for sale entered into between the present petitioner and the opposite party no.2 as well as the developer company long back in the year 2015 in respect of a project, namely Pyramid –Energy, to be constructed in Rajarhat having 17 Towers and the present petitioner on November, 2015 with both opposite party no.2 and M/S Realty LLP, Kolkata, the developer in order to purchase a flat being flat number 7E on the 7th floor of Tower no. 7. The construction could not be completed within the stipulated period of time which was in the year 2017 to be extended maximum for one year even though a significant amount was taken as advance by way of various instalment. On account of Covid outbreak and the lockdown as declared it was further delayed and only after such lockdown was waived in the year 2021 the petitioner when intended to approach, found that the office in the site over which the construction was supposed to be raised has been shifted and practically, no Such construction started till such time.

13. The petitioner then tried to get in touch with the persons of the opposite party no.2 as well as the developer, but failed since nobody received such call and then the petitioner lodged the complaint against the owner as well as developer for committing offence of 420/406/120B/34 of Indian Penal Code and the learned Magistrate took cognizance of the same and issued

summons. The present complaint was lodged by the opposite party no.2 being the owner of the property against the petitioner after receiving the summon from the court to appear in the said case, and after obtaining an interim order of stay of all further proceedings of the said complaint case in the Criminal Revisional Application . The stand taken by the learned advocate of the opposite party no.2 is that in the written complaint, the petitioner has used some derogatory remarks and statements against the present opposite party no.2 which created an impact in their long- standing reputation in the business field. It is their stand that the agreement was never signed by the present opposite party no.2, which was entered between the petitioner and the developer containing the name of the present opposite party no.2 , and hence he has no liability for non- completion of the project. Therefore the pertinent question arises whether accusation made in a written complaint is to be considered as defamatory when the said proceeding is yet to be completed .

- 14.** In the case of ***Shahed Kamal and others versus A. Surti Developers Private Ltd and others (Supra)*** as relied upon by the opposite party No 2 when the homebuyers and developers after being dissatisfied with the services provided by the developer, decided to resort to a unique form of protest, they erected a board/banner visible to the public at large setting out in English and Hindi languages which was considered to be derogatory and the developer hit back and threatened to sue them for defamation unless an apology was tendered. On refusal to do the same the complaint under Section 500 with Section 34 of IPC was started. The short question arose

before the Hon'ble Supreme Court was whether the complaint filed by the respondent makes out a case for the offences punishable under Section 500 with Section 34 IPC against the respondent. The Hon'ble Supreme Court discussed section 499 IPC and the 9th exception where it was promulgated that-

“Ninth Exception-imputation made in good faith by person for protection of his or other's interest- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person, making it, or of any other person, or for the public good.”

15. The Supreme Court also took taking note of ***Iveco Magirus Brandschutztechnik GMBH versus Nirmal Kishore Bhartiya***⁹ where the court while examining the question whether the exceptions to Section 499 could be considered at the stage of issuance of process under Section 204 Cr.P.C and equally for the High Court examining a petition to quash under section 482 at the following to say;

“60. What the law imposes on the magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the ever

⁹ (2024) 2 SCC 86

proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.

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62. In the context of a complaint of defamation, at the stage of magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/ Section 202) as to whether “sufficient ground for proceeding” exists as distinguished from “sufficient ground for conviction’, which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the magistrate to consider whether any of the Exceptions to Section 499 IPC is attracted, there is no bar either. After all what is “excepted” cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced , giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the magistrate is in any manner precluded from considering if at all any of the exceptions is attracted in a

given case; the magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process, he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveals complete defence under any of the Exceptions to section 499 IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction, if such dismissal has the support of reasons”.

- 16.** The Hon’ble Supreme Court after considering all the materials was of the view that- *“A right to protest peacefully without falling foul of the law is a corresponding right, which the consumers ought to possess just as the seller enjoys his right to commercial speech. Any attempt to portray them as criminal offences, when the necessary ingredients are not made out would be a clear abuse of process and should be nipped in the bud”* and thereafter the order issuing summons under Section 500 read with section 34 IPC was directed to be quashed and set aside.

In the decision of **Rubi Adhikari Sehgal and another versus Yashpal Joshi (Supra)** the High Court of Punjab and Haryana discussed section 499 of the Indian Penal Code and held that-

“the key ingredients that constitute defamation under this provisions are the intent to harm or the knowledge that harm is likely to occur as a result of imputation. It is not necessary that the person making the statement explicitly intends to damage the reputation of another

person; it is sufficient if they act with the knowledge that their words or actions are likely to cause harm.”

It was held that the law thus recognises the significant power that words and other forms of expression have an influencing importance under the law, and section 499 of Indian Penal Code provides legal records against any unwarranted or malicious attack on that reputation. The said Court observed after detailed examination of the complaint that the name of complainant was not specifically mentioned, without a clear incident of defamation being demonstrated, the essential ingredients required to attract the mischief of offences under section 499, 211 and 506 of the IPC have not been fulfilled. Therefore, there is no prima facie case for summoning of any of the petitioner of the complaint.

17. The agreement was executed on November 9,, 2015 between LGW Limited represented by Managing director, Anurag Gupta, Owner and MKHS realty Limited liability partnership firm represented by one of its partners, namely Mount Hill, Realty Private Limited, described as developer and collectively sellers were the parties to the agreement with the petitioner as Buyer . In terms and condition of the agreement flat was agreed to be handed over and possession to be given after completion of the construction by 2017 by executing conveyance in favour of the buyer provided the buyer pays all amount required for the same. The written complaint lodged by the petitioner under Section 200 Cr.P.C categorically alleged of violation of terms of agreement as well as certain other conduct which create sufficient doubt over the intention of the parties including this opposite party no.2 as the owner. The agreement was duly signed by the owner through their power

of attorney holder and the developer and therefore the stand taken by the opposite party no.2 about the signature of the owner not being obtained are absolutely false and to suppress the truth.

18. It is an admitted fact that aforesaid complaint was lodged by the petitioner against the opposite party no.2, the owner as well as the developer before the court of learned Magistrate and the summons were issued, they appeared and the affidavit in reply disclose that an application for discharge was not entertained as filed by the accused persons. Upon close scrutiny of the complaint lodged by the opposite party no.2 against the present petitioner, it is apparent that there is no specific denial on the part of the opposite party no.2 regarding the non-completion of the project or the receipt and acceptance of the advance amount paid by the petitioner towards the said project. Nor is there any averment indicating that the project was still ongoing or that any construction work had, in fact, been undertaken. On the contrary, the contents of the complaint demonstrate that the opposite party no.2 tried to escape from his responsibility, taking the plea that the agreement was not signed by him. It was denied that the office was shifted from the site but that is to be proved in course of trial by adducing evidence in respect of the complaint lodged by the petitioner.

19. The opposite party no.2 filed the complaint solely on the ground that in the petition of complaint, the allegations levelled against the opposite party no.2 or the word or sentence used therein or false manufactured afterthought and it has caused immense effect in the integrity, prestige, repute, good name and goodwill of the complainant company in the society

and business community as that it was not received by the complainant directly and routed through various persons .The content of the complaint of the petitioner can never be said to be published as averred in the written complaint and no specific averment can be found to that extent that the petitioner circulated the written complaint in any public platform .

20. In order to buttress the submission of the learned counsel of the petitioner put reliance in number of decisions by the Learned Counsel of opposite party no.2 and hence those are to be looked into as to how far applicable in the present case. In the decision of ***Dhanalakshmi versus R. Prasanna Kumar and others (Supra)*** the complaint was lodged against the husband under section 498A, along with other sections of Indian penal code and the High Court entertained the application of the First respondent under Section 482 Cr.P.C and analysed the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The Hon'ble Supreme Court held that section 482 of the Code of Criminal Procedure empowered the High Court to exercise its inherent power to prevent abuse of the process of the court, but it is to be exercised only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.

21. In the case of ***Dipika Lal and another (Supra)*** it was held that evidence have to be weighed by the trial court alone with other evidence that may emerge during trial in order to form an opinion whether the petitioner with

themselves involved in the publication of the news item and whether they are defamatory. The factual matrix of that case pertains to a complaint lodged alleging against the respondent no. 1/husband who was a judicial officer came to her residence, used abusive language, threw stones and broke the window panes and thereafter ran away from there. Further complained threatening to eliminate her and her father and take away the minor children. One complaint under Section 498A/406/506/323bnIPC was also registered against the husband. A news item was published in Dainik Punjab Kesari edition which roughly translated as case registered against judge for dowry and torture) and hence the complaint was lodged against the editor reporter as well as the appellant/wife under section 500/501/502/34 IPC. The question arose before the Court whether the proceedings are liable to be quashed on the ground that they are vexatious and an abuse of the process of law. The Hon'ble Supreme Court took note of the case of ***State of Haryana & Ors. versus Bhajanlal & Ors.***¹⁰ and held that *"the proceedings are maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge"* and did not quash the proceeding.

22. In the case of ***Rocky vs. State of Telengana and Anr. (Supra)*** the dispute arose from contractual and financial dealings relating to construction work when the complaint was lodged against the appellant under Section 420 and 506 of the Indian Penal Code where Shashi was also submitted when the application was filed for quashing of the proceeding by the accused person. The Supreme Court again took note of the decision of

¹⁰ 1992 SCC (SUPP) 1 335

State of Haryana versus Bhajanlal (supra), Pradeep Kumar Kesarwani versus State of Uttar Pradesh¹¹, Muskan versus Ishan Khan¹² and held that the court is not required to conduct a mini trial while exercising power to quash a proceeding under Section 482 of Cr.P.C . In the case of ***Komal Prasad Shakya (Supra)*** the complaint was filed under Section 420/ 467/ 468 and others of Indian Penal Code, and the learned Chief Judicial Magistrate took cognizance and issued summons, which ultimately travelled up to Hon'ble Supreme Court against the order of quashment and order of High Court was set aside with the observation that whether the offences will be made out at the trial will depend on the evidence adduced. At this stage, it cannot be said that there is a case for nipping the prosecution for these accused at the bud.

23. Lastly, in ***PS Meheromji (Supra)*** the revisional application under Section 482 was filled against an order of refusal to quash the complaint under Section 499 IPC on which the process was issued. In that case the appellant representing the company addressed a letter to the manager, MBD of A, making false and baseless allegations against the respondents with a malicious intention of causing wrongful loss to them. The said letter was forwarded by the applicant to the others also the argument advance before the Hon'ble court that the allegations made in the complaint together with annexure rely on their face value does not make out an offence against the appellant and High Court committed an error in dismissing the quashing petition without producing the sole alleged letter, which was the subject

¹¹ 2025 SCC OnLine SC 1947

¹² 2025 SCC OnLine SC 2355

matter of the complaint. After discussing several decisions, it was observed that the trial court after considering the allegations made in the complaint and the statement recorded on oath came to the conclusion that a prima facie case is made out for summoning the appellant and the case was taken on file and hence refuse to entertain the appeal.

24. Therefore, the above nature of the proceedings in connection of which the matters travelled up to Hon'ble Supreme Court are related to specific allegation, either circulated in writing or published in newspaper or written in the placard, placed in public place and it was held that the cognizance was rightly taken by the concerned court, since certain imputations were apparent and it prima facie constitute an offence . In the instant case, the factual matrix are all the way different where a bona fide purchaser entered into an agreement for sale to purchase a flat, paid advance amount and waited for long five years when the project was not completed and not even started but the company shifted its office and did not respond to the phone call made repeatedly by the complainant, which compelled the petitioner to lodge a complaint against the owner and developer, and the present opposite party no.2 is the owner. The allegations levelled against the owner and developer are subjected to the trial of the complaint lodged against them by the present petitioner and it is evident that the application to discharge filed by the accused persons including this opposite party was not entertained by the concerned court.

25. The proceeding filed before the Court under Section 482 of Cr.P.C for quashing was also not entertained and the charge sheet has been submitted

in the said case. At this stage, it is not disputed that the project was not completed nor any mala fide is there in the complaint lodged by the petitioner, expressing his grievance against the owner and developer, has been deprived for more than five years despite payment of advance amount as agreed.

In the present case, the complaint was filed on February 17, 2022, which was considered and cognizance was taken and February 3rd, 2022 was fixed for examination of complainant and his witnesses on S/A. The complainant and the other witness were present and were examined under Section 200 Cr.P.C on dock. On perusal of the complaint, statement made under Section 200 of the complainant and his witness and document supplied on behalf of the complainant the Magistrate was of the opinion that a prima facie case under section 500/501 of IPC are found to have been made against the accused person and issued summons. The learned Magistrate failed to consider whether the basic element to constitute an offence under Section 500/501 in terms of Section 499 of Cr.P.C were present or is hit by any of the exception as observed by the Hon'ble Supreme Court in the case of **Iveco Magirus (supra)**.

26. It is now necessary to look into the provision itself .Section 499 IPC reads as follows-

“499. Defamation.—

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is

said, except in the cases hereinafter expected, to defame that person.

Explanation 1.— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.— No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says— "Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

First Exception.— Imputation of truth which public good requires to be made or published.— It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.— Public conduct of public servants.— It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his

character, so far as his character appears in that conduct, and no further.

Third Exception.— Conduct of any person touching any public question.— It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.

Fourth Exception.— Publication of reports of proceedings of Courts.— It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.— A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.— Merits of case decided in Court or conduct of witnesses and others concerned.— It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this is in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A

is not within this exception, in as much as the opinion which he express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.— Merits of public performance.— It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.— A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing in the judgment of the public.

(d) A says of a book published by Z— Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says— "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, in as much as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.— Censure passed in good faith by person having lawful authority over another.— It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department

censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.— Accusation preferred in good faith to authorised person.— It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

Ninth Exception.— Imputation made in good faith by person for protection of his or other's interests.— It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business— “Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty”. A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.— Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

Therefore Exception 8 and 9 clearly speaks that an accusation preferred in good faith to authorised persons and imputation made in good faith by person for protection of his or others interest is not defamation. The essential ingredients of this offence is that the imputation should have been made, published with the intention of harming or with the knowledge or believe that imputation will harm the reputation of such person.

27. In the case of ***Kishor Balkrishna Nand vs The State of Maharashtra***¹³, a written complaint by the appellant was filed before the SDM alleging land encroachment and nuisance by the respondent's shop. The respondent thereafter filed a complaint on defamation against such incident. After prolonged procedural litigation, including recall of process and revisions, the High Court dismissed the appellant's challenge solely on the ground of delay leading to the appeal before the Apex Court. The Apex Court observed and held that-

“Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out. In the overall view of the matter, we are convinced that the appeal deserves to be allowed and is hereby allowed.”

¹³ 2023 INSC 675

Conclusions

- 28.** Therefore in terms of the decision of ***Shahed Kamal and Anr. (supra)*** when the complaint and the document annexed disclose a complete defence under any of the exceptions, Magistrate upon application of judicial mind held, empowered to accord the benefit of such exception to prevent a frivolous complaint from triggering an unnecessary trial. What is expected, held, cannot amount to defamation on the very terms of the provision and the Magistrate is not precluded from considering if at all any of the Exception is attracted in the given case. Nothing was considered in the instant case and the aforesaid discussion in the touchstone of the settled proposition of law this court is of the considered view that there would be an abuse of the process of the court if the proceeding is allowed to be continued further.
- 29.** Hence this Criminal Revisional application stands allowed. The entire proceeding pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta is hereby quashed.
- 30.** All other connected applications, if any, hereby stand disposed of.
- 31.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]