THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 8th September, 2022

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.06 of 2021

Petitioners : The Mathrubhumi Printing and Publishing Company Limited and Others

versus

Respondents : Santiago Martin and Another

Petition under Section 482 of the Code of Criminal Procedure, 1973

Appearance

Mr. Anmole Prasad, Senior Advocate with Mr. Tashi Rapten Barfungpa, Advocate and Mr. Hemlal Manger, Advocate for the Petitioners.

Mr. Kishore Datta, Senior Advocate with Ms. Laxmi Chakraborty and Mr. Ayan Banerjee, Advocates for the Respondent No.1.

Mr. Zangpo Sherpa, Advocate for the Respondent No.2.

O R D E R

Meenakshi Madan Rai, J.

1(i). By filing this Petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C."), the Petitioners seek quashing of the impugned Order dated 02-03-2021 passed by the Learned Judicial Magistrate (First Class), East Sikkim, at Gangtok, in Private Complaint Case No.09 of 2020 (*Shri Santiago Martin* vs. *Dr. T. M. Thomas Issac and Others*), wherein cognizance was taken of the offences under Sections 499, 500, 501, 502 and 120B of the Indian Penal Code, 1860 (hereinafter, "IPC"), and the impugned Summons, dated 03-03-2021, issued to the Accused Persons/Petitioners herein.

(ii) The Petitioners No.1 to 8 herein were arrayed as Accused Nos.2, 3, 4, 6, 7, 8, 9 and 10 before the Learned Trial

Court. The Respondent No.1 herein was the Complainant before the Learned Trial Court. The Respondent No.2 herein was arrayed as Accused No.1 before the Learned Trial Court. The Complainant had arranged one M. P. Veerendra Kumar at Serial Number 5 in the Complaint as one of the accused persons, however he is not before this Court as a Petitioner.

2(i). It is the Petitioners' case that the Respondent No.1 is aggrieved by the alleged defamatory statements, viz., "*lottery mafia like Santiago Martin will not be allowed to operate in Kerala*", attributed to Respondent No.2, the then Finance Minister of the Government of Kerala, alleged to have been published by the Petitioners in their publication 'Mathrubhumi'. That, charges of criminal conspiracy have been falsely alleged against the Petitioners and the co-accused under Section 120B of the IPC along with Sections 499, 500, 501 and 502 of the IPC.

(ii) In the first leg of his argument, Learned Senior Counsel for the Petitioners contended that, in the absence of any consent in writing from the State Government or the District Magistrate the impugned Order is liable to be quashed in view of the express bar of Section 196(2) of the Cr.P.C., which provides that, no Court shall take cognizance of the offence of any criminal conspiracy punishable under Section 120B of the IPC, other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings. The allegation against the accused persons under Section 120B of the IPC is that they have conspired to publish

articles in the daily newspaper and the online version, with the sole intention of causing damage to the name and reputation of the Respondent No.1. That, the Patna High Court in ***Raghav Bahi*** vs. ***The State of Bihar and Another*** with ***Rajdeep Sardesai*** vs. ***The State of Bihar and Another***[1] held that the offence of defamation is punishable with simple imprisonment for a term of two years, hence cognizance for its conspiracy under Section 120B of the IPC without the consent of the State Government or the District Magistrate is bad in law and as such, not sustainable. That, this Order was tested before the Hon'ble Supreme Court which upheld the Order of the Hon'ble Patna High Court. In light of this position of law the Learned Magistrate could not have taken cognizance of the offence under Section 120B of the IPC.

(iii) That, in ***Jawaharlal Darda and Others*** vs. ***Manoharrao Ganpatrao Kapsikar and Another***[2] the Respondent No.1 therein filed a Complaint in the Court of Chief Judicial Magistrate, Nanded, alleging that by publishing a news item in the newspaper "Daily Lokmath" on 04-02-1984, the Appellant J. L. Darda, the Chief Editor of the newspaper and other Editors connected with the publication had committed offences punishable under Sections 499, 500, 501 and 502 read with Section 34 of the IPC. The Supreme Court observed that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly and held that, the involvement of the Respondent was disclosed by the preliminary enquiry made by the Government and pertained to public good and was with respect to public conduct, of public servants, who were entrusted with public funds

[1] 2017 SCC OnLine Patna 1386
[2] (1998) 4 SCC 112

intended to be used for public good. That, similarly in the instant case, the accused persons had merely published what the Finance Minister had stated and as proceeds from lottery are also utilized for welfare measures the public ought to be made aware of the facts.

(iv) It was next contented that the news item was published by the Petitioners *bona fide*, believing the version of the Minister to be true and was a report in respect of the opinion of a public servant, regarding a public question and public policy and therefore privileged by Section 499 of the IPC. That, the Petitioners as a part of the Fourth Estate are under a solemn duty to inform the public on the views of the Government, on such a public question as in the present case. Reliance was placed on ***Grievances Redressal Officer, Economic Times Internet Ltd. and Others*** vs. ***V. V. Minerals Pvt. Ltd.***[3] where the Petitioners were accused of having committed the offence under Section 500 read with Section 109 of the IPC, for publishing an article in the Economic Times Magazine, regarding illegal beach sand mining of atomic minerals, along the southern coastline of Tamil Nadu. The Respondent therein controverted the allegations. The Madurai Bench of the Madras High Court held that the Petitioner Nos. 2 and 3 could not be said to have defamed the Complainant by publishing the Article in question and the impugned proceedings were quashed.

(v) Drawing strength from the ratio in ***Vinod Dua*** vs. ***Union of India and Others***[4] it was urged that the Supreme Court has succinctly remarked about the role of the Press and held that the purpose of the Press is to advance the public interest by publishing

[3] 2020 SCC OnLine Madras 978
[4] 2021 SCC OnLine SC 414

facts and opinions, without which, a democratic electorate cannot make responsible judgments. That, newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities and that such articles tend to become irritants or even threat to power. Relying on ***B. R. Enterprises*** vs. ***State of U.P. and Others***[5] it was contended that the business carried on by the Complainant is of a public nature and media has a duty to report his activities.

(vi) That, the Petitioner Nos.2, 4 and 5 being the Managing Editor, the Managing Director and the Joint Managing Editor of the Company, could not be proceeded against without the Complainant having made out a *prima facie* case that they had at least personal knowledge about the contents of the item, before it was published. Reliance on this aspect was also placed on ***A. K. Jain and Another*** vs. ***State of Sikkim and Another***[6]. That, the Petitioner No.1 (Respondent No.2 before the Learned Trial Court) is a Company registered under the Companies Act, 1930, being the "Mathrubhumi Printing and Publishing Company Limited and Others". Drawing strength from the ratio in ***Kalpnath Rai*** vs. ***State***[7] and ***Raymond Ltd. and Others*** vs. ***Rameshwar Das Dwarkadas P. Ltd.***[8] it was urged that there is no scope to prosecute a Company in view of the fact that the Company is not a natural person and it is incapable of possessing the requisite *mens rea* for the commission of the offence.

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[5] (1999) 9 SCC 700
[6] AIR 1992 Sikkim 20
[7] (1997) 8 SCC 732
[8] (2013) SCC OnLine Del 1328

(vii) That, in ***D. Devaraja*** vs. ***Owais Sabeer Hussain***[9] the Supreme Court referred to the ratio in ***Zandu Pharmaceutical Works Ltd.*** vs. ***Mohd. Sharaful Haque***[10] wherein it was observed that the power under Section 482 of the Code should be used sparingly and with circumspection to prevent abuse of process of Court but not to stifle legitimate prosecution. That, there can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed.

(viii) That, the Respondent No.2 having been the Finance Minister of Kerala and a public servant not removable from his Office save by or with the sanction of the Government, the Learned Court below could not have taken cognizance of the offences except with the previous sanction of the State Government.

Hence, the prayers for quashing of the impugned Order dated 02-03-2021 passed by the Learned Judicial Magistrate and the impugned Summons, dated 03-03-2021, to the Accused Persons/Petitioners herein. It is also prayed that in the event of the prayers above not being granted, the Court exempt the personal appearance of the Petitioners/Accused persons herein before the Learned Trial Court or allowed them to appear via video conferencing for proceedings.

3(i). Learned Senior Counsel for the Respondent No.1 herein while repelling the arguments put forth *supra*, contended that the sentence used by the Minister Respondent No.2 is *per se* defamatory, relieving the Respondent No.1 of the burden to prove

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[9] (2020) 7 SCC 695

[10] (2005) 1 SCC 122

defamation. Garnering strength from ***Mohd. Abdulla Khan*** vs. ***Prakash K.***[11] it was contended that while discussing threadbare the provision of Section 499 of the IPC, the Supreme Court observed that a person who has printed the matter within the meaning of the expression under Section 501 IPC, would be liable for penalty thereof. That, the acts of printing or selling or offering to sell need not only be physical acts but includes the legal right to sell, i.e., to transfer the Title in the goods, the newspaper and such activities if carried on by people who are employed directly or indirectly by the owner of the newspapers, renders the owner, the printer or the person selling or offering for sale, liable for the offences under Sections 501 and 502 of the IPC. That, in consideration of the above ratio, it cannot be said that the Editors herein are not liable.

(ii) It was further urged that in ***K. M. Mathew*** vs. ***K. A. Abraham and Others***[12] the Appellants were either the Managing Editor, the Chief Editor or the Resident Editor of their respective newspaper publications. Separate criminal complaints were filed against them under Section 500 IPC, alleging that in their newspaper publications, libellous matter was published and that they had knowledge of and were responsible for such publication and thus they had committed the offence of defamation besides other allied offences. The Learned Magistrate took cognizance of the offences and issued summons to the Appellants who unsuccessfully challenged their prosecution, under Section 482 Cr.P.C. on the ground that in view of Section 7 of the Press and Registration of Books Act, 1867, they were not liable to be prosecuted and only the Editor of the Publication whose name was

[11] (2018) 1 SCC 615
[12] (2002) 6 SCC 670

printed on the newspaper was liable. The Supreme Court dismissed the Appeal observing that, there was no statutory immunity for the Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which those persons exercise control. Similarly, the Petitioners herein have no statutory immunity for the defamatory article in their newspaper.

(iii) That, the Learned Senior Counsel for the Petitioners has incorrectly invoked the provision of Section 196 Cr.P.C. which is not applicable to offences pertaining to simple imprisonment. That, public good is to be determined on the facts of each case and that good faith and public good are questions of fact and emphasis has been laid on making enquiry in good faith and due care and attention for making the imputation as held in ***Subramanian Swamy*** vs. ***Union of India, Ministry of Law and Justice and Others***[13]. That, Section 196 cannot be stretched to bring within its ambit a person who is not a public servant as the Petitioners herein.

(iv) That, in ***Bakhshish Singh Brar*** vs. ***Gurmej Kaur and Another***[14] the Supreme Court has elucidated the rationale behind Sections 196 and 197 of the Cr.P.C., which is, to protect the public servant in the discharge of their duties and the Petitioners herein cannot be said to be public servants discharging their official duties.

(v) That, in ***Iridium India Telecom Limited*** vs. ***Motorola Incorporated and Others***[15] the Supreme Court observed that virtually in all jurisdictions across the world covered by the rule of law,

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[13] (2016) 7 SCC 221
[14] (1987) 4 SCC 663
[15] (2011) 1 SCC 74

companies and corporate houses can no longer claim immunity from criminal proceedings, on ground that, they are incapable of possessing the necessary *mens rea* for the commission of criminal offences. Reliance on this facet was also placed on ***Sunil Bharti Mittal*** vs. ***Central Bureau of Investigation***[16]. That, in light of the above settled position of law, the Petitioner No.1 cannot claim immunity on grounds of incapability of possessing *mens rea*. That, the instant matter is at the preliminary stage and as evidence is to be laid in all such matters, this Court would restrain itself from exercising powers under Section 482 of the Cr.P.C. and dismiss the Petition.

4. Learned Counsel for the Respondent No.2 submitted that he had no separate arguments to put forth and that he endorses the arguments put forth by Learned Senior Counsel for the Petitioners.

5. The submissions put forth at length have been duly considered, all documents perused, as also the citations made at the Bar.

6(i). In the first instance, while examining the contours within which the High Court can exercise its powers under Section 482 of the Cr.P.C. to quash criminal proceedings, in ***Smt. Nagawwa*** v. ***Veeranna Shivalingappa Konjalgi and Others***[17] the Supreme Court observed that;

> **"**4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited — limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint— (*i*) on the materials placed by the complainant before the court:

[16] (2015) 4 SCC 609
[17] (1976) 3 SCC 736

(*ii*) for the limited purpose of finding out whether a prima facie csse for issue of process has been made out; and (*iii*) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

5. ……. It is true that in coming to a decision as to whether a process should be issued the Magistrate 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 a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this 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 in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) 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;

(2) 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;

(3) 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

(4) 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.

> The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.**"**

(ii) In ***Kurukshetra University and Another*** vs. ***State of Haryana and Another***[18] the Supreme Court held that;

> **"**2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. **It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."** [emphasis supplied]

(iii) In ***Raj Kapoor and Others*** vs. ***State and Others***[19] the Supreme Court observed that;

> **"10.** ..... Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. ……."

The above decisions clearly lay down the parameters under which the High Court ought to exercise its powers under Section 482 of the Cr.P.C.

7(i). The Petitioners' seek exemption under the exception clause of Section 499 of the IPC by submitting that the Petitioners acted *bona fide* and for the public good. In ***Harbhajan Singh*** vs. ***State of Punjab and Another***[20] the Supreme Court while discussing the Ninth Exception to Section 499 IPC observed as follows;

> **"**(21) Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. **It would be a question to be considered on the facts and circumstances of each**

[18] (1977) 4 SCC 451
[19] (1980) 1 SCC 43
[20] AIR 1966 SC 97

> **case—what is the nature of the imputation made; under what circumstances did it come to be made; what is the status of the person who makes the imputation, was there any malice in his mind when be made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith by an accused person who claims the benefit of the Ninth Exception.** ……..**"** [emphasis supplied]

(ii) In ***Chaman Lal*** vs. ***The State of Punjab***[21] the Court held that;

> **"10.** ……. In order to establish good faith and bona fide it has to be seen first the circumstances under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith.**"**

(iii) In ***Sewakram Sobhani*** vs. ***R. K. Karanjiya, Chief Editor, Weekly Blitz and Others***[22] the Supreme Court observed as follows;

> **"18.** Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the Article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verifications? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalise the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off

[21] AIR 1970 SC 1372
[22] AIR 1981 SC 1514

> as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on.**"**

(iv) On the bedrock of the principles enunciated in the above ratiocination, the *bona fides* of the Petitioners in publishing the alleged defamatory statement, said to be in good faith and for serving the public good, are questions of fact which are required to be tested by evidence and decided after the regular trial is held, and cannot be truncated at this stage.

8. So far as the question of foisting *mens rea* on the Petitioner No.1 is concerned, in ***Sunil Bharti Mittal*** (*supra*) it has clearly been held that even a body corporate, an artificial person acting through its officers, if it commits an offence involving *mens rea*, it would normally be the intent and action of that individual who would act on behalf of the Company and therefore, liable. Earlier in time, the Supreme Court had held a similar view in ***Iridium India Telecom Limited*** (*supra*).

9. While dealing with the argument concerning Section 196 Cr.P.C. put forth by Learned Senior Counsel for the Petitioners in ***Madan Lal*** vs. ***The State of Punjab***[23] the Supreme Court *inter alia* observed that **"***The conspiracy to commit offence is by itself distinct from the offence to do which the conspiracy is entered into. Such an offence, if actually committed, would be subject-matter of*

[23] AIR 1967 SC 1590

*a separate charge. If that offence does not require sanction though the offence of conspiracy does and the sanction is not obtained it would appear that the Court can proceed with the trial as to the substantive offence as if there was no charge of conspiracy.***"** The Supreme Court further observed that **"***Though the charge under Section 120-B required sanction no such sanction was necessary in respect of the charge under S. 409. At the most, therefore, it can be argued that the Magistrate took illegal cognizance of the charge under Section 120-B as S.196-A(2) prohibits entertainment of certain kinds of complaints for conspiracy punishable under S.120-B without the required sanction. The absence of sanction does not prevent the Court from proceeding with the trial if the complaint also charges a co-conspirator of the principal offence committed in pursuance of the conspiracy or for abetment by him of any such offences committed by one of the co-conspirators under S.109 of the Indian Penal Code. …….. In our view, the fact that sanction was not in respect of the complaint under S.120-B did not vitiate the trial on the substantive charge under S.409.***"**

10. The pronouncements above have clearly propounded the position of law inasmuch as even if the Charge under Section 120B IPC cannot be entertained by the Learned Magistrate for want of sanction, the Magistrate can certainly proceed with the trial in respect of the allegation of commission of the substantive offences, i.e., Sections 499, 500, 501, 502 of the IPC. The facts as put forth in ***Raghav Bahi*** (*supra*) relied on by Learned Senior Counsel for the Petitioners is distinguishable from the matter at hand as it is clear that in the said case there was no direct allegation of defamation

against the Petitioners hence cognizance of the offence under Section 120B of the IPC was barred under the specific provisions of Sub-Section (2) of Section 196 IPC.

11. Besides, it goes without saying that Section 196 deals with prosecution for offences against the State and for criminal conspiracy to commit such offence, whether the Respondent No.1 can be covered by the ambit of this provision is another aspect as it has been held in ***Bakhshish Singh Brar*** (*supra*) that the rationale behind Section 196 and Section 197 of the Cr.P.C. is to protect the public servant in the discharge of their duties. On this count so far as Respondent No.2 is concerned, the discussions above in ***Bakhshish Singh Brar*** (*supra*) clarify the position where Prosecution sans sanction has taken place.

12. The argument that all the Editors cannot be prosecuted for publication of the alleged offending article holds no water at this stage in light of the observations of the Supreme Court in ***Mohd. Abdulla Khan*** (supra) and ***K. M. Mathew*** (*supra*) which have already been discussed and for brevity is not being reiterated. That apart, the facts as stated in ***Jawaharlal Darda*** (*supra*) from which the Petitioners drew succour are distinguishable from the facts in the instant case as a preliminary the enquiry in the said case had been conducted by the Government which disclosed the involvement of the Respondent therein. No preliminary enquiry has been undertaken by any authority in the case at hand.

13. In conclusion, in view of the preceding discussions, at this juncture, no grounds whatsoever arise for interference with the impugned Order dated 02-03-2021 or the impugned Order dated 03-03-2021 vide which Summons were issued to the Petitioners.

14. So far as the prayer for exemption of personal appearance of the Petitioners before the Learned Trial Court or to appear via Video Conferencing is concerned, I am not inclined to interfere in the jurisdiction of the Learned Trial Court on this aspect, as the Learned Trial Court is well within its jurisdiction to exercise its discretion as per the circumstances that arise at the relevant point in time.

15. The instant Crl.M.C. stands dismissed and disposed of accordingly. Pending application, if any, also stands disposed of.

(Meenakshi Madan Rai)
Judge
08-09-2022

Approved for reporting : **Yes**

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