

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on:16.09.2021
Pronounced on:13.10.2021

CRMC No.58/2019

ADITYA RAJ KAUL & ORS. ...PETITIONER(S)

Through: - Mr. R. A. Jan., Sr. Advocate, with
M/S: Rajat Pradhan &, Aswad Attar Advocates.

Vs.

NAEEM AKHTER ...RESPONDENT(S)

Through: - Mr. Jahangir Iqbal Ganai, Sr. Adv. with
Ms. Humaira Shafi, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

“Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were underserved and unjust; yet they must bear with them and submit to be misunderstood for a time.”

(Per Cock Burn, CJ, in Seymour V. Batten worth (1862) 3 F&F 372)

“Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office.”

(Per Bramewll, B in Kelly V. Sherlock, (1866) LRIQB, 689)

1) Petitioners have challenged the complaint filed by the respondent against them before the Court of Chief Judicial Magistrate, Srinagar, alleging commission of offences under Section 499 and 500 RPC, as also the order dated 27.12.2018 passed by the said Magistrate whereby cognizance of the offences has been taken and process has been issued against the petitioners. They have also challenged order dated 23rd February, 2019 passed by learned Chief Judicial Magistrate, Srinagar, whereby bailable warrants for securing attendance of the petitioners have been issued.

2) Petitioner No.3 happens to be the Editor-in-Chief of the news channels Republic TV and Republic Bharat/R. Bharat and Managing Director of ARG Outlier Media Asianet News Pvt. Ltd. whereas petitioners No.1, 2 and 4 are associated with the aforesaid news channels.

3) It emerges from the record of the trial court that the respondent (complainant herein), a member of the Jammu and Kashmir People's Democratic Party, who was also a member of the Jammu and Kashmir Legislative Assembly besides being leader of the Legislative Party, JKPDPA at the relevant time, filed a complaint against the petitioners (accused hereinafter) before the Court of learned Chief

Judicial Magistrate, Srinagar. In the complaint it was alleged that on July 4th, 2018, the news channel of petitioner No.3 broadcast a defamatory and malicious news segment against the complainant following a letter dated June 21st, 2018, written by one Mr. Khalid Jahangir, member of Bhartiya Janta Party and former VC of J&K Projects Construction Corporation (JKPCC), to the Governor , wherein Mr. Khalid Jahangir had leveled allegations of corruption and favouritism against a close aide of former Chief Minister of the State. According to the complainant, even though the letter did not make a mention of name of any person, yet petitioner No.3, while reporting about the said letter, deliberately and intentionally mentioned the name of complainant in connection with the allegations leveled in the aforementioned letter of Mr. Khalid Jahangir.

4) It is further alleged in the complaint that the anchors of the programme i.e., petitioners No.1 and 4, repeatedly and intentionally kept on mentioning complainant's name in connection with the allegations made in the letter that was addressed to the Governor. The aforesaid accused persons talked about massive corruption happening in JKPCC and concluded that such alleged corruption was happening at the behest of the complainant. It is averred

in the complaint that the petitioner No.2 heads and reports on the affairs related to Srinagar for the channel owned by petitioner No.3. The complainant also annexed the video of the news segment in the form of a compact disk(CD) along with his complaint.

5) According to the complainant, the accused made and published direct imputations against him and also to the political party to which he belongs with the intention to harm his reputation in the eyes of public at large. It was alleged in the complaint that though in the news segment, Mr. Khalid Jahangir, who had written letter against the complainant, did not mention the name of the complainant in the programme yet the anchors of the programme, kept on asking him about the identity of the Minister referred to in the letter and thereafter they themselves concluded that the Minister in question is the complainant. It is alleged that the news segment in question is defamatory and has been made with a *mala fide* intention to cause irreparable damage to the reputation of the complainant.

6) On the basis of aforesaid allegations and after recording statements of the complainant and his witness on oath in support of the allegations made in the

complaint, the learned Chief Judicial Magistrate, Srinagar, took cognizance of the offences against the accused and after observing that offence under Section 500(b) RPC is made out against the accused, the learned Magistrate proceeded to issue process against them. It appears that when accused did not cause their appearance before the learned Magistrate, order dated 23.02.2019 came to be passed whereby bailable warrants were issued against the accused to secure their presence before the Court.

7) The petitioners have challenged the complaint as well as the proceedings emanating there from on the grounds that the allegations of corruption against the complainant were not made by the petitioners but these were made by Mr. Khalid Jahangir in his letter addressed to the Governor and the petitioners on the basis of the said letter only broadcast a news segment relating to these allegations. It is contended that the letter in question was already in public domain at the relevant time, therefore, offence complained of is not made out against the petitioners. It is further contended that not only the petitioners but several other news agencies carried the news item on the basis of the letter dated 21st June, 2018. The petitioners go on to contend that the broadcast was concerning the conduct of a public servant in discharge of

his public duties and the same was aired in good faith for public good. It is also contended that the broadcast reported fairly the contents of the letter which contained serious allegations of corruption in relation to the working of the JKPC and the manner in which contracts/works were awarded to third parties. Thus, according to the petitioners, the offence under Section 500 RPC is not made out against them and, as such, the complainant as well as the proceedings emanating therefrom deserve to be quashed.

8) I have heard learned counsel for the parties and perused the material on record including the record of the trial Magistrate.

9) Before analyzing the facts emanating from the record of the trial court, it would be apt to notice the legal position as regards the scope of powers of the High under Section 561-A of J&K Cr. P. C which is in *pari materia* with Section 482 of the Code of 1973, to interfere with the proceedings/complaint filed before a Magistrate.

10) The power under Section 561-A of J&K Cr. P. C can be exercised by the High Court to prevent the abuse of process of the Court and otherwise to secure the ends of justice. The authority of the Court exists for advancement

of justice and if any attempt is made to abuse the said authority, the Court has the power to prevent that abuse. These inherent powers of the High Court are wide in their scope. Wider the power, higher the degree of responsibility upon the authority vested with such power to exercise it with circumspection. These powers are generally exercised to secure the ends of justice.

11) The Supreme Court in the celebrated case of **State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335**, has dealt with the scope of power of High Court under Section 482 of Cr. P. C, 1973 in an elaborate manner. Para 102 and 103 of the said judgment are relevant to the context and the same are reproduced as under:

“102. in the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- 1) wherein the allegations made in the first information report or the complaint, even if they*

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

- 2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order or a Magistrate within the purview of Section 155(2) of the Code.*
- 3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code*
- 5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.*
- 6) *Where there is an express legal bar engrafted in any of the provision of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, providing efficacious redress of the grievance of the aggrieved party.*
- 7) *Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is 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.*

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should

be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

12) In Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others, (1998) 5 SCC 749, the Supreme Court relying upon the ratio laid down by it in Bhajan Lal’s case (supra), observed as under:

“22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers.”

13) From the foregoing analysis of law on the subject, it is clear that in a case where allegations made in the complaint and evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused, the High Court can exercise its powers under Section 482 of Cr. P. C to quash the proceedings against an accused. The inherent powers cannot be, however, exercised to stifle or impinge upon the proceedings.

14) It is the contention of the petitioners that the complaint that has been made by the complainant before the trial Magistrate against them together with the material in support thereof do not disclose commission of any offence by the petitioners. But before determining the merits of this contention, it is necessary to understand as to what constitutes an offence of “defamation”.

15) Section 499 RPC (which is applicable to the instant case) defines the offence of defamation whereas Section 500 of the said Code provides for its punishment. Section 499 RPC reads as under:

“499. Defamation – Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will

harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1. – It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the 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.

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

Second Exception – Public conduct of public servants – It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

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

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

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

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

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 submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

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.

Eight Exception – Accusation preferred in good faith to authorized 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.

Ninth Exception – Imputation made in good faith by person for protection of his or other 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 interest of the person making it, or of any other person, or for the public good.

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 of 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.”

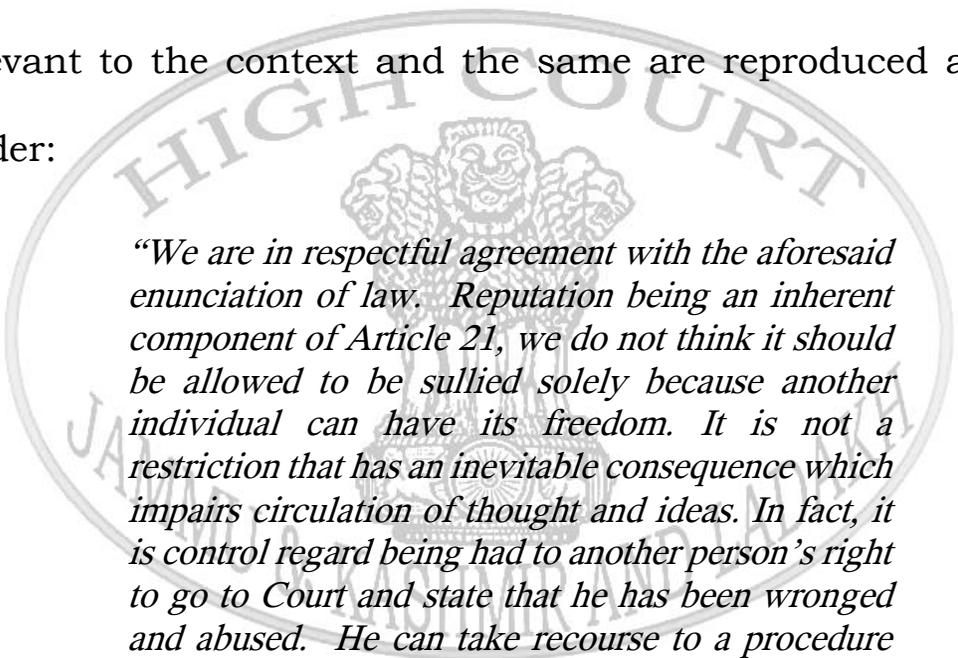
16) A bare reading of the afore-quoted provision, makes it clear that an offence of defamation is made out whenever a person by words spoken etc. makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person. The offence, however, would not get attracted if a case falls under any of the ten exceptions quoted hereinabove.

17) The Supreme Court in the case of **Subramanian Swamy v. Union of India, (2016) 7 SCC 221**, while considering the constitutional validity of Section 499 IPC, had an occasion to discuss the anatomy of aforesaid provision and its field of operation. Para 168 of the judgment is relevant to the context and the same is reproduced as under:

“168. For the aforesaid purpose, it is imperative to analyse in detail what constitutes the offence of “defamation” as provided under Section 499 of IPC. To constitute the offence, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and mens rea is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasizes on the intention or harm. Section 44 of IPC defines “injury”. It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. Thus, the word “injury” encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person’s body and mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant.”

18) From a perusal of the afore-quoted observations of the Supreme Court, it is clear that for constituting an offence of defamation, it must be shown that the accused had intention or had reason to believe that such imputation would harm reputation of the complainant. So, *mens rea* is a condition precedent to constitute the offence. There has to be an intention or knowledge on the part of the accused to cause harm to the reputation of the complainant. Without intention or knowledge, the offence would not be constituted.

19) In **Subramanian Swamy's** case (supra) the Supreme Court while upholding constitutional validity of Section 499 IPC has dwelled upon balancing of fundamental rights, i.e., the right of privacy of an individual and the right of freedom of speech and expression guaranteed to an individual under Article 19(1)(a) of the Constitution. The Court observed that reputation being an inherent component of Article 21, the same should not be allowed to be sullied solely because another individual can have its freedom. The following observations of the Court are relevant to the context and the same are reproduced as under:



“We are in respectful agreement with the aforesaid enunciation of law. Reputation being an inherent component of Article 21, we do not think it should be allowed to be sullied solely because another individual can have its freedom. It is not a restriction that has an inevitable consequence which impairs circulation of thought and ideas. In fact, it is control regard being had to another person's right to go to Court and state that he has been wronged and abused. He can take recourse to a procedure recognized and accepted in law to retrieve and redeem his reputation. Therefore, the balance between the two rights needs to be struck. “Reputation” of one cannot be allowed to be crucified at the altar of the other's right of free speech. The legislature in its wisdom has not thought it appropriate to abolish criminality of defamation in the obtaining social climate.”

20) As is clear from the facts narrated in the complaint, we are faced with a situation where we have to balance the right of a public figure to his reputation and on the other

hand the freedom of press which is encompassed in fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, which is subject to certain restrictions including the one relating to defamation.

21) The press, which is the fourth pillar of democracy, has a bounden duty to bring to the notice of the viewers and readers the day-to-day events, particularly those relating to public figures and public servants concerning their actions/omissions affecting the public at large. The Supreme Court has time and again emphasized the importance of freedom of press in its various judgments. A reference to a few of them is necessary in the context of this case.

22) In **Express Newspaper (P) Ltd. V. Union of India, AIR 1958 SC 578**, the Supreme Court laid down that freedom of speech and expression includes freedom of propagation of ideas by which freedom is ensured and it emphasized on liberty of the press as it is an essential part of the right to freedom of speech and expression and further stated that liberty of the press consists in allowing no previous restraint upon publication. The Court also observed that the freedom of press rests on the

assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.

23) In Sakal Papers (P) Ltd. V. Union of India, AIR 1962 SC 305, it has been held that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete freedom and by resorting to any available means of publication, subject again to such restrictions as could be legitimately imposed under clause (2) of Article 19 of the Constitution.

24) In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641, the Supreme Court observed that freedom of press is the heart and soul of political intercourse and it has assumed the role of public educator making formal and non-formal education possible in a large scale particularly in the developing world. The Court also observed that the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.

25) Again, in Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603, the Supreme Court observed

that freedom of expression which includes freedom of the press takes within its compass the right to receive information and ideas of all kinds from different sources.

26) Recently, the Supreme Court in the case of **Arnab Ranjan Goswami v. Union of India, AIR 2020 2386**, while emphasizing the importance of free press, observed as under:

“Article 32 of the Constitution constitutes a recognition of the constitutional duty entrusted to this Court to protect the fundamental rights of citizens. The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India’s freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it succinctly in his recent book titled “21 Lessons for the 21st Century”: “Questions you cannot answer are usually far better for you than answers you cannot question.”

27) The extent to which the freedom of speech and expression which includes the freedom of press guaranteed by Article 19(1)(a) of the Constitution can be subjected to reasonable restrictions on the grounds of decency and defamation as mentioned in Clause (2) of the said Article, has been considered by the Supreme Court in the case of **R. Rajagopal alias R.R. Gopal and another v. State of T.N. and others, (1994) 6 SCC 632**. The Court, after discussing the law on the subject, summarized six broad principles which are quoted in para 26 of the judgment. The same are reproduced as under:

“(1)The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2)The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a

female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

28) From the analysis of the aforesaid judgments of the Supreme Court, it becomes clear that freedom of press to obtain information from all kinds of sources and to propagate the same amongst the readers/viewers is a fundamental right which, of course, is subject to the reasonable restrictions, *inter-alia*, on the ground of defamation as contemplated in Clause (2) of Article 19 of the Constitution and explained in terms of the broad principles enunciated by the Supreme Court in **R. Rajagopal's** case (supra).

29) It is in the light of aforesaid legal position that we need to analyze the facts of the instant case as emerge from the complaint and the material annexed thereto including the compact disk(CD) containing recording of the news programme which is subject matter of the complaint, so as to arrive at a conclusion as to whether or not any offence is made out against the petitioners.

30) In the instant case, it is not in dispute that respondent was holding the portfolio of Works Minister in the coalition Government of People's Democratic Party and Bhartiya Janta Party during the period when Shri Khalid Jahangir was holding the position of VC, JKPCC. It is also not in dispute that said Shri Khalid Jahangir addressed a

communication dated 21st June, 2018 to the then Governor of erstwhile State of Jammu and Kashmir, in which allegations of corruption and favouritism as regards award of tenders and functioning of the Corporation were made. The letter, however, does not name the Works Minister, who was at the helm of affairs at the relevant time. The dates to which reference is made in the letter clearly suggests that the Works Minister, referred to in the letter, is none other than the complainant. Even the complainant does not dispute this fact.

31) It has been contended by learned Senior counsel appearing for the respondent that the accused/anchors repeatedly asked the author of the letter, Shri Khalid Jahangir, to name the Works Minister concerned but he did not do so and instead the accused/anchors named the Works Minister concerned. The accused/anchors have only stated the obvious. Anyone who possesses even elementary knowledge of who is who of Jammu and Kashmir, can name the Minister who was holding portfolio of works during the period referred to in the letter of Shri Khalid Jahangir. So, merely because accused/anchors mentioned the name of the respondent in the programme may not be enough to impute *mens rea* to the petitioners

that they wanted to harm the reputation of the respondent.

32) Having carefully watched the news programme contained in the compact disk attached to the complaint, I do not find any imputation or any allegation having emanated from the presenters of the news programme. The anchors and presenters only repeatedly referred to the letter of Shri Khalid Jahangir and read out contents thereof. In fact, upon watching the programme on the compact disk, it appears that the news anchors were at pains to emphasize the fact that their source of information is the letter in question and they go on repeatedly telling the viewers about the charges/allegations with each caption carrying question mark(?) at its end, thereby conveying to the viewers that the allegations/charges contained in the letter are yet to be established. By doing so, the channel has, while telecasting the programme, taken due care that is expected of a responsible news channel. In this view of the matter, it cannot be stated that the accused intended to harm the reputation of the complainant.

33) The next question that arises for consideration is as to whether reporting of allegations levelled by a senior

office bearer of a Public Sector Corporation against a Minister touching the public duties of the said Minister would amount to offence of defamation. The answer to this question has to be in negative. This is so because categorizing as defamation, the publication of allegations/charges concerning public duties of public figure recorded in a letter which is in public domain, would be an unreasonable restriction on the freedom of press guaranteed under Article 19(1)(a) of the Constitution.

34) As already noted, in **R. Rajagopal's** case (supra), the Supreme Court has clearly emphasized that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. The Court has further observed that publication of the matters relating to conduct relevant to the discharge of official functions of a public figure is not defamation. Therefore, on the touchstone of the broad principles enunciated by the Supreme Court in the aforementioned case, the reporting of contents of letter written by Shri Khalid Jahangir touching the official functioning of the department that was under the Ministry headed by the complainant, would not amount to offence of defamation.

35) There is yet another aspect of the matter which deserve to be noticed. The complainant/respondent in his complaint has admitted that the news item based upon letter of Shri Khalid Jahangir was published by certain other newspapers. One of the newspapers, Daily Early Times, has published the news item on the basis of the letter in question on the same day when the programme was telecast by the channel of petitioners. Certain other newspaper like Tribune etc. have also published the news item based upon the aforesaid letter, which is clearly mentioned by the respondent in his complaint. In fact, the complainant has been fair enough not only to state these facts in his complaint but he has also annexed these news clippings along with the complaint. So, it is not a case where the allegations against the respondent have emanated from petitioners. It is a case where petitioners in their capacity of anchors and reporters of news channel have disseminated whatever was already in public domain in the form of letter of Shri Khalid Jahangir

36) In somewhat similar circumstances, the Supreme Court in the case of **Jawaharlal Darda and others v. Manoharrao Ganpatrao Kapsikar and another, AIR 1998 SC 2117**, quashed the prosecution against Chief Editor, Editor and Executive Editor of a newspaper who

had published a news item regarding happenings that had taken place during a debate in the Assembly. Paras 4 and 5 of the said judgment are relevant to the context and the same are reproduced as under:

“4. As we have stated earlier, the news item was published on 4.2.84. The complaint in that behalf was filed by the complainant on 2.2.87. The news item merely disclosed what happened during the debate which took place in the Assembly on 13.12.83. It stated that when a Question regarding misappropriation of Government funds meant for Majalgaon and Jaikwadi was put to the Minister concerned, the had replied that a preliminary enquiry was made by the Government and it disclosed that some misappropriation had taken place. When questioned further about the names of persons involved, he had stated the names of five person, including that of the complainant. The said proceedings came to be published by the accused in its Daily on 4.2.84. Because the name of the complainant was mentioned as one of the persons involved and likely to be suspected he filed a complaint before the learned CJM alleging that as a result of publication of the said report he had been defamed.

5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus, the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court.”

37) From the foregoing ratio laid down by the Supreme Court, it is clear that when a journalist publishes accurate and true report in respect of a public figure relating to his public functions, which is already in public domain, it cannot be stated that there was any intention to harm the reputation of such person.

38) Learned senior counsel appearing for the respondent has vehemently contended that the expressions “good faith” and “public good”, appearing in exceptions to Section 499 RPC, are questions of facts and these can be determined only during trial of the case, the burden of proving an exception being always upon the accused. To buttress his point, he has relied upon the judgment of this Court in the case of **Rahul Kanwal v. P. K. Tikoo (Brig.) & anr., 2013 (1) JKJ 380 [380]** and judgment of the Supreme Court in **Subramanian Swamy v. Union of India, (supra)**.

39) There can be no quarrel with the legal proposition that in order to bring a case within the exceptions, the burden always lies upon the accused but then in the instant case, even the ingredients of main Section 499 RPC are not made out from the contents of the complaint and the material attached thereto because the imputations

which have been published by the channel of the petitioners have not originated from them but the originator of these imputations is someone else i.e., Shri Khalid Jahangir who had written a letter containing allegations against the respondent to the Governor which found its way into public domain. Having carefully watched the whole of news programme as contained in the CD annexed to the complaint, I could not find even a single allegation or imputation originating from the anchors of the program. The accused/anchors only go on repeating the contents of the letter referred to above. They only repeated what was contained in the letter. Thus, the argument raised by learned Senior counsel appearing for the respondent does not hold any merit.

40) Having held that the complaint and the material on record do not constitute an offence of defamation against the petitioners, let us now proceed to analyze as to whether the learned Magistrate has applied his mind to the material on record before passing the impugned order of issuing process against the petitioners. Before undertaking such an exercise, it would be apt to notice the legal position as regards the duty of a Magistrate at the time of taking cognizance of offences and issuing process against the accused.

41) Section 204 of the J&K Cr. P. C provides that before issuing a process against the accused, a Magistrate taking cognizance of an offence has to form an opinion that there is sufficient ground for proceeding in the matter. The said opinion has to be formed on the basis of the material on record. The provision contemplates application of mind on the part of the Magistrate before proceeding against the accused.

42) The Supreme Court in the case of **Pepsi Foods Ltd. & anr.** (supra), while discussing the matter relating to summoning of an accused in a criminal case, has, in para 28, of the judgment observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

43) Again, in **Mehmood ul Rehman v. Khazir Mohammad Tunda and others, (2015) 12 SCC 420**, the Supreme Court, while explaining the duty of a Magistrate at the time of issuing process against the accused, has issued certain guidelines to the Magistrates. Paras 20, 21 and 22 of the judgment are relevant to the context and the same are reproduced as under:

“20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Limited (supra), to set in motion the process of criminal law against a person is a serious matter.

21 Under Section 190(1)(b) of Cr.P.C., the Magistrate has the advantage of a police report and under Section 190(1)(c) of Cr.P.C., he has the information or knowledge of commission of an offence. But under Section 190(1)(a) of Cr.P.C., he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) of Cr.P.C. The complaint is simply to be rejected.

22. The steps taken by the Magistrate under Section 190(1)(a) Cr.P. C followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and

the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 Cr.P.C, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C, the High Court under Section 482 Cr.P.C is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

44) In **Subramanian Swamy’s** case (supra), the Supreme Court once again emphasized the fact that a heavy responsibility and duty lies on the Magistrate to find

whether the accused concerned is legally responsible for the offences charged for. The Court, particularly, made these observations with reference to complaints pertaining to the offence of defamation. Paras 207 and 208 of the said judgment are relevant to the context and the same are reproduced as under:

“207. Another aspect required to be addressed pertains to issue of summons. Section 199 CrPC envisages filing of a complaint in court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) CrPC. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in Rajindra Nath Mahato v. T. Ganguly Rajindra Nath Mahato v. T. Ganguly, 1972 1 SCC 450, is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In Punjab National Bank v. Surendra Prasad Sinha Punjab National Bank v. Surendra Prasad Sinha, 1993 Supp 1 SCC 499 it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistracy to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. In Pepsi Foods Ltd. v. Special Judicial

Magistrate Pepsi Foods Ltd. v. Special Judicial Magistrate, 1998 5 SCC 749, a two-Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

208. We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in Section 202 CrPC which stipulates about the residence of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of Section 499 CrPC are satisfied. Application of mind in the case of complaint is imperative.”

45) From the analysis of aforesaid ratio laid down by the Supreme Court in its various judgments, it is clear that issuing a process in a criminal complaint against an accused is a serious business and it cannot be done in a casual and mechanical manner, particularly in cases relating to defamation.

46) In the instant case, the learned Magistrate, while issuing process against the petitioners, it seems, has not applied his mind to the whole material before him. The complainant has himself admitted in the complaint that Shri Khalid Jahangir had written a letter to the Governor which contained allegations of corruption etc. against him. He had also placed on record a copy of the said letter along with his complaint. The news programme, which is contained in a compact disk attached to the complaint,

clearly shows that the programme was based on the letter of Shri Khalid Jahangir and no allegation or imputation emanated from the news anchors or the channel. The complainant has also placed on record along with the complaint the news paper cuttings of different newspapers in which contents of the aforesaid letter were extensively referred to and quoted. Therefore, it was obvious that the letter in question was already in public domain. Had the learned Magistrate applied his judicial mind to the material on record, he would have come to the conclusion that the alleged offence is not made out against the petitioners/accused. It seems that the learned Magistrate has approached the whole matter lightly, and in a mechanical manner while issuing the process against the petitioners.

47) As already noted, in the case of complaints alleging commission of offence of defamation, the responsibility of a Magistrate to examine the material on record is of a higher degree. However, in the instant case, the approach of the learned Magistrate while passing the impugned order exhibits lack of application of mind to the material on record. The impugned order of issuing process against the accused is, therefore, not sustainable in law.

48) In view of what has been discussed hereinbefore, it is clear that no offence is disclosed against the petitioners from the contents of the complaint and the material annexed thereto. The case, therefore, squarely falls within the four corners of illustration No. (1) of **Bhajan Lal's** case (supra). Thus, the complaint and the proceedings emanating there from deserve to be quashed.

49) Accordingly, the petition is allowed and the complaint titled "**Naeem Akhter v. Arnab Goswami & others**" pending before the Court of Chief Judicial Magistrate, Srinagar, and the proceedings emanating therefrom are quashed.

50) Trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Srinagar
13.10.2021
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No