

ITEM NO.60

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).12360/2024

(Arising out of impugned final judgment and order dated 29-08-2024 in CRLMC No. 1394/2020 passed by the High Court Of Delhi At New Delhi)

SHASHI THAR00R

Petitioner(s)

VERSUS

STATE OF N.C.T OF DELHI &amp; ANR.

Respondent(s)

IA No. 204641/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-09-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s)

Mr. Muhammad Ali Khan, Adv.  
Mr. Abishek Jebaraj, AOR  
Mr. Omar Hoda, Adv.  
Ms. Eesha Bakshi, Adv.  
Ms. A Reyna Shruti, Adv.  
Mr. Uday Bhatia, Adv.  
Mr. Arjun Sharma, Adv.  
Mr. Kamran Khan, Adv.  
Ms. Gurbani Bhatia, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Heard Mr. Muhammad Ali Khan, learned counsel appearing for the petitioner.

2. The counsel would point out that the complaint against the petitioner was filed in connection with his utterances on 28.10.2018, where the petitioner had made a reference to the statement published six years earlier on 01.03.2012 in the

Caravan magazine. None had any grievance with the article and the uttered sentence, as published in the Carvan Magazine on 01.03.2012. But when the petitioner observed that this was an extraordinarily striking metaphor, the same was perceived to be a defamatory utterance by the respondent No.2. He then filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 against the petitioner under Section 499/500 of the IPC. According to the respondent, the following is the defamatory statement made by the petitioner on 28.10.2018:-

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

*Petitioner further stated :*

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

3. In the complaint itself, the respondent No.2 had acknowledged that he was aware of the alleged offending statement published in the year 2012. But those then were of no consequence. But because of the passage of time and the growing popularity of the Prime Minister and the BJP Party, the petitioner according to the complainant, had deliberately dug out that buried statement and made it relevant for current

times.

4. The petitioner who is a Member of Parliament was summoned for commission of offence under Section 500 of the IPC and he preferred a petition in the Delhi High Court assailing the Magistrate's order dated 27.04.2019. The defamation proceeding was initially stayed by the High Court on 16.10.2020 but in the impugned judgment dated 29.08.2024, the High Court opined that no grounds are made out for quashing the proceeding at this stage. The learned Judge observed that the defamatory imputation should be weighed by the Trial Court and accordingly direction was issued to the petitioner to appear before the Trial Court on 10.09.2024.

5. The counsel for the petitioner would firstly argue that the respondent No.2 cannot be said to be an aggrieved person under Section 199 of the CrPC. Likewise, the Members of the political party cannot also be an aggrieved party viz-a-viz the comments attributed to the petitioner. According to the counsel the concerned statement would fall within the Exception Clause 8 and 9 of Section 499 of the IPC. The statement should be considered to be made in good faith and should not count as defamatory.

6. In support of the above contention, the counsel cites *Subramaniam Swamy vs. Union of India* reported in (2016) 7 SCC 221, where in the context of Section 199 CrPC in a case of prosecution for defamation, the Court had made the following observation:-

*"197. Now, we shall advert to Section 199 CrPC, which provides for*

prosecution for defamation. Sub-section (1) of the said section stipulates that no court shall take cognizance of an offence punishable under Chapter XXI of the Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence; provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf. Sub-section (2) states that when any offence is alleged against a person who is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union Territory or a Minister of the Union or of a State or of a Union Territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor. Sub-section (3) states that every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him. Sub-section (4) mandates that no complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government or any other public servant employed in connection with the affairs of the State and of the Central Government, in any other case. Sub-section (5) bars the Court of Session from taking cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed. Sub-section (6) states that nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.

198. The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In *John Thomas v. K. Jagadeesan* [*John Thomas v. K. Jagadeesan*, (2001) 6 SCC 30 : 2001 SCC (Cri) 974] while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In *S. Khushboo* [*S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 : (2010) 2 SCC

*(Cri) 1299] , while dealing with "person aggrieved", a three-Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on M.S. Jayaraj v. Commr. of Excise [M.S. Jayaraj v. Commr. of Excise, (2000) 7 SCC 552] and G. Narasimhan [G. Narasimhan v. T.V. Chokkappa, (1972) 2 SCC 680 : 1972 SCC (Cri) 777] and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words "some person aggrieved" are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a "person aggrieved" is too specious a submission to be accepted."*

7. Issue notice, returnable in four weeks.
8. Further proceeding in pursuant to the impugned judgment is stayed, until the returnable date.

[DEEPAK JOSHI]  
ASTT. REGISTRAR-cum-PS

[KAMLESH RAWAT]  
ASSISTANT REGISTRAR