IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25th OF OCTOBER, 2024

MISC. CRIMINAL CASE NO.12558/2024

SHIVRAJ SINGH CHOUHAN AND OTHERS

VS.

VIVEK KRISHNA TANKHA

Appearance:

Applicants by Shri Surendra Singh – Senior Advocate with Shri Akshat Arjariya – Advocate, Shri Rohan Harne – Advocate and Shri Karnik Jaggi - Advocate.

Respondent by Shri Kapil Sibbal – Senior Advocate with Shri H.S. Chhabra – Advocate and Shri Shivendra Pandey – Advocate.

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Reserved on: 21.09.2024

Pronounced on: 25.10.2024

ORDER

With the consent of learned counsel for the rival parties, the matter was heard on 21.09.2024 at length and today the order is being pronounced.

2. This petition has been filed under Section 482 of CrPC by the applicants seeking the following reliefs:-

> 1. Quash and Set aside the impugned order dated 20/01/2024 (Annexure A/1) passed by the learned

Judicial Magistrate Class-I/Special Judicial Magistrate (M.P./M.L.A. Court), Jabalpur.
2. Quash and set aside the impugned private complaint bearing SCPPM No.01/2024 (Annexure A/5), pending before the Judicial Magistrate Class-I / Special Judicial Magistrate (M.P./M.L.A. Court), filed by the respondent herein to meet the ends of justice.
3. Any other relief that the Hon'ble Court may deem fit and proper in the interest of justice.

3. The encapsulated facts of the case are that the complainant is a practising Senior Advocate and also a Member of Parliament. The applicants are also political persons. In it, applicant No.1 is a Member of Parliament from Vidisha Constituency and Former Chief Minister of State of Madhya Pradesh, currently serving as Union Minister of Union Cabinet, Minister of Agriculture & Farmers Welfare and Minister of Rural Development. Applicant No.2 is a Member of Parliament from Khajuraho Constituency and applicant No.3 is a Member of Legislative Assembly from Khurai Constituency and former Minister of the State of Madhya Pradesh.

3.1 A private complaint was filed by the respondent-complainant alleging that the applicants have committed an offence punishable under Sections 499 and 500 of IPC by making defamatory remarks in print and visual media against him and propagandizing the proceedings took place before the Supreme Court and High Court.

3.2 The State Government of Madhya Pradesh has come-up with Ordinance No.14/2021 on 21.11.2021 before the declaration of Panchayat elections, which was scheduled from 06.01.2022. A batch of writ petitions was filed challenging that Ordinance. In it, one of the petitions filed by Mr. Manmohan Nagar on 09.12.2021 basically on the

ground that the said Ordinance is in breach of Article 243-C and 243-D of the Constitution of India and also in breach of Sections 13, 17, 22, 23, 25, 30, 32 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. The complainant, being a senior advocate, was engaged by the writ-petitioner in W.P.No.26943/2021. The petitions were limited to the issue that delimitation and rotation in Panchayat elections scheduled in Madhya Pradesh are mandatory in nature as per Article 243-C and 243-D of the Constitution and M.P. Panchayat Raj Act and the State has to follow the law and cannot undermine the same by way of Ordinance. None of the writ petitions were related to the issue of OBC reservation in their pleadings nor was the same made an issue in any of the petitions or argued on behalf of the complainant before the High Court or the Supreme Court.

3.3 On 04.12.2021, the State Election Commission issued a notification for conducting panchayat elections in Madhya Pradesh. When these petitions came up for hearing on the question of admission and interim relief, the High Court declined to grant any interim relief on the ground of judicial propriety as in a similar matter, the Gwalior Bench of the High Court rejected the interim relief.

3.4 Being aggrieved with the said order dated 09.12.2021, one of the writ-petitioners, Shri Manmohan Nagar approached the Supreme Court by filing an SLP No.20734/2021 and during the course of hearing, the Supreme Court made certain observations. On the basis of those observations, the petitioner moved a mention-memo before the High Court seeking urgent hearing of the main matter. Those matters were directed to be listed for 07.01.2022. Although, the Panchayat Elections process was already initiated w.e.f. 13.12.2021, ergo, Shri Nagar preferred a Misc. Application bearing Diary No.31495/2021 before the

Supreme Court with a prayer to restore the SLP and also to grant stay of notification dated 04.12.2021 of M.P. Election Commission as despite the order of the Supreme Court on 15.12.2021, the High Court did not decide the issue on 16.12.2021 and directed for listing the matter on 07.01.2022. Said Misc. Application came-up for hearing on 17.12.2021 and on the said date, the complainant appeared as Senior Advocate in the said case for the petitioner – Manmohan Nagar and prayed that SLP be restored for hearing, with a further prayer for early hearing of the plea seeking interim relief. According to the complainant, the said Misc. Application did not contain even a single word about OBC reservation, conversely, it was related to the issue of delimitation and rotation in panchayat elections. On 17.12.2021, the Supreme Court passed the order on the said Misc. Application and that order of the Supreme Court was passed in presence of the counsel for the State of M.P. and also the counsel for the State Election Commission. The Solicitor General of India namely Shri Tushar Mehta was also present. The live reporting of the court proceedings was available with some prominent news reporters, which have covered the whole court proceedings. As per the complainant, the order passed by the Supreme Court on 17.12.2021 that the complainant neither argued the issue with regard to OBC reservation nor made any pleading about OBC reservation, however, after the order dated 17.12.2021, as per the complainant, the accused persons launched a coordinated, malicious, false and defamatory campaign against him through scandalising the proceedings of the Supreme Court and the High Court in print and visual media. Since 18.12.2021, the complainant is being targeted as the one who is against OBC reservations. The defamatory statement made by the accused persons in print and visual media are available in public domain. As per the complainant, the falsity

was being spread by the accused persons by misreporting and scandalising the courts proceedings and in order to bring the correct facts to the knowledge of the public, he held a press conference on 21.12.2021 disseminating the real facts that the petition in which he appeared before the High Court and the Supreme Court was with regard to rotation process adopted by the State Government and it had no connection with OBC reservation. According to the complainant, the statement made by the applicants about him emphasised the imputing motive against the leaders of the opposition and as such by giving a different colour to the controversy tried to gain optimum political mileage knowing fully well that neither before the High Court nor the Supreme Court, the issue with regard to OBC reservation was projected or argued by the complainant. Applicant No.3 tweeted a threat through his verified twitter account on 23.12.2021. In it, he tweeted defamatory contents and statements indirectly against the complainant that he was responsible for the stay of OBC reservation. Although, according to the complainant, the accused persons always were invariably aware of true picture about the court proceedings, but to gain political mileage a false narrative was made by defaming the complainant. According to the complainant, accused No.1 has also made unscrupulous and defamatory statements against him and in fact instigating the rank and file of Bhartiya Janta party to launch a campaign and spread false, malicious and defamatory propaganda against the complainant. According to the complainant, the statements of the accused persons were fallacious and insinuating ignominy towards the complainant, therefore, he filed the said complaint.

4. Shri Surendra Singh, learned Senor Advocate appearing for the applicants submitted that the material produced before the court for

initiating proceeding against the applicants was insufficient for taking cognizance in the matter whereas according to him the material and evidence produced before the court were inadmissible and as such the court below has committed illegality in taking cognizance of the matter by wrongly relying on the evidence produced before the court, which in fact had no legal value. According to Shri Singh, the documents which were submitted by the complainant to convince the court for taking cognizance in the matter, were sheer newspaper cuttings and such material was legally inadmissible and therefore cognizance was wrongly taken by the court instead of dismissing the complaint. He accentuated that the dispute was purely civil in nature and at the most complainant could claim compensation for defamation, but no case is made out for initiating criminal prosecution against the applicants. Shri Singh relying upon a decision of the Supreme Court in the case of **Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi and others (1976) 3 SCC 736** submitted that the Supreme Court has categorically observed as to when the order issuing summons by the Magistrate against the accused can be quashed and set aside. He pinpointed paragraph 5 of the said decision, therefore, it is reproduced hereunder:-

> "5. Mr Bhandare laid great stress on the words "the truth or falsehood of the complaint" and contended that in determining whether the complaint is false the court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. 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.

5. Shri Singh further submitted that the Supreme Court has categorically observed whether the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been passed either on no evidence or on the material which were wholly irrelevant/inadmissible. As per Shri Singh, whole evidence adduced in this case are inadmissible as per Section 81 of the Evidence Act. For ready reference, Section 81 of Evidence Act is reproduced hereunder:-

> 81. **Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents**. The Court shall presume the genuineness of every document purporting to be the London Gazette or any official Gazette, or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament [of the United Kingdom] [Inserted by A.O. 1950.] printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept

substantially in the form required by law and is produced from proper custody.

6. Shri Singh also relied upon a decision of the Supreme Court in the case of **Laxmi Raj Shetty and another v. State of Tamil Nadu (1988) 3 SCC 319** and laid stress to paragraph 25. Said paragraph is reproduced as under:-

> "25. As to the first, the accused Laxmi Raj Shetty was entitled to tender the newspaper report from the Indian Express of the 29th and the regional newspapers of the 30th along with his statement under Section 313 of the Code of Criminal Procedure, 1973. Both the accused at the stage of their defence in denial of the charge had summoned the editors of Tamil dailies Malai Murasu and Makkal Kural and the news reporters of the Indian Express and Dina Thanthi to prove the contents of the facts stated in the news item but they dispensed with their examination on the date fixed for the defence evidence. We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."
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> (emphasis supplied)

7. Shri Singh further relied upon a decision in the case of **Quamarul Islam v. S.K. Kanta and others (1994) Supp.(3) SCC 5**. Relevant paragraph 48 is quoted as under:-

> 48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher, PW 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW 5, who was the polling agent of the election petitioner and a resident of the locality in

> support of the correctness of the elereports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent. The evidence of the election petitioner himself or of PW 4 and PW 5 to prove the contents of the messages and advertisements in the newspaper in our opinion was wrongly admitted and relied upon as evidence of the contents of the statement contained therein.

8. Shri Singh submitted that the complainant had produced the list of witnesses, but essentially it did not contain any news reporter as a witness. It meant that whatever news was published and relied by the complainant cannot be proved in absence of any witness as news reporter. Shri Singh had drawn attention of this court to the statement of Siddharth Gupta, who had recorded the speech and also downloaded the material from the electronic media, meaning thereby, he must have had the original material, but no certificate of Section 65B is available so as to make evidence admissible in the court. Shri Singh submitted that whatever material placed by the complainant before the court for registration of offence are inadmissible and the court by taking cognizance of the matter; registering the complaint and issuing summons to the accused persons, has committed illegality. According to

Shri Singh, the complaint was bereft of substance and in absence of admissible material, deserved to be quashed.

9. In contrast, Shri Sibbal, learned senior counsel appearing on behalf of respondent-complainant submitted that the submissions made on behalf of the applicants are absolutely misconceived for the reason that the evidence produced by the complainant along with the complaint and cognizance taken thereupon, was *prima facie* found sufficient having ingredients to constitute the offence. He submitted that the evidence adduced before the court was admissible or not, would be decided during the course of trial. He submitted that it is not a case of 'no evidence'. He further submitted that Section 81 of the Evidence Act deals with the presumption of the court about the genuineness of the document produced in the court. He submitted that said presumption has to be proved during the trial and if the party fails to prove it, the court will not take cognizance of the matter, but at the very inspection, the very evidence which is presumed to be genuine, the court cannot draw any inference over it. Shri Sibbal submitted that the evidence is admissible or inadmissible, will be seen during but not before the trial. According to learned senior counsel, while registering the complaint, the court has to see whether the material produced by the complainant *prima facie* contains sufficient ingredients to constitute the offence alleged to have been committed by the accused or not. He also submitted that in the case at hand, there was sufficient evidence adduced by the complainant and it will be proved during the trial and at this stage that too in a petition under Section 482 of CrPC, the court cannot observe that said evidence is inadmissible. He further submitted that merely because the list of witnesses does not contain the name of any news reporter would not mean that any such witness cannot be added or

called in the court to record his statement at a later stage. Accordingly, Shri Sibbal submitted that it is not a case in which the accused persons are denying about what has been reported in the newspapers because after their statement on 19.12.2021 notice was given to the applicants that they may tender apology publicly about the defamatory statement made by them but they did not submit any reply to said notice and they have denied that they had made any such statement. On 25.12.2021 a press-note was released that in the assembly, applicant No.1 had persuaded his MLAs to disparage the image of the complainant. Shri Sibbal submitted that this factual aspect makes it clear that there was no denial about the defamatory statement made by the applicants against the complainant. It is not a case in which complaint can be dismissed only on the ground that it was supported by inadmissible evidence.

10. I have heard the learned counsel for the rival parties at length and perused the documents available on record.

11. Indubitably, the applicants' foremost assertion is about the trial Court's proclivity in registering the complaint based on inadmissible evidence, although on the strength of numerous decisions of the Supreme Court, the complaint being frivolous could have been jettisoned by the trial Court at the helm. Obviously, there is no scintilla of doubt in legally accepting the applicants' assertion, but such assertion when juxtaposed with the underlying facts and circumstances of the case, it forms a shadow of doubt. Much light has been thrown by the Supreme Court in **Smt. Nagawwa** (supra) by laying down the following parameters, which would help navigating the path of the courts before passing an order issuing summons upon the registration of complaint against the accused.

> (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.
>
> (emphasis supplied)

12. The conflict between two rivals is about interpreting above parameters and trying to set their sails in opposite directions. In that, Shri Surendra Singh laid stress on above Clause (3) and sought dismissal of the complaint predicated on inadmissible evidence, conversely, Shri Sibbal, relying on the same decision, pinpointed the observations of the Supreme Court about the situation when the complaint can be quashed and the order issuing summons can be quashed, on the face of no-evidence and moreso, it can also be done when the material placed before the court is inadmissible, but the notion that the placed evidence is admissible or inadmissible, cannot be tested at this stage, however, if in the opinion of the trial court the evidence produced is presumed to be genuine, the complaint can be registered and during trial it will be deduced whether the evidence produced is admissible or inadmissible.

13. In my opinion also, this is not a stage where the court can draw an inference that the material placed by the complainant could have been thrown-out terming it ‘inadmissible’. Here, it is profitable to

see Fifth Exception to Section 499 of IPC, which bespeaks that offence of Section 499 has to be tested by the court. For ready reference, Fifth Exception is quoted below:-

> *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 of agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

It is amply clear that the case has to be decided on merits in Court. Highlighted it was that after making statement by the applicants, the complainant did send notice to them asking whether they had made any such statement or not and in that event, the applicants could have denied the same, but remained reticent and did not bother to send reply to the complainant's notice. It is imperative here to go-through the observations made by the Supreme Court while dealing with Section 499 of IPC in case of **Suramanian Swamy v. Union of India, Ministry of Law and others (2016) 7 SCC 221**. which read thus:

> **"167.** Having dealt with this facet, now we shall focus on whether Section 499 IPC either in the substantive sense or procedurally violates the concept of reasonable restriction. We have to examine whether it is vague or arbitrary or disproportionate.
> **168.** For the aforesaid purpose, it is imperative to analyse in detail what constitutes the offence of "defamation" as provided under Section 499 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

> emphasises on the intention or harm. Section 44 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."

Ergo, it is for the trial Court to see whether the offence under Section 499 of IPC has been committed or not and that can only be determined on the basis of evidence adduced during the trial. *In re* **Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya and another (2024)2 SCC 86**, the Supreme Court has observed as to what is required to see by the Magistrate before taking cognizance of the offence on a complaint made to it. Relevant paragraphs 59 to 61 are reproduced hereunder:-

> **59.** Thus, when a Magistrate taking cognizance of an offence proceeds under Section 200 based on a prima facie satisfaction that a criminal offence is made out, he is required to satisfy himself by looking into the allegations levelled in the complaint, the statements made by the complainant in support of the complaint, the documentary evidence in support of the allegations, if any, produced by him as well as statements of any witness the complainant may choose to produce to stand by the allegations in the complaint. Although we are not concerned with Section 202 here, if an inquiry or an investigation is conducted thereunder, it goes without saying that the reports should also be looked into by the Magistrate before issuing process under Section 204. However, there can be no gainsaying that at the stage the Magistrate decides to pass an order summoning the accused, examination of the nature referred to above ought not to be intended for forming an opinion as to whether the materials are sufficient for a "conviction"; instead, he is required to form an opinion whether the materials are sufficient for "proceeding" as the title of the relevant Chapter would indicate. Since the accused does not enter the arena at that stage, question of the accused raising a defence to thwart issuance of process does not arise. Nonetheless, the fact that the accused is not before the Magistrate does not mean that the Magistrate need not apply his judicial mind. Nothing in the applicable law prevents the Magistrate from applying his judicial mind to other provisions of law and to ascertain whether, prima facie, an "offence", as defined in Section 2(*n*)CrPC is made out. Without such an

opinion being formed, question of "proceeding" as in Section 204 does not arise.

60. What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.

61. Since initiation of prosecution is a serious matter, we are minded to say that it would be the *duty* of the Magistrate to prevent false and frivolous complaints eating up precious judicial time. If the complaint warrants dismissal, the Magistrate is statutorily mandated to record his brief reasons. On the contrary, if from such materials a prima facie satisfaction is reached upon application of judicial mind of an "offence" having been committed and there being sufficient ground for proceeding, the Magistrate is under no other fetter from issuing process. Upon a prima facie case being made out and even though much can be said on both sides, the Magistrate would have no option but to commit an accused for trial, as held in *Chandra Deo Singh* [*Chandra Deo Singh* v. *Prokash Chandra Bose*, 1963 SCC OnLine SC 4 : (1964) 1 SCR 639] . The requirement of recording reasons at the stage of issuing process is not the statutory mandate; therefore, the Magistrate is not required to record reasons for issuing process. This is also the law declared by this Court in *Jagdish Ram* v. *State of Rajasthan* [*Jagdish Ram* v. *State of Rajasthan*, (2004) 4 SCC 432 : 2004 SCC (Cri) 1294]. Since it is not the statutory mandate that reasons should be recorded in support of formation of opinion that there is sufficient ground for proceeding whereas dismissal of a complaint has to be backed by brief reasons, the degree of satisfaction invariably must vary in both situations. While in the former it is a prima facie satisfaction based on probability of complicity, the latter would require a higher degree of satisfaction in that the Magistrate has to express his final and conclusive view of the complaint warranting dismissal because of absence of sufficient ground for proceeding.

(emphasis supplied)

14. Notably, as per the Supreme Court, the only thing which is required to be seen before taking cognizance in the matter, whether the material placed before the court is sufficient to take cognizance in the matter or not, but it does not mean that the Magistrate would form an opinion whether the material is sufficient for conviction. In the case at hands, in which, evidence was placed before the court to take cognizance in the matter and it will be proved in the trial whether such evidence/material are sufficient to convict the accused or not, but *prima facie* if the court comes to the conclusion that those evidence cannot be ignored at initial stage, it has no other option but to proceed with the trial and issue summons to the accused to rebut the presumption drawn by the court in respect of the evidence produced before it.

15. Indisputably, the public good is a question of fact. Good faith has also to be established as a fact. Ergo, to prove good faith so as to constitute offence of Section 499 of IPC, trial is necessary. It is so observed by the Supreme Court in case of **Chaman Lal v. The State of Punjab (1970) 1 SCC 590**, which is quoted below.

> "8. Public good is a question of fact. Good faith has also to be established as a fact."

16. I am fully impressed and agreed with the submission made on behalf of the respondent-complainant that if no newspaper reporter was cited in the list of witnesses, it does not mean that no other person can be called as witness or the court lacks power to call any person as witness not included in the list of witnesses. Indeed, that is not a ground for terming the material produced as inadmissible.

17. Quite apart from the above, even yardsticks for quashing the complaint calibrated by the Supreme Court in the case of **State of Haryana and others v. Bhajanlal and others 1992 Supp.(1) SCC 335**

do not cover the situation in hand, so as to quash the complaint filed by the complainant.

18. In view of the above discourse, the reliefs as claimed by the applicants in this petition cannot be granted. Ergo, the petition is **dismissed**.

(SANJAY DWIVEDI)
JUDGE

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