



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.Revision No. 401 of 2022**

**Reserved on: 29.12.2023.**

**Date of Decision: 11<sup>th</sup> January 2024.**

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**Jagat Singh Negi**

**....Petitioner**

**Versus**

**Surat Singh Negi**

**....Respondent**

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**Coram**

**Hon'ble Mr Justice Rakesh Kainthla, Judge.**

**Whether approved for reporting? Yes**

**For the Petitioner**

**: Mr Nitin Thakur & Mr Udit Shaurya  
Kaushik, Advocates.**

**For the Respondent**

**: Respondent was proceeded ex parte  
vide order dated 13.06.2023.**

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**Rakesh Kainthla, Judge**

The petitioner filed a complaint before the learned Trial Court for the commission of offences punishable under Sections 500, 504, 505(C) of IPC asserting that the accused made a statement in the Press Conference that the petitioner had not toured Kinnaur District more than 50 times during two years and had withdrawn T.A. Allowance of ₹12,54,145/-. He toured every district in his capacity as Vice President of Forest Corporation and had drawn the Travelling Allowance of ₹2,00,000/-. The

Whether reporters of the local papers may be allowed to see the judgment? Yes

petitioner indulged in corruption. The petitioner alleged in the complaint that these words amount to defamation as they lowered the estimation of the petitioner in the eyes of the public. ◇

2. The learned Trial Court recorded the statements of the petitioner and his witnesses and thereafter held that the right of speech and expression is a fundamental right. The public has a right to know. The opposition has a right to criticize the ruling party and such criticism is essential for a vibrant democracy. Politicians should not be thin-skinned and hypersensitive. There was no *mens rea*. Hence, the complaint was dismissed.

3. Being aggrieved from the order passed by the learned Trial Court, the present revision has been filed, asserting that the learned Trial Court failed to apply its mind to the controversy in issue. The statement amounted to defamation and did not fall within any of the exceptions. The petitioner is known for his honesty and integrity and his estimation has been lowered by the statement. The video recording of the statement was not referred to. The right to speech and expression is not absolute and is controlled by exceptions. Therefore, it was prayed that the

present petition be allowed and the order passed by the learned Trial Court be set aside.

4. I have heard Mr. Nitin Thakur and Mr. Udit Shaurya Kaushik, Advocates, for the petitioner. None appeared on behalf of the respondent despite service.

5. Mr Nitin Thakur, learned counsel for the petitioner submitted that the learned Trial Court misdirected itself while passing the order. It was wrongly held that the accused had a right to criticize the petitioner. The right of criticism does not extend to hurling abuses and defamation; therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

6. I have given considerable thought to his submissions and have gone through the records carefully.

7. It was laid down by the Hon'ble Supreme Court in *State of Haryana vs Bhajan Lal 1992 Supp. (1)SCC 335*, that if any imputations of corruption are made against a person holding a high office, such a person has a right to approach the Court under Section 500 of IPC besides suing for damages. It was observed:-

“104. It may be true, as repeatedly pointed out by Mr Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sully his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complainant. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? *The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Penal Code, 1860 — namely under Section 182, 211 or 500 besides becoming liable to be sued for damages.*” (Emphasis supplied) ◇

8. In the present case, the statement made by the accused- respondent that the petitioner had withdrawn the excess amount can amount to criticism of the public official and exposure of his acts. However, to call a person corrupt lowers his estimation in the eyes of the public and is *per se* defamatory.

9. The learned Trial Court was swayed by Article 19 of the Constitution of India. It was rightly submitted that this Article is not absolute but subject to the exceptions carved out in it. It was held by the Delhi High Court in *Vinai Kumar Saxena v. Aam Aadmi Party*, (2022) 5 HCC (Del) 662, that Article 19(1)(a) of the Constitution affords the right of freedom of speech and expression to all persons but the same is subject to restriction,

which includes defamation. A person cannot make a defamatory statement to tarnish the reputation of a person in the garb of the right of speech and expression: It was observed:-

20. Before turning to the submissions of the parties, it is deemed apposite to spell out the contours of free speech, as provided in Article 19 of the Constitution of India. Article 19(1)(a) of the Constitution affords the right of freedom of speech and expression to all persons. However, the same is subject to restrictions under Article 19(2), which includes defamation. Therefore, the right to freedom of speech and expression is not an unfettered right in the garb of which defamatory statements can be made to tarnish the reputation of a person. The fundamental right to freedom of speech has to be counterbalanced with the right to the reputation of an individual, which has been held to be a basic element of the right to a life consecrated in Article 21 of the Constitution of India. Reference in this regard may be made to the judgment in *Umesh Kumar v. State of A.P.* [*Umesh Kumar v. State of A.P.*, (2013) 10 SCC 591 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237]”

10. Therefore, the learned Trial Court fell in error while holding that the accused was justified in calling the petitioner corrupt, such a right cannot be given to anyone as long as the offence of defamation exists in the statute books. Calling a person corrupt is *per se* defamatory as it tends to lower the estimation of the person in the eyes of the public and cannot be justified by resorting to Article 19 of the Constitution of India.

11. The learned Trial Court was swayed by the promotion of healthy and vibrant democracy by the right of criticism. As already stated, there is a right to criticism but not a right to abuse and defame any person. Granting the right to abuse and defame a person will not make a democracy healthy and vibrant but will turn it into a mudslinging arena where the opposition and dissent will be crushed by abuses and slurs. ◇

12. The complaint has also been filed for the commission of an offence punishable under Section 504 of IPC. It was laid down by the Hon'ble Supreme Court in *Vikram Johar v. State of U.P.*, (2019) 14 SCC 207 : (2019) 4 SCC (Cri) 795: 2019 SCC OnLine SC 609 that in order to attract Section 504 of IPC, there must be evidence that the insult was intended to provoke a person to commit a breach of peace. It was observed:

22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect : (*Fiona Shrikhande case* [*Fiona Shrikhande v. State of Maharashtra*, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715], SCC p. 49)

“13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a

person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.”

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24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in *Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715]*.

13. In the present case, nothing was stated in the complaint or the statement on oath that the words used by the accused were intended to provoke the complainant or any other person to commit a breach of peace. Hence, no grounds for

summoning the accused for the commission of an offence punishable under section 504 of IPC is made out.

14. The complaint has also been filed for the commission of an offence punishable under section 505 (c) which provides that the statement should have been made with intent to incite any class or community of persons to commit any offence against any other class or community. It is difficult to see how calling the complainant corrupt will incite one community against the other. Hence, this offence is also not made out.

15. Therefore, the present revision is partly allowed and the order dated 26.04.2022, passed by the learned Trial Court is set aside.

16. The accused is ordered to be summoned for the commission of an offence punishable under Section 500 of IPC. The parties through their respective counsel are directed to appear before the learned Trial Court on 12.03.2024.

**(Rakesh Kainthla)**  
**Judge**

**11<sup>th</sup> January, 2024.**  
(Ravinder)