

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 992 of 2022

Dr. Sima Banerjee

Vs

Dr. Barnali Chattopadhyay

For the Petitioner

: Mr. Apalak Basu,
Mr. Abhradip Jha,
Ms. Jagriti Bhattacharya.

For the Opposite Party

: Mr. Goutam Brahma,
Mr. Tapash Das,
Ms. Pampa Ghosh,
Mr. Arijit Dey.

Hearing concluded on

: 23.04.2024

Judgment on

: 02.05.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being C.R. 51/2019, under Sections 499/500 of the Indian Penal Code 1860, pending before the Learned Judicial Magistrate, 3rd Court at Chinsurah in and all orders passed therein including Orders dated 08.02.2019, 01.08.2019 and 19.12.2020.

FACTS:-

2. The petitioner states that the petitioner is innocent and in no way connected with any offence far less the offences alleged herein. The petitioners have clean antecedent having no record of past conviction.
3. The petitioner states that she has been implicated as the accused person in C.R. Case no. 51/2019 filed by one Dr. Barnali Chattopadhyay (the Opposite Party herein), under Sections 499/500 of the Indian Penal Code, 1860 presently pending in the Court of Judicial Magistrate, 3rd Court at Hooghly. The crux of the complaint against the petitioner is as hereunder:-

“That the complainant /Opposite Party is an Associate Professor of Hooghly Women’s College, and the petitioner is the principal of the college. The petitioner, after becoming the principal of the college in 2015, has allegedly been ventilating false rumours regarding some fictitious conspiracies in the name of the Opposite Party. It is also alleged that on 09.08.2018, the petitioner had in a public interview castigated the ongoing situation in Hooghly Women’s College, wherein she had inter alia named the O.P. of abetting and aggravating the chaos in the college. The said

interview was aired by ABP Ananda on 10.08.2018, wherein the petitioner has allegedly chastised the ongoing political and chaotic situation of Hooghly Women's College and has allegedly on several occasions named the O.P. as well as one Priyanka Adhikary, who is the Joint Secretary of the District Wing of TMCP as well as the Secretary of the TMCP Students Union of Hooghly Women's College, as being the chief abettor of various illegal activities in the college."

4. The petitioner states that she was appointed as the Principal of Hooghly Women's College in 2015. Prior to taking over of charge by the petitioner as the Principal of Hooghly Women's College, the Opposite Party was the Teacher-in-Charge of the college. The Students' Union which is backed by a particular political party of the college was however unhappy with the petitioner's appointment as the principal of the college and on multiple occasions has threatened the petitioner to resign from her post and hand over charge to the Opposite Party. The petitioner was however resolute in her position and refused to succumb to such political pressure from the students of her college.
5. That various leaders of the Students' Union of the College were extremely disappointed with the steadfast attitude of the petitioner, and in order to actualize their threats and intimidate the petitioner, in 2016, one Susmita Sen, who was then a student of B.A. 3rd year, lodged a complaint against the petitioner and two other professors of the college, namely Dr. Samadyuti Halder and Dr. Subhendu Bikas Adhikary, alleging inter alia that the petitioner and others had illegally cut trees in the college campus, sold such trees and misappropriated

the proceeds of such sale. The said complaint was followed by an application under Section 156(3) of the Code of Criminal Procedure, 1973, which was heard by the Learned Chief Judicial Magistrate at Hooghly, who subsequently took cognizance of the case and ordered investigation into the same vide Chinsurah P.S. Case No. 619/2016 dated 15.12.2016 under Sections 349/379/409/506/120B of the Indian penal Code, 1860. **Upon investigation into the matter however, it was revealed that the allegations against the petitioner and others were false and concocted, and accordingly a Final Report was filed by the concerned Investigating Agency in relation to the said case.**

6. Upon filing of final report in the purported case, no application for further investigation (Narazi) was filed by the complainant of the purported case, and accordingly the petitioner and the others were exonerated. However, the false allegations leveled against the petitioner had caused significant mental agony and loss of reputation of the petitioner. As a result, upon being acquitted of such charges, the petitioner filed a complaint for defamation and malicious prosecution against Susmita Sen, who was the complainant of the purported Chinsurah P.S. Case No. 619/2016 dated 15.12.2016 under Sections 499/500 of the Indian Penal Code, 1860. The said complaint filed by the petitioner herein was registered as C.R. Case no. 254/2017 and is

currently pending before the Ld. Additional Chief Judicial Magistrate at Chinsurah, Hooghly.

- 7.** The petitioner states that at various point of time, the petitioner has received various threats from various members of the Students' Union of Hooghly Women's College demanding that the petitioner should forthwith withdraw her complaint against Susmita Sen (who was an influential member of the Students' Union). The petitioner was however firm on her stand and refused to withdraw her complaint in face of such pressure.
- 8.** That during this period, amidst the pendency of the aforementioned cases, Susmita Sen as well as other members of the Students' Union of Hooghly Women's College aided and abetted by the Opposite Party herein, distributed pamphlets and leaflets containing derogatory and hateful remarks about the petitioner as well as a few other teachers of the college. The pamphlets inter alia alleged that the petitioner was involved in various illegal activities such as chit fund and other scams and demanded immediate resignation of the petitioner from her post as the Principal of Hooghly Women's College. Such incidents were also informed to the higher authorities.
- 9.** That as an active step to ensure that the petitioner is put to severe pressure by having to face the rigors of criminal law, almost one year after the date of the alleged interview, i.e. on 08.02.2019 the Opposite

Party filed an application under Section 200 of the Code of Criminal Procedure.

- 10.** The Learned Chief Judicial Magistrate at Hooghly, on receipt of the application filed by the opposite party herein had vide order dated 08.02.2019, mechanically taken cognizance of the offences as alleged.
- 11.** The petitioner states that the Learned Magistrate thereafter had went on to issue summons upon the petitioner. A bare perusal of the order would suggest that there was no reflection in the order to justify the reasons for coming to the conclusion of issuing process against the petitioner.
- 12.** The petitioner submits that the instant case is a conunterblast of C.R. Case No. 254/2017 which she had filed against one Susmita Sen, an influential member of the Students' Union of the Hooghly Women's College. The Opposite Party is in good terms with the Students' Union and was the previous teacher-in-charge, prior to the appointment of the petitioner, and accordingly the instant case has been falsely made out by the Opposite Party to intimidate the petitioner into withdrawing the C.R. Case no. 254/2017.
- 13.** Hence the revision, praying for quashing of the said mala fide proceedings.

FINDINGS:-

- 14.** The learned counsel for the opposite party has submitted that as the trial has already commenced by recording of plea, this revision is liable to be dismissed.
- 15.** The allegations (9 pages) against the petitioner in the petition of complaint are as follows:-

That on 9th August 2018 in a public interview and press conference she had made the said baseless, false and derogatory allegations against the complaint publicly and before electronic media and News Channels including ABP Ananda which was aired on ABP Ananda TV Channel on 10th August, 2018 around mid-day.

Report by ABP Ananda as aired on 10th August 2018.

“Sustho bhabe college chalate deche na chatra songsod, chair charte bolar pasapasi Addhapak der hat pa kete parcel kore deyar humki deche TMCP porichalito chatra songsod – avijog Hooghly Women’s College er Addhokha Sima Bandhopadhyay. Ter dabi ei ghotoner modot dechen TMCP netri Priyanka Adhikary, Colleger praktan varpapta Addhokha Barnali Chattopadhyay abong colleger cashier. Chinsurah Thanai itimodhe avijog dayer kora hoyeche. Burdwan University Upacharjer kacheo avijog dayer korechen college Addhokha soho koyek jon addhapak. TMCP Netri Priyanka Adhikary dabi humkir avijog bhitrihin. Tader palta dabi Chatri Songsod vangte tader palta dabi Chatri Songsod vangte chaichen addhakha. Praktan Addhakha abong colleger cashier er protikiya meleni.”

- 16.** Then the Complainant has made her complaint which runs into 9 pages in all.

17. The offences alleged are under Sections 499/500 of the Indian Penal Code, 1860.

18. Written notes has been filed on behalf of the petitioner.

19. **The following Judgments are relied upon by the petitioner:-**

i) *Mahmood Ali and Ors. vs State of U.P. and Ors., 2023 SCC OnLine SC 950, decided on August 8, 2023.*

ii) *Kishore Balkrishna Nand vs State of Maharashtra and Anr., (2023) 8 SCC 358, decided on August 2, 2023.*

20. **Section 499 of the Indian Penal Code lays down as follows:-**

“Section 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 case 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 a 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 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.*

Eighth 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's interests.—*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 interests 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 for 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.”*

21. Section 500 of the Indian Penal Code lays down as follows:-

“Section 500. Punishment for defamation.—*Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Ingredients of offence.-*The essential ingredients of the offence under sec. 500 are as follows:-*

(1) The accused made or published any imputation concerning any person;

(2) Such imputation was made by words either spoken or written with intent to be read, or by signs, or by visible representations;

(3) Such imputation must have been made with intent to harm or with knowledge or belief that it will harm the reputation of the person concerned.”

22. Prima facie this is a dispute between the office bearers (teaching)

of a college. The criminal complaint against the petitioner is under Sections 499/500 of the Indian Penal Code.

23. In 2014, Dr. Subramanian Swamy made corruption allegations

against Ms. Jayalathitha. In response, the Tamil Nadu State Government filed defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the Indian Penal Code (IPC). A two-judge bench of the Supreme Court comprising Justices Dipak Misra and P. C. Pant decided the case.

24. Section 499 defines defamation and Section 500 prescribes the

punishment. Defamation is defined as spoken or written words or visible representations, concerning any person intended to harm his/her reputation. Exceptions to this include an ‘imputation of truth’ required for a ‘public good’, or the conduct of any person touching any public question, or expressing opinions on a public performance.

- 25.** The challenge before the Court was twofold – first, whether criminalising defamation is an excessive restriction on freedom of speech, and second, whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.
- 26.** On 13 May 2016, the Court held that Section 499 is not an excessive restriction under Article 19(2). It held that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public wrong. It held that criminal defamation is not a disproportionate restriction on free speech, because protection of reputation is a fundamental right as well as a human right.
- 27.** The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under Article 21. Using the principle of ‘balancing of fundamental rights’, the court held that the right to freedom and speech and expression cannot be “allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area”.
- 28.** Further, the Court held that Sections 499 and 500 of IPC are not vaguely worded or ambiguous. Using the **Constituent Assembly Debates** to understand what the framers of the Constitution meant by the word “defamation” in Article 19(2), the Court held that the word is its own independent identity. It stands alone and defamation laws

have to be understood as they were when the Constitution came into force.

29. The Supreme Court in **Subramanian Swamy vs. Union of India, Ministry of Law and others, (2016) 7 SCC 221**, while deciding the case held:-

*“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 Cr.P.C.** which stipulates about the resident 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 Cr.P.C.** are satisfied. Application of mind in the case of complaint is imperative.*

*We will be failing in our duty if we do not take note of submission of Mr. Bhambhani, learned senior counsel. It is submitted by the learned senior counsel that Exception to **Section 499** are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in M.A. Rumugam (supra) that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to **Section 499 IPC**, it would be necessary for the person who pleads the Exception to prove it. He has to prove good faith for the purpose of protection of the interests of the person (1998) 5 SCC 749 making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of the issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same.*

*In view of the aforesaid analysis, we uphold the constitutional validity of **Sections 499** and **500** of the Indian Penal Code and **Section 199** of the Code of Criminal Procedure. During the pendency of the Writ Petitions, this Court had directed stay of further proceedings before the trial court. As we declare the provisions to be constitutional, we observe that it will be open to the petitioners to challenge the issue of summons before the High Court either under **Article 226** of the Constitution of India or **Section 482** Cr.P.C., as advised and seek appropriate relief and for the said purpose, we grant eight weeks time to the petitioners. The interim protection granted by this Court shall remain in force for a period of eight weeks. However, it is made clear that, if any of the petitioners has already approached the High Court and also become unsuccessful before this Court, he shall face trial and put forth his defence in accordance with law.”*

The Court further held:-

*“The court while deciding over the matter considered various landmark judgments including the *Gian Kaur v. State of Punjab* (1996) 2 SCC 648, *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others* (1983) 1 SCC 124 to come to the peroration of inclusion of the right to reputation under Article 21. Over the issue of the exaggeration of ‘defamation’ under the restrictions of Article 19(1)(a) the court referred to the speech of Dr. B. R. Ambedkar and pointed out the intention of drafters to include reasonable restrictions on free speech and expression through the means of Article 19(2) without specifically defining the terms like ‘defamation’, ‘public order’ etc. and left it to the courts to decide what would constitute as restriction and what not so as to not restrict the meaning of any such term.*

*The court disregarded the dissection of rights and their enjoyment under Article 19 and 21 as contested by petitioners while holding that every citizen enjoys every right under the constitution simultaneously and took reference from *Sakal Papers (P) Ltd. v. Union of India* AIR 1962 SC 305 and the *Maneka Gandhi v. Union of India* and another (1978) 1 SCC 248. To decide upon the*

constitutionality of Section 499 and its exceptions the bench, while individually determining each exception and various clauses in the provision, clearly enunciated that there is no vagueness in the whole section. The argument of petitioner over the 'public good', the court referred the argument as unnecessary and concluded that what can be termed as a public good is a subject matter of facts and has to decide on a case-to-case basis. The court declared section 499 of IPC, as well as Section 199 of Cr.P.C. constitutional as it being a subject matter of magistrate to ensure that the judicial process doesn't become a tool of harassment and inherent duty of the magistrate to take care of it and concluded that the judiciary is independent of the political stigma, therefore, the arguments of petitioners stand void."

30. It is very unfortunate that under political influence, the primary purpose to provide education is completely overlooked, such hostile atmosphere in an educational institution goes against the welfare (which is paramount) of the students whose future is in the hands of these colleges.

31. College teachers are expected to adhere to professional standards of conduct, which include:-

1. **Respect for students:** Treat students with dignity and fairness, fostering an inclusive and supportive learning environment.
2. **Competence:** Demonstrate expertise in their subject matter and teaching methods.
3. **Integrity:** Be honest and transparent in all academic and administrative dealings.

4. **Professionalism:** Maintain appropriate boundaries and behavior in interactions with students, colleagues, and staff.
5. **Fairness and impartiality:** Evaluate students' work objectively and provide constructive feedback.
6. **Continuous improvement:** Engage in professional development activities to enhance teaching skills and stay current in their field.
7. **Collegiality:** Collaborate with colleagues and contribute positively to the academic community.
8. **Compliance with institutional policies:** Follow college policies and procedures related to teaching, research, and student support.

32. The facts as stated in the written complaint in this case comes under the 9th exceptions as laid down under Section 499 of I.P.C. and thus the ingredients required to constitute the offence alleged under Section 500 of I.P.C. is clearly absent in the present case.

33. On perusal of the contents in the written complaint there is no materials to show that any imputations has been made against the complainant, with the intent to cause harm, or with knowledge or belief that it will harm the reputation of the complainant. The statements in the interview made by the petitioner herein clearly come within the ninth exception under Section 499 IPC and as such the

ingredients required to constitute the offences alleged is clearly absent against the petitioner herein.

34. CRR 992 of 2022 is allowed.

35. The proceedings being C.R. 51/2019, under Sections 499/500 of the Indian Penal Code 1860, pending before the Learned Judicial Magistrate, 3rd Court at Chinsurah in and all orders passed therein including Orders dated 08.02.2019, 01.08.2019 and 19.12.2020, **is hereby quashed in respect of the petitioner.**

36. All connected applications, if any, stand disposed of.

37. Interim order, if any, stands vacated.

38. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

39. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)