

**Case :-** APPLICATION U/S 482 No. - 1559 of 2019

**Applicant :-** Faye D Souza And Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Lohitaksha Shukla,Sachin Chaturvedi

**Counsel for Opposite Party :-** Govt. Advocate,Pranshu Agarwal

**Hon'ble Rajeev Singh,J.**

1. Heard Shri Pawan Narang assisted by Shri Lohitaksha Shukla, learned counsel for the applicants, Shri Avinash Singh Bisen, learned counsel for respondent no. 2 as well as learned A.G.A. for the State.

2. These applications have been filed for quashing the summoning order dated 15.01.2018 as well as bailable warrant dated 06.07.2018 passed in Complaint Case No. 2575 of 2017, (Rajendra Singh Vs. Mirror Now & Ors.), under Sections 500, 501, 502 read with Section 34 I.P.C. as well as proceedings of the complaint case.

3. Learned counsel for the applicants submitted that the applicants nos. 5 and 6 are the legal entities registered under the provisions of Company Laws. Applicant no. 1 is the Editor-in-Chief of Mirror Now (hereinafter referred to as 'news channel'). Applicant no. 2 was the Anchor in the news channel at the relevant point of time. However, applicants no. 3 was the reporter of Times Now Channel at the relevant point of time and she had no association or official role in the Mirror Now Channel. It has further been submitted that the court below passed the impugned summoning order against applicants nos. 1 to 3, though neither they have been arrayed as private respondents in the complaint case nor there is any averment in regard to their individual role. It has vehemently been submitted that it is the duty of the applicants to bring into notice of the citizens of the Country all the news without intending to harm anyone.

4. It has been submitted that as per the prosecution case, on 20<sup>th</sup> June, 2017, news item was broadcasted in the news channel with the false allegations that District & Sessions Judge, Lucknow Civil Court, Lucknow and his associates had allegedly received bribes to grant

bail to Mr. Gayatri Prajapati, Former Minister, Government of U.P. It was also reported in the news item that to ensure granting of bail to the aforesaid accused person, total five persons, i.e., 2 judges and 3 members of Lucknow Bar Association were working hand in glove. There was a high level corruption in posting of judges to sensitive courts dealing heinous crimes, viz., rape and murder. It is also reported that one Om Prakash Mishra II was posted as Special Judge, POCSO Act on 07.04.2017 when he had just three weeks left for retirement and there was no justification or reason to replace Mr. Mishra in place of Mr. Laxmikant Rathaur as Special Judge, POCSO Act. A sum of Rs.10 crore was involved in the deal, out of which, Rs.5 crore was paid to Special Judge, POCSO Act and District & Sessions Judge, who posted Mr. Mishra to a sensitive court and rest of Rs.5 crore was shared with the aforesaid three advocates. The news item also revealed that the Intelligence Bureau established corruption in the posting of Mr. Om Prakash Mishra II as Special Judge, POCSO Act and raised questions in transfer and posting dispensation in U.P. Subordinate Judiciary. It also transpired from the news item that a series of meetings were held in between the 3 lawyers and the District & Sessions Judge/private respondent no. 2 in his Chamber since 3-4 weeks prior to the bail and last such meeting was held on 24.07.2017, the date of filing of the bail application of the accused in the court of Mr. Om Prakash Mishra II. On 25.04.2017, the application was listed before Mr. Mishra and bail was granted to the accused persons.

5. Submission of the learned Senior Counsel is that the applicants was doing investigative journalism and without any *mens rea*, only in good faith, broadcasted the said new item on the basis of authentic information, i.e., one communication of this Court to the Hon'ble Supreme Court dated 3<sup>rd</sup> May, 2017. He further submitted that the communication in between two constitutional authorities is of sensitive nature and, therefore, it has not been made part of the record of the present case, however, a copy of the said communication was provided to the learned counsel appearing for private respondent on 24<sup>th</sup> January, 2018 in pursuance of the order of this Court. Learned counsel for the applicants vehemently submitted that neither the genuineness of the aforesaid letter nor its contents are challenged by the private respondent.

It has also been submitted that the contents of the aforesaid communication reveals that under the direction of the then Hon'ble Chief Justice, some discreet inquiry was conducted and thereafter, communication was done in between two Constitutional Authorities. It has been submitted by the learned Senior Counsel that in the present era, media has a very important role to play in the democracy by highlighting the deeds and misdeeds of the Government as well as Public authorities and in the present case, only the information was given by the applicants to the Publisher. It has next been submitted that there is no derogatory words in the news item against any person. The said news item was broadcasted in the news channel on 20.06.2017 on the basis of the substance of the aforesaid correspondence in between two Constitutional Authorities.

6. Learned counsel for the applicants submitted that the said communication was made in between this Court and Hon'ble Supreme Court on 03.05.2017 on the basis of report of Intelligence Bureau. Thereafter, on 26.05.2017, private respondent was transferred to District Chandauli and he took charge as District & Sessions Judge there on 03.06.2017. Respondent no. 2, after his superannuation on 31.08.2017 sent legal notice alleging publication of alleged defamatory news on 6<sup>th</sup> October, 2017. It has been submitted that the reply to the said notice was also given on 13.10.2017. Thereafter, on 15<sup>th</sup> November, 2017, Complaint No. 2575 of 2017 was filed and statement of the complainant/respondent no. 2 was recorded on 21.11.2017 under Section 200 Cr.P.C. In his statement, respondent no. 2 stated that only with the intention to harm his reputation, the said news item was broadcasted, due to which, his image was tarnished. In the aforesaid statement, respondent no. 2 also stated that by way of notice, he asked from the applicants and persons about the press note of the High Court as well as the Intelligence Bureau report, being not available with him, but the same was not provided.

Thereafter, statements of Mr. Ashok Kumar Awasthi-retired Officer of HJS cadre and Mr. Sarvesh Kumar Singh, Advocate practising in Lucknow were recorded under Section 202 Cr.P.C. on 11.12.2017 and 28.11.2017, respectively. It has been submitted by the learned counsel for the applicants that general statement was made under Section 202 Cr.P.C. by the witnesses that the private respondent was honest and reputed

Officer of his cadre and belongs to a reputed family background and after broadcasting of the news item 20.06.2017, his image was tarnished in the eyes of the witnesses.

7. It has further been submitted by the learned counsel for the applicants that as by way of notice, the correspondence in between the High Court and Hon'ble Supreme Court was asked by the complainant, the copy of the same was already provided to him after passing of the order dated 24<sup>th</sup> January, 2018 by this Court, but no rebuttal about the contents of the letter is made by the private respondent in the counter affidavit filed by him. However, in the counter affidavit, he has stated that the alleged letter is a privileged communication in between two Constitutional Institutions and the applicants along with all the accused is liable to be prosecuted under the Official Secrets Act, 1923 for publishing a confidential communication between the authorities.

8. Learned counsel for the applicants submitted that the word 'defamation' derived from the Latin term 'Diffamare', which means 'Spreading evil report about someone'. He also relied on the decision of Queens Bench in the case of **Scot Vs. Sampson, 1882 9 QB 491** and submitted that defamation is simplest way as 'a false statement to a man to his discredit'. This definition is smaller yet it encompasses everything about the concept. It has also been submitted that to constitute 'defamation under Section 499 I.P.C., there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of complainant, irrespective of whether complainant actually suffered directly or indirectly from the imputation. Further relying on the decision of the Gujarat High Court in the case of **Narottamdas L. Shah Vs. Patel Maganbhai Revabhai & Anr., 1984 Cri.L.J. 1790**, learned counsel for the applicants submitted that the term 'reputation' means, "What us generally said or believed about the persons' or things' character". The two terms 'character' and 'reputation' are prone to be confused. Character, in the context, would mean, fortitude or morals constitution or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore, character is what a person

“actually is”, while reputation is what neighbours and others say “what he is”. The man may have, in fact, a good character and yet suffer from bad reputation or vice versa. In short, ‘reputation’ is, what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is held by others and not the opinion which he himself may have about himself. It may be said that ‘reputation’ is a composite hearsay, being the community’s opinion which implies the definite and final formation of belief by the community. By no stretch of reasoning the term ‘reputation’ can imply one’s belief about himself.

9. Learned counsel for the applicants vehemently submitted that the object of the inquiry under Section 202 of the Code is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need to be taken. The Section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. It has lastly been submitted that the case of the applicants is squarely covered by Exception 1<sup>st</sup> and 3<sup>rd</sup> to Section 499 I.P.C. It has, thus, been submitted that the impugned proceedings are liable to be quashed.

10. On the other hand, learned counsel for the private respondent vehemently opposed the prayer of the applicants and submitted that the news item was broadcasted by the applicants and other persons without getting it verified and while doing so, they failed to comply the norms of Code of Ethics & Broadcasting Standards prepared by the News Broadcasters & Digital Association, New Delhi. The applicants also failed to comply the guidelines of Press Council of India. It has further been submitted that the respondent no. 2 applied for the alleged privileged communication between this Court and Hon’ble Supreme Court dated 3<sup>rd</sup> May, 2017, but he could not succeed. However, he did not dispute the fact that vide order dated 24<sup>th</sup> January, 2018, photocopy of the aforesaid document was provided to him and the content of privileged communication is not being disputed.

It has vehemently been submitted that the applicants are liable to be prosecuted under the provisions of Official Secrets Act. While submitting that all these arguments raised by the learned counsel for the applicants may be placed before the court below at appropriate stage, it has been

submitted that the present applications are liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for the applicants, learned counsel for the respondent and gone through the contents of the application, counter affidavit, rejoinder affidavit, statements recorded under Section 200 and 202 Cr.P.C. as well as other relevant documents.

12. It is evident from the record that the photocopy of the privileged communication was received by the private respondent on 24.01.2018. A copy of the aforesaid letter is placed before this Court by Senior Registrar of this Court.

13. Before dealing with the arguments advanced by the learned counsel for the parties, it is to be noted that from the complaint, it is evident that applicant nos. 1 to 3 have not been arrayed in the complaint case as private respondent and there is no specific averment about their role, but the court below, on its own, observed that though in the complaint, they have not been arrayed, but in the enclosures, the name of the reporters are mentioned and, therefore, they have been summoned.

14. While considering all the arguments raised by the learned counsel for the parties as well as going through the complaint, the only question, which arises before this Court, is whether the defamatory act was committed by the applicants and other persons, under a conspiracy. 'Defamation' is defined in Section 499 I.P.C., which clearly provides that 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 mentioned in the Exception clauses.

15. Admittedly, in the present case, the news items were broadcasted on 20<sup>th</sup> June, 2017. Thereafter, notice was given by the private respondent to the Editors of Times of India and asked the copy of the privileged communication as well as Intelligence Bureau report. It is evident from the record that the photocopy of the privileged communication was placed by the learned counsel for the applicants before this Court on 24.01.2018 and under the order of this Court of the date, the copy of the same was provided to the private respondent. The inclination of respondent no. 2 appears to be that for publishing a confidential

communication, all the accused persons are liable to be prosecuted under the provisions of Official Secrets Act, 1923.

16. Hon'ble Apex Court in the case of **Jawaharlal Dadra & Ors. Vs. Manoharrao Ganpatrao Kapsikar & Anr., (1998) 4 SCC 112**, held that in the case of accurate and true reporting published in good faith, it cannot be said that the accused intended to harm the reputation of the complainant. Para 5 (relevant) of the said decision is as under :

“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.”

Indisputably, the privileged correspondence between the High Court and Hon'ble Supreme Court is not denied by respondent no. 2 in the counter affidavit.

17. In view of above facts and discussions, this Court is of the view that the action of the applicants is squarely covered in the Exception (1) & (3) of Section 499 I.P.C. Section 499 along with Exception (1) & (3) is reproduced hereunder :

“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 3.*—An imputation in the form of an alternative or expressed ironically, may amount to defamation.”

18. In view of the above facts and discussions, this Court is of the view that the complaint in question is nothing but a sheer abuse of the legal provisions and no offence, as alleged, can be said to be made out.

19. The impugned proceedings are hereby quashed. The application stands allowed.

20. Office is directed to communicate this order to the court below, forthwith.

**Dated : December 22, 2023**  
**VKS**