

ITEM NO.6

COURT NO.5

SECTION X

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

Writ Petition(s) (Criminal) No(s). 106/2015

FOUNDATION FOR MEDIA PROFESSIONALS THROUGH
ITS DIRECTOR, MR. MANOJ MITTA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(with office report)

Date : 09/07/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. Anup J. Bhambani, Sr. Adv.
Mr. Mohit Paul, AOR
Mr. Apar Gupta, Adv.
Mr. Dushyant Arora, Adv.

For Respondent(s)

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

In this writ petition, the petitioner, apart from other reliefs, has prayed for the following reliefs :

"a. Issue a writ of mandamus or any other writ, order or direction quashing Sections 499 and 500 of the Indian Penal Code, 1860 (and consequently also Sections 501 and 502 IPC) as ultra-vires the provisions of Articles 14, 19 and 21 of the Constitution;

b. Issue a writ of mandamus or any other writ, order of direction quashing Sections 199(1) and 199(2) of the Code of Criminal Procedure, 1973 as ultra-vires the

provisions of Articles 14, 19 and 21 of the Constitution;C

c. In the alternative to prayers (a) and (b) above, interpret, read-down and issue directions and guidelines under Article 142 of the Constitution of India as this hon'ble Court may deem necessary and appropriate to reconcile Sections 179; 204(I); and 205 of the Code of Criminal Procedure, 1973 with Articles 14, 19 and 21 of the Constitution including but not limited to :

- i. That the territorial applicability of Section 179 of the CrPC may be limited to the proper location where the journalistic publication is made (as per the declaration made by the newspaper under the provisions of the Press & Registration of Books Act, 1867), as opposed to where it is circulated or read/viewed; and in the case of broadcasts and on-line publications (which do not fall within the purview of the PRB Act) territorial jurisdiction should vest in the place where the registered office of the broadcaster/on-line publication is situate;
- ii. That the postponement of process under Section 202 of CrPC is mandatory in cases arising under Section 459 of CrPC is mandatory in cases arising under Section 499 of the IPC;
- iii. That any Court must consider the applicability of the exceptions to Section 499 of the IPC at the state of issuance of process under Section 204 of the CrPC."

It is submitted by Mr. Bhamani, learned senior counsel for the petitioner-foundation, that apart from challenging the constitutional validity of the provisions contained in Sections 499 and 500 of the Indian Penal Code, 1860, the association, as the relief clause would show, has challenged the constitutional validity of Sections 199(1) and 199(2) of the Code of Criminal Procedure and further prayed for reconciliation of various provisions, namely, Sections 179, 204(I) and 205 of the Code of Criminal Procedure so that they would come in accord with Articles

14, 18 and 21 of the Constitution of India.

In course of his submissions, he has drawn our attention to the decision of this Court in S. Khushboo vs. Kannimall & Anr. [(2010 5 SCC 600)], especially paragraphs 37, 40 and 41 which read as under :

"37. It may be reiterated here that in respect of the offence of defamation, Section 199 Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.PC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people.

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40. A complaint under Sections 499, 500 and 501 IPC was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine Section 19 of the Code of Criminal Procedure, 1898 (analogous to Section 19 of the Cr.PC. 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person" or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition 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.

41. This Court further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was not a 'person aggrieved' within the meaning of Section 198 CrPC, 1898. The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of 'a company or an association or any collection of persons as such'. Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed."

It is urged by him that a situation has arisen where every one is asserting himself to be the person aggrieved and clothing himself with the *locus standi* to launch prosecution under Sections 499 and 500 of the IPC. It is urged by him that Section 199(1) is also unreasonable unless it is read down. In this context, he has drawn inspiration from the pronouncement by the Constitution Bench in Dr. N.B. Khare vs. The State of Delhi [(1950) SCR 519], wherein the larger Bench has observed as follows :

"The law providing reasonable restrictions on the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law."

Issue notice.

A copy of this petition be served on the office of the learned Attorney General of India in course of the day.

Let the matter be listed along with Writ Petition (Crl.) No.184 of 2014 on 14.07.2015.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master