

**HIGH COURT OF MADHYA PRADESH**  
**BENCH GWALIOR**

**SB : Justice G.S. Ahluwalia**

**MCRC No. 2629/2012**

*A.K. Hade*

Vs.

*Shailendra Singh Yadav and another*

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Shri Amit Lahoti, counsel for the applicant.  
Shri Rishikesh Bohare, counsel for the respondent No. 1.  
Shri Prakhar Dhengula, Public Prosecutor for the respondent  
No. 2/State.  
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Date of hearing : 02.05.2018  
Date of order : 07.05.2018  
Whether approved for reporting : Yes

**ORDER**

(Passed on 07/05/2018)

This application under Section 482 of Cr.P.C. has been filed challenging the order dated 9-3-2012 passed by 1<sup>st</sup> Additional Sessions Judge/Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act], Guna in Criminal Revision No. 47/2012, confirming the order dated 16-2-2012 passed by J.M.F.C., Guna in Criminal Case No. 268/2012, by which the charge under Section 500 of I.P.C. has been framed against the applicant.

**2.** The necessary facts for the disposal of the present application in short, are that the respondent no.1 filed a criminal complaint against the applicant, on the allegations that, the respondent no.1 is the office bearer of B.J.P., District Guna, Executive Member of District Bar Association of District Guna as well as an office bearer of Yadav

Mahasabha, Guna and is also office bearer in various other organizations, whereas the applicant is working as Assistant/Executive Engineer in M.P.M.K.V. Vitaran Company, Guna.

**3.** That since, the respondent no.1 had appeared as a Counsel in some of the cases against the M.P.M.K.V.V. Company and is also a Counsel in some of the pending cases against M.P.M.K.V.V., Guna, therefore, the applicant had a personal grudge against him.

**4.** That the applicant has a house near Shahnai Garden, B.G. Road, Guna, in which an electric connection No. 6525 is installed in the name of the brother of the respondent no.1, namely Arvind Yadav. Since, the brother of the respondent no.1 is in Govt. Job and, therefore, he is residing in N.F.L. Town and, therefore, the respondent no.1 is residing in the house having the electric connection in the name of his brother. Because of personal grudge, the applicant deliberately issued a wrong electricity bill of Rs. 13,234/-.

**5.** That on 9-1-2012, the respondent no.1 went to the office of applicant for getting the electricity bill corrected, and requested the applicant to correct the bill, but the applicant refused to look at the bill or to correct the bill, and when the respondent no.1 tried to handover an application for correction, then the applicant uttered following words :

“तेरे जैसे वकील गली गली घूमते है जैसे काले कुत्ते घूमते है।”

It was further alleged that the applicant also said that similar applications are torn every day, therefore, the respondent should leave the office and just two days back, he has got cases registered against the B.J.P. Personal and he would also be implicated in false case and misbehaved with the respondent no.1 by using abusive language. At the

time of incident, another Advocate Girish Kumar as well as other respectable members of the society were also present in the office of the applicant. The respondent no.1 has been defamed in the presence of others.

**6.** The respondent no.1 examined himself under Section 200 of Cr.P.C. and also examined one Girish Kumar, Advocate under Section 202 of Cr.P.C.

**7.** The Trial Magistrate, by order dated 16-7-2012, took cognizance of offence under Section 500 of I.P.C. against the applicant.

**8.** Being aggrieved by the order of the Magistrate, the applicant filed a Criminal Revision, which was registered as Cr.R. No. 47/2012. The said Criminal Revision also stood dismissed by order dated 9-3-2012, passed by 1<sup>st</sup> Additional Sessions Judge to the Court of 1<sup>st</sup> Additional Sessions Judge/Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

**9.** Challenging the orders passed by the Courts below, it is submitted by the Counsel for the applicant, that in fact during inspection of the electric meter installed in the house of the brother of the respondent no.1, theft of electricity was caught as the electricity was being stolen by manipulating the electric meter. Accordingly, the theft of electricity was assessed and a provisional bill of Rs.12,668/- was issued to the customer, which was duly received by the customer. On the provisional bill, it was also mentioned that in case, if the customer has any objection, then he may present the same before the applicant, otherwise a complaint shall be filed before the Court of competent jurisdiction under Section 135 of the Electricity Act or else by depositing the compounding fee, the criminal prosecution may be avoided. Since, the brother of the respondent no.1

did not deposit any amount, therefore, the complaint is being filed. The Trial Court took cognizance of the complaint against the brother of the respondent no.1. It is submitted that the present complaint has been filed by the respondent no.1, by misusing his position as an Advocate and has been filed by way of counterblast to the action taken against the brother of the respondent no.1.

**10.** *Per contra*, it is submitted by the Counsel for the respondent no. 1 that in fact the respondent no.1 was defamed by the applicant by using a defamatory words and thus, the Courts below have rightly taken cognizance against the applicant.

**11.** Heard the learned Counsel for the parties.

**12.** The Counsel for the applicant has filed the copy of the complaint filed against Arvind Yadav, the brother of the respondent no.1 and has also filed the copy of the order dated 17-2-2012 passed by Special Judge (Electricity), Guna by which, the cognizance of offence under Section 135/138 of the Electricity Act was taken against Arvind Yadav. It is submitted by the Counsel for the applicant that it is well established principle of law that the High Court, while exercising powers under Section 482 of Cr.P.C. can consider the documents of defence, which are of sterling quality. To buttress his submissions, the Counsel for the applicant has relied upon the Judgment passed by the Supreme Court in the case of **Rukmini Narvekar Vs. Vijaya Satardekar** reported in **(2008) 14 SCC 1**, **Rajiv Thapar Vs. Madan Lal Kapoor** reported in **(2013) 3 SCC 330** and **Prashant Bharti Vs. NCT of Delhi** reported in **(2013) 9 SCC 293**.

**13.** The Supreme Court in the case of **Rukmini Narvekar (Supra)** has held as under-:

**"37.** The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 CrPC is concerned. However, in paras 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

**38.** In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in *Debendra Nath Padhi* case by the larger Bench therein to which the very same question had been referred.

**14.** The Supreme Court in the case of **Rajiv Thapar Vs. Madan Lal Kapoor** reported in has held as under :

**"30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

**30.1.** *Step one:* whether the material

relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

**30.2. Step two:** whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

**30.3. Step three:** whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

**30.4. Step four:** whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

**30.5.** If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.

**15.** The Supreme Court in the case of **Prashant Bharti (Supra)** has held as under :

"**22.** The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "CrPC") has been dealt with by this Court in *Rajiv Thapar v. Madan Lal Kapoor* wherein this Court inter alia held as under: (SCC pp. 347-49, paras 29-30)

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it

chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences, inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution / complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court,

and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. *Step one*: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. *Step two*: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. *Step three*: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. *Step four*: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

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**25.** Based on the holistic consideration of the facts and circumstances



summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in *Rajiv Thapar case* stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied that the first information report registered under Sections 328, 354 and 376 of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1-12-2008, deserves to be quashed. The same are accordingly quashed."

**16.** Thus, it is clear that when the documents are of sterling and impeccable quality, then the same may be considered by the High Court, while exercising power under Section 482 of Cr.P.C.

**17.** In the present case, the applicant has relied upon the copy of the complaint filed by Assistant Engineer, M.P.M.K.V.V. Company Limited against Arvind Yadav, the brother of the respondent no.1. In this complaint, it was alleged that the premises of Arvind Yadav was inspected and it was found that theft of electricity was being committed by manipulating the meter, and accordingly, the provisional assessment to the tune of Rs.12,686/- was made and since, Arvind Yadav, neither filed any objection against the provisional assessment, nor deposited the amount, therefore, the complaint for offence under Section 135 of Electricity Act was filed and the Trial Magistrate by order dated 17-7-2012, took cognizance of the same

against Arvind Yadav. If these two documents are taken into consideration, then it would be clear that these are the Public documents having direct bearing on the matter. The complaint and the order dated 17-7-2012, have not been disputed by the respondent no.1, therefore, they are considered in the light of the allegations made by the respondent no.1 in his complaint against the applicant.

**18.** It is the case of the respondent no.1 that an illegal electricity bill of Rs.13,234/- in respect of an electric meter, which is installed in the house of his brother Arvind Yadav was issued and, therefore, the respondent no.1 had gone to the office of the applicant, to get the same rectified. Thus, it is clear that the respondent no.1 had gone to the office of the applicant no.1 for getting the electricity bill rectified which was issued by way of provisional assessment of theft of electricity committed by Arvind Yadav, the brother of the respondent no.1. It is submitted by the Counsel for the respondent no.1 that there is nothing on record to suggest that the respondent no.1, went to the office of the applicant to get the provisional assessment cancelled. However, it is important to mention here, that the respondent no.1 has deliberately not filed the copy of the electricity bill, which according to him was not correct. Had the respondent no.1, filed the said bill along with his complaint, then it would have been clear that the respondent no.1 had gone to the office of the applicant, for getting the provisional assessment, cancelled by show of pressure. Thus, it is clear that on one hand, Arvind Yadav, the brother of the respondent no.1 was found involved in commission of theft of electricity, and on the other hand, the respondent no.1 was pressurizing the applicant, in an illegal manner, to withdraw the said bill. In case of theft of electricity, the

authorities are well within their rights to issue provisional assessment and the said provisional assessment is subject to objections. Section 126 of Electricity Act, 2003 is relevant for this purpose, which reads as under :

**"126. Assessment.-**

1. If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

3. The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

4. Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

5. If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be

ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection;

6. The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

**Explanation:-** For the purposes of this section,--

a. "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

b. "unauthorised use of electricity" means the usage of electricity--

i. by any artificial means; or

ii. by a means not authorised by the concerned person or authority or licensee; or

iii. through a tampered meter; or

iv. for the purpose other than for which the usage of electricity was Authorized ; or

v. for the premises or areas other than those for which the supply of electricity was authorised.

**19.** Arvind Yadav had a right to file objections against the provisional assessment made by the authorities, but instead of following the due process of law, the respondent no.1, who himself is an Advocate, was trying to pressurize the applicant, to rectify the bill. However, it is unfortunate, that another lawyer tried to support the illegal act of the respondent no.1 in filing frivolous complaint against the officer of the Electricity Department. Shri Girish Kumar, has appeared as a witness in support of the complainant. He has stated that he had also gone to the office of the applicant, for getting his electricity bill corrected, but after finding that the applicant is against the lawyers, therefore,

he too came back without making his complaint. However, this witness has not given any details of his electric meter and has also not filed a copy of the application, which he wanted to make for rectification of his electricity bill. Even the copy of the so called Electricity Bill has not been filed by this witness, to show that he too was present in the office of the applicant at the time of the incident. Thus, it is clear that out of friendship, the another lawyer, has made a false statement before the Court.

**20.** Be that whatever it may be.

**21.** There is another important aspect of the matter. Earlier, this case was taken up for hearing on 12-7-2017, and during arguments, it was submitted by the Counsel for the applicant, that the respondent no.1 is in habit of making false and frivolous complaints and the Bar Association, Guna had also taken note of that, and accordingly, the applicant was granted time to place all the relevant documents on record.

**22.** The applicant has placed a copy of the resolution dated 27-4-2017, passed by the District Bar Association, Guna, thereby terminating the membership of the respondent no.1 on the ground that the activities of the respondent no.1 are detrimental to the function of the District Bar Association, Guna. This resolution was signed by more than 100 members of the Bar. The said resolution was passed on the basis of the report submitted by a three member committee constituted by the Executive Members of District Bar Association, Guna. The report of the three member committee has also been placed on record.

**22.** In reply, the respondent no.1 has filed a copy of the order dated 17-9-2017 passed by the Appellate Committee of Bar Council of Madhya Pradesh. In this order, it is held

by the Appellate Committee of Bar Council of Madhya Pradesh, that the constitution of three member Committee by the District Bar Association was illegal and, therefore, it had no authority to look into the allegations, therefore, the evidence collected by the Committee is senseless and not trustworthy, accordingly, the resolution dated 27-4-2017 was set aside and the membership of the respondent no.1 was restored.

**23.** Considered the submissions made by the Counsel for the parties, in this regard.

**24.** It is submitted by the Counsel for the respondent no.1, that once, the resolution passed by the District Bar Association, has already been set aside by the Appellate Committee of Bar Council of Madhya Pradesh, then, the same cannot be read against the respondent no.1 and the resolution dated 27-4-2017 passed by District Bar Association must be treated as *non-est*.

**25.** The submission made by the Counsel for the respondent no.1 cannot be accepted and hence rejected. The resolution dated 27-4-2017 passed by the District Bar Association was set aside on the question of jurisdiction, and while holding so, it was held that the evidence collected by the committee is senseless and untrustworthy. How such a finding, for brushing aside the evidence collected by the Committee, can be given by the Appellate Committee? The Counsel for the respondent no.1 could not dispute the fact that the evidence so collected, would not stand erased merely because the constitution of the committee was held to be illegal. Since, this Court is not considering the genuineness of the order passed by the Appellate Committee, Bar Council of Madhya Pradesh, therefore, nothing more is required to be considered. But one thing is

correct, that atleast 26 Advocates, whose statements were recorded by the Committee had stated against the respondent no.1. The resolution dated 27-4-2017 was signed by more than 100 Advocates of District Bar Association, Guna. Thus, it is clear that the conduct of the respondent no.1 was already under scanner by the District Bar Association, Guna, and the members of the District Bar Association, Guna were and are not happy with the activities of the respondent no.1 as the same were treated to be not only against District Bar Association, but his activities were also found to be detrimental to the reputation of the District Bar Association, Guna. Under this circumstance, this Court is of the considered opinion, that the complaint filed by the respondent no.1 has to be scrutinized very minutely.

**26.** The Supreme Court in the case of **Priyanka Shrivastava Vs. State of U.P.** reported in **(2015) 6 SCC 287** has held as under:-

**"30.....**That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

**27.** In the present case also, a provisional assessment was

done because of theft of electricity committed by the brother of the respondent no.1. The provisional assessment is subject to objections, but the respondent no.1, instead of filing objections, tried to get the provisional assessment scraped by pressurizing the applicant. Under these circumstances, it can be safely held that the complaint was filed with *mala fide* and ulterior motive, as the brother of the respondent no.1 is facing criminal prosecution for offence under Section 135 of Electricity Act. If such frivolous complaints against the officers of the Electricity Department are allowed to continue, then it would certainly, adversely effect the drive of the Electricity Department against the theft of Electricity.

**28.** There is another aspect of the matter. Section 499 of I.P.C. reads as under:-

**"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 cases 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.**

*Illustrations.-*

(a) A says—"Z is an honest man; he never stole B's watch": intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

**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 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.

*Illustration.-*

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or

canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

**Fourth Exception.—Publication of reports of proceedings of courts.**—It is not defamation to publish a 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.

*Illustrations.*—

(a) A says—“I think Z’s evidence on that trial is so contradictory that he must be stupid or dishonest.” A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z’s character as it appears in Z’s conduct as a witness, and no further.

(b) But if A says—“I do not believe what Z asserted at that trial because I know him to be a man without veracity”; A is not within this exception, inasmuch as the opinion which he expresses of Z’s character, is an opinion not founded on Z’s conduct as a witness.

**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.

*Illustrations.-*

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

**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.

*Illustration.-*

A judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

**Eighth Exception.—Accusation preferred in good faith to authorised 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.

*Illustration.-*

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

**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 interest of the person making it, or of any other person, or for the public good.

*Illustrations.-*

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

**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."

**29.** From the plain reading of Section 499 of I.P.C., it is clear that 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. In the present case, the complainant has examined only one witness in his support. Shri Girish Kumar has not stated that after hearing the words allegedly uttered by the applicant, the reputation of the respondent no.1 was harmed in his estimation. On the contrary, Girish Kumar has stated that after considering the conduct of the applicant, he too returned back without making his application. Thus, the statement of Girish Kumar, does not *prima facie* fulfill the requirement of Explanation 4 of Section 499.

**30.** The Supreme Court in the case of **State of Haryana Vs. Bhajanlal** reported in **1992 Supp (1) 335** has held as under:-

**"102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar en-grafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

**31.** Thus, it is held, that the complaint by the respondent no.1, has been filed maliciously instituted with an ulterior motive for wreaking vengeance on the applicant and with a view to deter him from discharging his official duties as provided under the Electricity Act. It is the duty of the Electricity Department to check the theft of electricity and to act in accordance with the provisions of Electricity Act.

There is nothing on record to suggest that any action of the Electricity Department was dehors the provisions of Electricity Act. If an official is forced to face criminal prosecution for having performed his duties, then certainly, it would demoralize the officers, and they would start hesitating in discharging their duties and such an attitude on the part of the officers would be against the society at large and would not be in the interest of justice. Furthermore, the complaint filed by the respondent no.1, does not full fill the requirement of Explanation 4 of Section 499 of I.P.C.

**32.** Considering the facts and circumstances of the case, this Court is of the considered opinion that the Trial Magistrate, did not consider the entire aspects of the matter and has wrongly taken cognizance of the offence under Section 500 of I.P.C. Accordingly, the order dated 16-2-2012 passed by J.M.F.C., Guna in complaint case no. 268/12, as well as the order dated 9-3-2012 passed by 1<sup>st</sup> Additional Sessions Judge to the Court of 1<sup>st</sup> Additional Sessions Judge/Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act] in Criminal Revision No. 47/2012 are hereby set aside.

**33.** This Court by order dated 4-4-2012, had stayed the further proceedings in Case No. 268/2012 pending in the Court of J.M.F.C., Guna, and thus, it is clear that no proceedings must have taken place so far in the matter before the Trial Court.

**34.** Consequently, the complaint filed by the respondent against the applicant for offence under Section 500 of I.P.C. is hereby dismissed.

The application succeeds and is hereby **Allowed.**

**(G.S. Ahluwalia)**  
**Judge**