

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 11th OF JULY, 2023

MISC. CRIMINAL CASE No. 10132 of 2020

BETWEEN:-

**AKHILESH GUPTA S/O MOHANLAL GUPTA, AGED
ABOUT 48 YEARS, OCCUPATION: CONSULTANT,
R/O 72, VYANKATESH NAGAR MAIN, AIRPORT
ROAD, INDORE (MADHYA PRADESH)**

.....APPLICANT

***(SHRI PRATEEK MAHESHWARI, LEARNED COUNSEL FOR THE
APPLICANT.)***

AND

**MANOJIT SAAD S/O MOHAN KUMARSAAD, AGED
ABOUT 36 YEARS, OCCUPATION: BUSINESS
CHAMELI KI BAADI, KHARGONE (MADHYA
PRADESH)**

.....THE NON-APPLICANT / THE COMPLAINANT

***(SHRI ROHIT KUMAR MANGAL, LEARNED COUNSEL FOR THE THE NON-
APPLICANT / THE COMPLAINANT .)***

*This application coming on for orders this day, the court passed the
following:*

ORDER

[1] The the applicant has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of the proceeding of private complaint registered as Criminal Complaint No.1426/2017 pending under Section 499/500 of IPC.

[2] The Non-applicant / the complainant has filed a complaint under Section 200 of Cr.P.C. for the prosecution of the applicant under Section 500 of the I.P.C.. According to the complainant, he is a reputed resident of Khargone city and a member of an Educational Institution, namely, Gokuldas Education Society which is running Gokuldas Public School in Khargone. He became a member on 27.03.2009 and since then rendering service to society. The society was established by the father of this the applicant Mohanlalji Gupta and Sister Sarita Mahajan in the year 2004 and apart from that this the applicant has no relation/concern with the society.

[3] The applicant sent a legal notice dated 30.08.2016 through Shri Ankit Premchandani Advocate to the complainant levelling various false allegations of financial irregularities in the society and acco to the Non-applicant, these allegations are baseless and defamatory in nature. The complainant sent a reply denying the allegation despite that the applicant made a written complaint to the Superintendent of Police, Khargone seeking inquiry/investigation. On such complaint, the SDOP, Khargone conducted an inquiry and submitted its report, the complainant was required to visit the police station Khargone and compel to sit for hours. It is further pleaded in the complaint that the applicant was a member of society in the year 2004 but he resigned on 30.07.2010, therefore since he had nothing to do with the day-to-day affairs of the society hence, he had no right to send a defamatory notice and a complaint to the police on the baseless allegation which has defamed the reputation of the complainant, he is liable to be punished under Section 500 of IPC.

[4] The complaint was filed on 13.11.2017, the complainant recorded his statement under Sections 200 and 202 of Cr.P.C. and thereafter, vide order dated 19.12.2017 the learned Magistrate took cognizance and issued a notice to the applicant for the appearance of present the applicant on 22.01.2018. Hence, the present petition before this Court.

[5] Learned counsel for the applicant submits that from the contents of the complaint as well as the statement of the complainant, no case for defamation under section 500 is made out. The learned Magistrate has wrongly taken cognizance of the complaint and the applicant is being harassed to appear before the Court. It is further submitted that the essential ingredients of the offence of defamation are not there because the legal notice was not published and there is no allegation that the amputation has been made with the intention to harm the reputation of the complainant. The intention to cause harm *sine qua non* for the offence under Section 499 of the IPC . It is further submitted by the learned counsel that sending a legal notice and making a complaint to the police for enquiry or investigation cannot said to be an intentional act to defame any person. The fact remains that after submitting the report by the SDOP no action has been taken by the present the applicant.

[6] It is further submitted by the learned counsel that even the applicant never got published any news in the newspaper in respect of issuance of legal notice and complaint to the police, or internal affair of the society hence no such harm has been caused to the reputation of the Non-applicant / the complainant. It is submitted that the High Court

under Section 482 of Cr.P.C. or 227 of the Constitution of India can quash the proceedings when the complainant has filed a groundless complaint and Magistrate took cognizance of the said complaint. In support of his contention learned counsel has placed reliance on the judgment passed by the Apex Court in the case of *Pepsi Foods Ltd. and others v/s Special Judicial Magistrate and others reported in (1998) 5 SCC 749*, he has also placed reliance on the judgment passed by (i) the High Court of Jammu and Kashmir in the case of *T.K. Ganjoo v/s Meenu Betab [2021 SCC OnLine J&K 489]*, (ii) the High Court of Madras in the case of *B.P. Bhaskar v/s B.P. Shiva [1993 CriLJ 2685]* in which the similar nature of the complaint has been set aside.

[7] Shri Rohit Kumar Mangal, learned counsel for the complainant submits that the applicant had nothing to do with the educational society in which this complainant is a member. The applicant unnecessarily issued a legal notice to the Non-applicant / the complainant to harm his reputation. Thereafter he did not remain silent and submitted a false complaint to the police in which the Non-applicant / the complainant was called to appear and sit in a police station number of times which defamed his reputation hence, the learned Magistrate has rightly taken cognizance and issued notice for appearance. The Apex Court in the case of *Bhushan Kumar and another v/s State of (NCT of Delhi) and another [2012 5 SCC 424]* has held that the Magistrate is only required to apply his mind at the cognizance stage, pre-summon stage and post-summon stage, Magistrate is not bound to give reasons for issuing an order of summon under Section 204. Shri Mangal learned counsel further submits that if the applicant is innocent, he will get

discharged from the Court but at this stage, the High Court should not interfere when the charges are liable to be proved by way of evidence.

I have heard learned counsel for both parties at length.

[8] As per Section 500 of IPC whosoever defames another shall be punished with simple imprisonment for a term which may extend to 2 years or a fine or both. Defamation is defined in Section 499 of IPC according to this whosoever by word either spoken or intending to publish any imputation concerning any person intending to harm or having reason to believe that such reasons to harm the reputation of such person is liable to be punished under Section 500 of IPC.

[9] As per the contents of the complaint, the father and sister of this applicant established an education society. Initially, the applicant was also a member of the said education society however, he resigned in the year 2010, and the Non-applicant / the complainant also became a member on 27.03.2009 of that society. According to the complainant, the applicant sent a legal notice dated 30.08.2016 through counsel making an allegation in respect of financial irregularities in the society and school and thereafter made a complaint to the police which has defamed the reputation of the complainant. The copy of the legal notice is filed as Annexure P/6 which was addressed not only to the applicant but as many as 8 members of Gokuldas Educational Society and out of which only one the Non-applicant / the complainant has approached the Court of Magistrate under Section 200 of Cr.P.C. The allegations are general in nature against all the members of the society in respect of financial irregularities, therefore, it cannot be said that with the intetion to defame or lowering down the reputation of the complainant, this legal

notice was sent.

[10] Thereafter, a complaint was also made to the police seeking enquiry or investigation into the allegation of financial irregularities in society and after the enquiry by the SDOP same was closed. The complainant has not given any dates or times on which he was called to appear at the police station. There is also no allegation that these notices were published in the newspaper to defame him which is a mandatory requirement to punish any person under Section 499 of IPC. The complainant in support of his complaint has examined himself and his uncle, no witness from the public has been examined who read these notices and saw this complainant visiting the police station, therefore, the proceedings of Criminal Complaint No.1426/2017 pending under Section 499/500 of IPC are liable to be quashed and are accordingly **quashed.**

With the aforesaid, the present petition is disposed of.

(VIVEK RUSIA)
JUDGE

Divyansh