



**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 12<sup>th</sup> OF AUGUST, 2024**

**MISC. CRIMINAL CASE No. 10231 of 2024**

***AIR MARSHAL HARISH MASAND***

*Versus*

***THE STATE OF MADHYA PRADESH AND OTHERS***

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**Appearance:**

***Petitioner Air Marshal Harish Masand is present in person.***

***Shri S. S. Thakur- P.L./G.A. for respondent No.1/State.***

***Shri Rishiraj Trivedi- Advocate for the respondent Nos.2 to 6.***

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**ORDER**

**1]** Heard finally, with the consent of the parties.

**2]** This petition under Section 482 of Cr.P.C. has been filed by the petitioner against the order dated 05.02.2024, passed by the II Additional Sessions Judge, Dr. Ambedkar Nagar, Indore affirming the order passed by the Judicial Magistrate, Dr. Ambedkar Nagar dated 25.09.2023 in case No.RCT 504/2023.

**3]** In brief, the facts of the case are that the petitioner herein, Air Marshal Harish Masand (retd.) has filed a private complaint alleging defamation by the accused persons, eight in number (Accused No.8 Lieutenant Colonel I.S. Gill (retd.) has died during the proceedings). In the aforesaid case, initially an order was passed



by the Trial Court on 17.05.2023 (Annexure- P/7), holding that no *prima facie* case of defamation is made out against the accused Nos.2 to 5 and 7. The aforesaid order of JMFC was challenged in Criminal Revision No.53/2023, which was decided on 31.07.2023, remanding the matter back to the Trial Court for deciding the matter afresh, as it was found that the Trial Court has erred in appreciating the documents filed on record. After the matter was remanded back to the Trial Court, subsequent order was passed by the Trial Court on 25.09.2023, this time giving details of the accusations made against each of the other accused persons and came to the same finding that no case for taking cognizance is made out against the other accused persons, except the accused No.1 and 6, *i.e.*, Sandeep Gupta and Lieutenant Colonel Jagdish Pahuja.

4] The aforesaid order dated 25.09.2023 was again challenged by the petitioner in Criminal Revision No.95/2023 (Annexure-A/11), which was decided on 05.02.2024, which is under challenge before this Court. In the aforesaid order, learned Judge of the Revisional Court has affirmed the order dated 25.09.2023, passed by the Judicial Magistrate First Class holding that no error has been committed in passing the aforesaid order by the Judicial Magistrate in taking cognizance against accused Nos.1 and 6 only, and letting off the other accused persons.

5] Shri Harish Masand, the petitioner herein, has assailed the impugned orders on the ground that both the learned Judges of the District Court have erred in appreciating the averments made by the petitioner in his complaint and the documents filed therewith, in their proper perspective. The petitioner has also drawn the attention



of this Court to the *WhatsApp* chats (Annexure-P/3) to submit that the initial post against the petitioner was made by Sandeep Gupta on 21.02.2023, at 01:05 a.m., which has been liked and supported by the other accused persons in their subsequent posts. Thus, it is submitted that since the initial post itself is defamatory against the petitioner, and other persons have approved of the same by sending their personal messages in the WhatsApp group, it cannot be said that other persons were not involved.

6] In support of his submissions, Shri Masand has relied upon the decision rendered by the Supreme Court in the case of *Balraj Khanna and Others Vs. Moti Ram*, reported as *1971 (3) SCC 399*; *Shivnarayan Laxminarayan Joshi and Others Vs. State of Maharashtra*, reported as *(1980) 2 SCC 465*; *Nazir Khan and Others Vs. State of Delhi*, reported as *(2003) 8 SCC 461* and *Kishore Balkrishna Nand Vs. State of Maharashtra and Another*, reported as *(2023) 8 SCC 358*.

7] The prayer is vehemently opposed by the counsel for the respondent Nos.2 to 6, Shri Rishiraj Trivedi, and it is submitted that no illegality has been committed by the Courts below in appreciating the documents filed on record. Shri Trivedi has submitted that both the Courts have rightly held that the main allegations are against the accused Sandeep Gupta and Lieutenant Colonel Jagdish Pahuja only, who have made defamatory statements against the petitioner in his capacity as the Chairman of the housing society and not as an Air Force Officer while serving the nation, whereas, the present respondent Nos.2 to 5/accused persons are the family members of main the accused Sandeep



Gupta, as Mrs. Jasbir Gupta happens to be his mother; Viveksheel Gupta is his elder brother, whereas Reshma Gupta and Khushboo Gupta are the daughters-in-law of Jasbir Gupta. It is submitted that the said accused persons along with the respondent No.6 Colonel S.S. Aulakh, aged 80 years have also been given a clean chit by the District Court assigning their limited role in posting their respective messages in the group.

8] Counsel has also submitted that both the Courts below have rightly appreciated the averments made by the complainant and thus, the petition is liable to be dismissed.

9] Heard counsel for the parties and perused the record.

10] On perusal of the record it is found that a private complaint has been filed by the petitioner alleging his defamation against as many as eight persons, out of which, the accused No.8, Lt. Col. I.S. Gill has already expired due to old age. In the complaint, it is alleged that the petitioner has retired from the Air Force, from the Rank of Air Marshal and has also served the nation for around 40 years and was also adorned with Veer Chakra during the 71 Indo-Pak war, and had also taken part in the freedom of Bangladesh. His younger brother has also died as martyr in the Bangladeshi war. After his retirement, he is residing in Mhow since February, 2006, and is the Chief Patron for the Air Veterans Association, Indore.

11] It is alleged in the complaint that in the Signals Vihar Common Room WhatsApp group of the housing society, of which the petitioner and the other accused persons are residents of, a dispute arose and pursuant to which, a WhatsApp post was made by the accused Sandeep Gupta at 01:05 a.m. in the night of 22.01.2023,



and soon thereafter, from the morning, the other accused persons also joined Sandeep Gupta in criticizing the petitioner's conduct, which included the respondent No.2 Viveksheel Gupta, aged 48 years, his mother, the respondent No.3 Dr.(Mrs.) Jasbir Gupta aged 78 years, respondent No.4, Reshma Gupta, W/o Viveksheel Gupta, aged 43 years, Khushboo Gupta, aged 38 years, W/o Sandeep Gupta, Col. S.S. Aulakh, aged 80 years, and Lt. Col. I.S. Gill, aged 75 years (now dead). Thus, being distressed by the conduct of the said accused persons, the aforesaid private complaint was filed, alleging defamation against them, in which, the learned Judge of the Trial Court has taken cognizance on 17.05.2023, only against the accused No.1 Sandeep Gupta and No.7 Col. S.S. Aulakh, holding that so far as the accused Nos.2 to 6 are concerned, no specific overt act is attributed to them. The order dated 17.05.2023 was challenged by the petitioner in revision No.53/2023 before the District Court, which was allowed vide order dated 31.07.2023, and the matter was remanded back to the Trial Court and again a direction was made to pass the order on merits. Consequently, on 25.09.2023, the JMFC has again went through the complaint and came to the same conclusion that the case is made out only against the accused Nos.1 and 6 namely, Sandeep Gupta and Lt. Col. Jagdish Pahuja. The aforesaid order was again challenged by the petitioner before the District Revisional Court- II ASJ, Dr. Ambedkar Nagar, Indore, in Criminal Revision No.95/2023, who vide its order dated 05.02.2024, has affirmed the order passed by the Judicial Magistrate on 25.09.2023, which is under challenge before this Court.



**12]** On perusal of the aforesaid orders, as also the WhatsApp chats between the parties, which is filed by the petitioner along with the complaint, this Court is of the considered opinion that no illegality or jurisdictional error has been committed by both the District Courts. It is found that in the entire text of the WhatsApp group, only two persons namely, Sandeep Gupta and Lt. Col. Jagdish Pahuja have expressed their views in detail, whereas, the other persons have made passing remarks only, agreeing with Sandeep Gupta and Lt. Col. Jagdish Pahuja.

**13]** In such circumstances, this Court is of the considered opinion that merely expressing one's agreement to a post by a one liner may be tantamount to agreeing to the expression made by the other members of the group/accused persons, however, this Court is also required to see the conversation in the WhatsApp group in its entirety, and has to see the context in which it is made, and also the purpose for which the Whatsapp group was formed.

**14]** It is apparent that the aforesaid WhatsApp group was formed to facilitate the activities of the housing society, including its day-to-day problems, in which certain criticism has been made by one of the members, on which certain views have been expressed by the other members also, in a very cryptic manner. These comments appear to have been made without any premeditation, and on the spur of the moment only. They appear to have been made without any intention of defaming the petitioner, and in such circumstances, they cannot be held liable for the long posts which are made by only two members of the said group, namely, Sandeep Gupta and Lt. Col. Jagdish Pahuja (Retd.).



**15]** So far as the decisions relied upon by the petitioner are concerned, they are distinguishable and have no application in the facts and circumstances of the case.

**16]** In view of the same, the petition being devoid of merits, is hereby *dismissed*.

**(SUBODH ABHYANKAR)**  
**JUDGE**

**Bahar**