



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 06th February, 2025

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Pronounced on: 22nd May, 2025

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CRL.M.C. 1447/2018 & CRL.M.A. 23073/2024

SH. PRAVEEN ARYA

S/o Late Sh. Jagdish Prasad Arya
R/o B-1/10-11, 2nd Floor, Flat No.201-202,
Sharma Colony, Budh Vihar, Phase-2,
Delhi-110086.

.....Petitioner

Through: Mr. Puneet Goel, Advocate.

Versus

1. **THE STATE OF NCT OF DELHI**

2. **YOGDHYAN AHUJA**

S/o Late Lala Govindram Ahuja
R/o B-36, Preet Vihar, Delhi-110091.

.....Respondents

Through: Mr. Satinder Singh Bawa, Ld. APP
for the State with SI Dheer Singh P.S.
Anand Vihar.
Mr. Pramod Gupta and Mr. Umang
Dixit, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. A Petition under Article 227 of the Constitution of India, 1950 read with Section 482 Cr.P.C has been filed to set aside the Summoning Order dated 04.06.2016, on a Chargesheet filed under Section 66-A IT Act/500 IPC in FIR No.780/2014 P.S. Anand Vihar, of learned ACMM which has been modified by learned ASJ on 29.11.2017, to be confined to S.500 IPC.
2. Briefly stated, Shri Yogdhyan Ahuja had made a written Complaint dated 07.10.2014 that he is working as Chairman in Vivekanand School, D-Block, Anand Vihar, Delhi. Shri Pradyumn Ahuja, son of Shri Yogdhyan Ahuja is working as Manager in the school. Smt. Megha Ahuja, his daughter-in-law, is working as Director in the said school. Smt. Aprajita Ahuja, daughter of the Complainant is also participating in the working affairs of the school. He in his Complaint against the Petitioner Praveen Arya, stated that he is a suspended employee of the school who had been chargesheeted and Enquiry Proceedings were initiated against him.
3. The Petitioner herein (accused in the Complaint) was alleged to have been making defamatory statements reflecting his bitter inimical attitude towards the Complainant and it was alleged that he was bent upon causing harm to his reputation. He made various serious and absolutely false allegations of defamatory nature against him and had given vide publicity to the same, which has brought down the reputation of the Complainant and his School in the estimation of friends, staff, well-wishers etc..
4. It is also stated that the accused printed, published and circulated an SMS on 10.09.2014 to various persons including Ms Neelam Seth, Rakesh Jaitely and Mahavir Singh, about the Court case which had been initiated



against the School, wherein certain directions had been given to the Complainant for deposit of certain amounts.

5. He further stated that he has also filed a case and that he has an offer of Rs.25 lakhs and whether he should accept it or not.

6. He also published a second SMS on the same date i.e. 10.09.2014 making reference to the litigations initiated by himself and other employees against the School and that one employee Prem Rani bhenji who had been terminated, would have to be taken back by the School. Reference was made to the case of Sunita Nair, wherein the Court has directed deposit of Rs.8 lakhs. He also referred to his own case proceedings in the Court and averments were made about the various litigations in the same breath. He further claimed that only his case would give benefit to the other employees and asked them whether they were agreeable to contribute 10% to the Petitioner and if they were not so agreeable, should he quietly enter into a compromise by taking Rs.25 lakhs. He had further stated that all the salary that he was getting from the School was being spent on the Court litigation and nothing got saved for his house expenses. He further asked the others whether they should bend or fight for their rights.

7. It was further claimed that the Petitioner had formed a group in the name of *Vivekanand School Manoranjan Kendra on his Facebook* and had printed, published and circulated various posts on that group.

8. On 06.04.2013 he made various allegations about the political decisions of Ms. Sonia Gandhi and stated about the socio-political condition



of the country and that the Government was not functioning properly and was not utilizing the funds for the benefit of the country.

9. He further wrote on his Facebook on 05.10.2013 wherein again he reported about the Management with reference to the parents of the students having made Complaints about the School. He stated that the Bus staff had misbehaved with some children, about which the parents had made Complaints and even had to get an FIR registered.

10. He further stated *“Is nikkami management ki laparwai or jababdehi ke liye inki mijajpursi ke liye aai thi aage aage dekho hota he kya”*.

11. The Complainant claimed that these all averments had been made to mislead and collect money. He deliberately out of spite defamed the Complainant.

12. In the SMS, the Accused had represented that he had filed a Contempt Petition against the Samiti, in this Court. The representation was made on 10.09.2014 at 10:39 hours. However, a search on the website of the High Court revealed that no such Contempt Petition had been filed till that date.

13. It was further alleged falsely that Contempt cases have been filed in his case and that the School Management had filed an Application in this Court to hear them before taking any action, which was rejected.

14. It was learnt that the Petitioner herein had filed W.P (Civil) 5344 of 2013 in this Court against NCT of Delhi and others wherein, the Samiti and the Managing Committee of the School were made Respondent No.5 and 6 respectively. The matter was taken up on 27.08.2013, but no Notice was issued either to Respondent No.5 or 6. The Court passed an Order directing



that the Department of Education would decide the representation made by the Petitioner herein after hearing both the parties.

15. The Department of Education called the Managing Committee on 25.11.2013 to pay the Petitioner herein his statutory dues as per Section 10 (1) of Delhi School Education Act and Rules. The Managing Committee thus, called the accused to substantiate his money claim with necessary supporting documents, which he failed to do. As per the records of the Managing Committee, no money was due and payable to the Petitioner.

16. The Accused reagitated the matter by filing another Application CM 3211 of 2014 seeking directions to Department of Education to implement its Order dated 25.11.2013. This time the Court did not issue the Notice to the Samiti or Managing Committee. It did not give any directions to the Department of Education as well and disposed of the Application vide Order dated 28.04.2014. In its Order dated 28.04.2014, the High Court noticed that the Director of Education had adequate statutory powers to ensure the compliance of its Orders and was free to take necessary steps for it.

17. Undeterred, the Accused filed yet another Application CM 9251 of 2014 against seeking the same relief of implementation of Order dated 25.11.2013. This time again, no substantive Order was made and the Application was disposed of on 25.07.2014 without issuing Notice to the Managing Committee or Samiti.

18. The DDE (East) called the Managing Committee on 04.08.2014 to discuss the claims of the Accused. The School informed that it has duly complied with Section 10(1) of the Act and Rules and that it had asked the



Accused/Petitioner to submit further claims, if any left with supporting documents, but he has failed to respond.

19. It was further alleged that the Petitioner in a false public circulation had falsely claimed that “*Prem Rani wapis aa gyi he*”. The claim made by the Petitioner is false as DOE in an inspection in 2006, found that some employees of the School were employed after crossing their eligibility age. Prem Rani was one such employee. The DOE directed that there was no provision for relaxation of age and the School must retrench such employees. Prem Rani challenged her removal in the Labour Court, wherein the directions were given by the Labour Court to reinstate Prem Rani with full back wages. The Managing Committee challenged the Order in Writ Petition (Civil) No.3687/2014 in this Court. On the submissions of the Managing Committee, the relief to grant full back wages was stayed, but Prem Rani was agreed to be taken back into service.

20. It was further asserted that the Petitioner had made a false representation that “*Sunita Nayar ke 8 lac court me jamakarneke order hogaye*”. However, the correct facts are that the DDE (East) by its Order dated 15.03.2014 directed repayment on certain heads, to Ms. Sunita Nayar. This Order was challenged in Writ Petition (civil) 4943/2014 and the impugned Order was subject to deposit of the amounts directed by DDE (East) in the Registry of the Court. The disputed amount came to Rs.2,39,490.00 and not Rs.8,00,000.00. This amount was deposited pursuant to the Orders of this Court. There was a dishonest falsity in the reporting by the Petitioner.



21. His further claim that “**80 lac PF Department main jamakarnehonge**” is a false statement. His assertion that “*pf chhape me ye doshi paye gaye pf depts court se order kar waliya he 80 lac 2 week me jama karaye, otherwise baap bete ko jail*” is also false. However, the truth of the matter is that the Managing Committee had an option to file an Appeal against the Order of RPF, Delhi to seek stay on its operation. Appeal No. ATA 915(4) 2014 was filed before Employees Provident Fund Appellate Tribunal, where the Order got stayed on 18.09.2014 upon deposit of Rs.8,46,789.00. There was no order from the Court to deposit Rs.80 lakhs. Further, the Order does not mention anything about anybody going to jail .

22. It is claimed that all the statements made in the SMSs were deliberate, falsehood. The innuendo that “*aap dekh hi rahe badi chattan tutne lagi hai*” was against the Managing Committee and more so against the Complainant No.1 Shri Yogdhyan Ahuja and his son Pradyuman Ahuja. It was asserted that in the Complaint, the SMSs contained falsehood, false representations and had the effect of undermining the **estimation** of the Complainant. These remarks were derogatory, objectionable and disrespectful. The name of Vivekanand School for the Facebook Group has been used apparently to convey it to be an official representative forum of the School.

23. Considering that Shri Yog Dhyan Ahuja is also a BJP Leader, it was intended users/viewers of the group may readily assume that the abusive language and vituperatives against the Congress (I) leaders emanated or were supported by Shri Yogdhyan Ahuja. It is thus, submitted that accused



is liable for the offences under Section 383/420/499 and 500 IPC and liable to be prosecuted.

24. On this Complaint FIR No.780/2014 was registered. Eventually, during the investigations, the mobile phones of the three witnesses were seized and sent to FSL, Rohini for expert opinion. The Petitioner Praveen Arya was chargesheeted under Section 500 IPC and 66-A IT Act. The Chargesheet was filed before the Court, on 23.10.2015.

25. The learned MM took the cognizance on the Complaint vide Order dated 04.06.2016 by observing as under :

“04.06.2016

Present: Ld. Substitute APP for the State.

Accused not arrested.

I have gone through the chargesheet, statements of witnesses and documents attached with the chargesheet. I take cognizance.

Issue summon to the accused and notice to his surety for 03.10.2016.”

26. The Petitioner Praveen Arya aggrieved by the Summoning Order, preferred a Revision Petition No. 84/2017 before the learned ASJ to challenge the Summoning Order. The learned ASJ noted that Section 66-A IT Act had been declared unconstitutional by the Apex Court in the case of **Shreya Singhal vs. Union of India reported in 2015 Law Suit (SC) 265** decided on 24.03.2015. Therefore, the Petitioner could not have been summoned under Section 66-A IT Act. Surviving offence is under Section 500 IPC which is non-cognizable and the investigations could not have been conducted by the Police except by the permission of the learned M.M under



Section 155(2) CPC. However, considering the FIR was registered in the year 2014 when Section 66-A IT Act existed, it could not be said that the investigation undertaken in the FIR was invalid or that the permission of learned M.M was required.

27. It was further held that contention of learned counsel for the Revisionist Praveen Arya that a person at whose instance FIR was lodged, had to file a separate Complaint under Section 200 Cr.P.C for the offence alleged under Section 500 Cr.P.C, and the trial on the basis of FIR, cannot continue was bad. It was observed that the Summoning Order cannot be faulted except that to the extent of cognizance under Section 66-A IT Act. It was further stated that now the procedure to be adopted in this case would be that the Chargesheet be treated as a Complainant and I.O of the case would be examined as a Complainant and the matter to proceed as a Complaint Case.

28. *Aggrieved by the said Order, the present Petition under Section 482 Cr.P.C has been filed for quashing of the original Summoning Order of the learned M.M dated 04.06.2016 and the modified Order of learned ASJ dated 29.11.2017.*

29. The **grounds of challenge** are that the Order of Summoning is not a speaking Order from where it could be inferred that there was sufficient evidence to summon the Petitioner. The learned M.M as well as learned ASJ should have referred to the specific averments of the Chargesheet before passing the Summoning Order. Both, learned M.M and learned ASJ did not consider that Police can investigate only the cognizable offences and FIR



required at least one Section of cognizable offence, otherwise in the light of Section 155 Cr.P.C, Police is not empowered to register a case and investigate the matter. No written permission was obtained by the Police under Section 155 Cr.P.C.

30. Therefore, the investigation conducted in the non-cognizable offence is without jurisdiction and bad in law. Despite Section 66-A IT Act had been struck down by the Apex Court, Chargesheet has been filed in the Court under Section 66-A IT Act. The filing of the Chargesheet is a gross abuse of process of law.

31. It is further asserted that both learned M.M and learned ASJ, have not considered that in the light of Section 199 Cr.P.C., for the offence under Section 500 IPC, only a Complaint Case can be filed and that too, only by the *aggrieved person* and the Prosecution cannot file a Chargesheet under Section 500 IPC, except with the written permission from the concerned Government. The Complainant could have filed a Complaint under Section 200 Cr.P.C, but could not get an FIR registered and investigated for the offence under Section 500 IPC.

32. On merits, it is contended that the allegations made in respect of the political parties, is not defamation at all. It is a settled law that a person against whom the defamatory words are used, can file a Complaint and not any third party. It is, therefore, submitted that the Summoning Order dated 04.06.2016 of learned ACMM and dated 29.11.2017 of learned ASJ be set aside and the FIR be quashed.



33. **Learned Addl. PP for State** has submitted that in the Summoning Order, it has been mentioned that the Chargesheet, Statement of witnesses and documents have been perused before taking cognizance. This in itself is sufficient to disclose the application of mind by the learned M.M before taking cognizance. Furthermore, the Chargesheet and the documents if considered, do prima facie disclose a case under Section 500 IPC. Therefore, it cannot be said that the cognizance has been taken without application of mind or the reasons for taking cognizance are not discernable from the Chargesheet, Statements of Witnesses etc. It is, therefore, submitted that there is no infirmity in the Orders of the learned M.M and learned ASJ.

34. Learned counsel on behalf of Respondent No.2 has also addressed the arguments on a similar lines, as learned Addl. PP for State.

35. **Submissions heard and record perused.**

36. To give the background, the FIR dated 09.12.2014 was registered on the Complaint under *Section 500 IPC* and under *Section 66 IT Act* on the Complaint of Respondent No.2 Shri Yogdhyan Ahuja, wherein his claim for defamation rested on two SMSs dated 10.09.2014 and also on the Facebook posts dated 05.10.2013, 03.01.2013, 06.04.2013 and 29.03.2014. The investigations were carried out by the Police and the Chargesheet got filed under Section 66A of the IT Act and Section 500 IPC on **23.10.2015**.

37. Pertinently, while Section 66A of the IT Act was existing at the time of registration of FIR, but it got declared unconstitutional in the judgment of



Shreya Singhal (supra). The Chargesheet so filed under Section 66A IT Act, is therefore, liable to be quashed as it no longer exists.

38. The **second aspect** which comes for consideration is whether there can be a Chargesheet under Section 500 IPC. The offence under Section 500 IPC is *non-cognizable and bailable offence*. The procedure for initiating any Complaint for defamation, has been specifically provided under Section 199 Cr.P.C, which reads as under:

“Section 199(1)-No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860), except upon a complaint made by some person aggrieved by the offence :Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.”

39. From the very Section, it is evident that it being a non-cognizable offence, only a Complaint can be filed before the learned Trial Court by the aggrieved person and it is only on the Complaint that the cognizance can be taken. There cannot be any FIR, it being a non-cognizable offence.

40. This aspect was considered in the case of Subramaniam Swami vs. UOI (2016) 7 SCC 221, wherein the Apex Court specifically referred to Section 199 Cr.P.C to observe that there can be no other way of initiating any case under Section 499/500 IPC, except by the Complaint and that too by an aggrieved person. It stated that in the light of Section 199 Cr.P.C,



neither any FIR can be registered nor can any directions be issued under Section 156(3) Cr.P.C.

41. In the case of Subramaniam Swami (supra) it was further observed that the offence under Section 500 IPC has its own gravity and it is the immense responsibility of the M.M to consider the contents before directing issuance of process, which is a matter of judicial determination and the contents of the Complaint must be examined before directing issuance of summons.

42. In Punjab National Bank vs. Surendra Prasad Sinha 1993 Supp. (1) SCC (Crl.) 149, the Apex Court observed that the judicial process cannot be made an instrument of oppression or needless harassment. The Court though in a different context, observed that there lies responsibility and duty on the Magistrate to find out whether the accused concerned should be held legally responsible for the offence charged.

43. In the present case, the FIR could not have been registered under Section 500 IPC, in view of the express bar under Section 199 Cr.P.C.

44. The contention of the Respondent No.2 was that the bar of Section 199 Cr.P.C comes into play only when the offence complained is alone of Section 500 IPC. If there are other offences alleged in the Complaint, then the Police is mandatorily required to register the FIR. If the FIR is validly registered and subsequently, some provision is struck down as unconstitutional, the investigation undertaken on such FIR would not become nonest and therefore, the Chargesheet had been validly filed for the offence under Section 500 Cr.P.C.



45. This argument is totally fallacious for what has been barred at the beginning itself, cannot be validated by taking support of the other Sections. Irrespective of there being other Sections involved in the FIR or not, the cognizance under Section 500 could have been only on the Complaint and not on the FIR.

46. Pertinently, the learned ASJ noted this anomaly in its Order dated 29.11.2017 and, therefore, to cross-over this legal hurdle, found an innovative way of saying that the Chargesheet may be taken as a Complaint under Section 500 IPC and the I.O be taken as the Complainant. However, the I.O was merely the Investigating Officer conducting the investigations in the Complaint, and by no stretch of interpretation can be termed as an '*aggrieved person*'.

47. In the present case the only person aggrieved was the Complainant/Respondent No.2 and he cannot be substituted by the Investigating Officer.

48. There could not have been any Chargesheet filed for an offence under Section 500 IPC and even if so filed, no cognizance could have been taken on such Chargesheet under Section 500 IPC. On this short ground itself, the Chargesheet is liable to be quashed.

49. Irrespective of the maintainability, the *next aspect* which may be considered is: *whether any defamation is made out from the two SMSs and the Facebook posts.*

50.



51. *“Defamation” is defined under Section 499 IPC is reproduced as under-*

“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.”

52. In order to constitute ‘defamation’, under Section 499, there must be an “imputation” with the “intention” to harm the reputation of the person about whom such imputation is made. It would have to be shown that the accused intended or knew or had the reason to believe that such imputation would harm the reputation of the complainant or that he would be directly or indirectly suffered by it.

53. First and the foremost, the Facebook posts may be considered. It was a Facebook Group notified in the name of Vivekanand School Manoranjan Kendra. The contentions raised by the Petitioner are that the name of the School was used only to give it a colour of being an official Facebook account. However, merely because the Facebook account had been opened in the name of the School would not in itself lead to any inference of it being defamatory. Also, the name itself stated “**Manoranjan Kendra**” and by no stretch. Could it be considered to depict the Official web-site of the School.

54. Furthermore, the posts that were made under that Group explicitly revealed that they were made by the Petitioner. One Facebook post related to the disquiet and dissatisfaction of the Petitioner with the present day



government, this did not speak anything about the school and cannot be said to be defamatory where the Complainant was concerned.

55. In the present case, essentially the basis for claiming defamation, are the *two SMSs dated 10.09.2014* which have been detailed above, merely reflect the reporting of various disputes inter-se the employees with special reference to the Petitioner and the Management. It has been explained by the Petitioner Praveen Arya, that there was supporting litigation which had been undertaken in the Labour Court, High Court and Employees Provident Fund Appellate Tribunal.

56. The contents of the SMSs referred above does not show any defamatory, derogatory or false statements. It merely states about the reference to the various facts arising from the litigation undertaken by the Petitioner and the Employees. The contents of the two SMSs, do not get covered in the definition of defamation.

57. To conclude, the cognizance for the offence under Section 500 IPC could have been undertaken only on a Complaint under Section 200 Cr.P.C filed by the "*Person Aggrieved*"; no cognizance for the offence under Section 500 IPC can be taken on an FIR. Furthermore, even the contents of the Complaint; do not prima facie establish any case of defamation.

58. Therefore, the Summoning Orders dated 04.06.2016 and 29.11.2017 are hereby, set aside and the Petitioner is discharged.

59. The Petitioner was directed to deposit Cost of Rs. 20,000/- with Advocates Welfare Fund *vide* Order dated 05.08.2024 by which restoration of his Petition in CRL.MA. 23073/2024 was allowed. However, the Cost has



yet not been deposited. It be deposited within seven working days, failing which it be placed before the Ld. Registrar General to recover it as Land Revenue.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 22, 2025

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