



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CRIMINAL PETITION NO. 14473 OF 2024

BETWEEN:

1. RAHUL GANDHI
S/O LATE RAJIV GANDHI
AGED ABOUT 54 YEARS
R/AT: C/O SONIA GANDHI, 10
JANPATH, NEW DELHI
G.P.O., NEW DELHI
DELHI - 110 001.

... PETITIONER

(BY SRI SHASHIKIRAN SHETTY, SENIOR ADVOCATE FOR
SRI NISHIT KUMAR SHETTY, ADVOCATE A/W
MS. ANISHKA VAISHNAV, ADVOCATE AND
SRI HARSHA G.L., ADVOCATE)

AND:



1. BHARATIYA JANATA PARTY
NO.48, JAGANNATHA BHAVANA
TEMPLE STREET
11TH CROSS, MALLESHWARAM
BANGALORE - 560 003
REPRESENTED BY ITS STATE SECRETARY
BJP KARNATAKA
S KESHAVA PRASAD
S/O LATE SIDDALINGAIAHSETTY
AGED ABOUT 58 YEARS

... RESPONDENT

(BY SRI VINOD KUMAR M., ADVOCATE)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO ALLOW THE PETITION AND QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER IN C.C. NO.7399/2024 (P.C.R. 3878/2023), FOR THE ALLEGED OFFENCES PUNISHABLE UNDER 499 AND 500 OF THE INDIAN PENAL CODE, 1860 PENDING ON THE FILE OF THE XLII ADDL. CHIEF JUDICIAL MAGISTRATE, BENGALURU (SPECIAL COURT FOR TRAIL OF CASES FILED AGAINST SITTING AS WELL AS FORMER MP/MLA'S, TRIABLE BY MAGISTRATE IN THE STATE OF KARNATAKA), IN THE INTEREST OF JUSTICE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED ON 18.12.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

C.A.V. ORDER

PER: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

The petitioner who is accused No.4 has filed the present petition seeking for setting aside of the proceedings pending in C.C.No.7399/2024 (P.C.R.No. 3878/2023) for the alleged offences punishable under Sections 499 and 500 of Indian Penal Code, pending on the file of XLII Additional Chief Judicial Magistrate, Bengaluru.



2. The parties are referred to by their description in the proceedings before the trial Court.

3. The complaint under Sections 190 and 200 of Cr.P.C. came to be filed by the complainant viz., Bharatiya Janata Party, represented by its State Secretary, S. Keshava Prasad.

4. The complaint narrates that the accused No.1 i.e., the Karnataka Pradesh Congress Committee which is a part of Indian National Congress, the accused No.2 - the President of the Karnataka Pradesh Congress Committee, accused No.3 - the leader of Opposition i.e., of the Congress Party (at the relevant point of time) and accused No.4 - the Former Vice President of Indian National Congress, had conspired and issued an advertisement on 05.05.2023 by making reckless imputations against the complainant. The advertisement, it is alleged was defamatory and published in main stream newspapers.



5. It is submitted that the allegations made in the advertisement made a clear reference to the time period of 2019 to 2023 which would indicate that the reference made in the advertisement was against the complainant. The complaint further narrates that the insinuations made in the said advertisement have tarnished the image of the complainant's Government.

6. It is further asserted that the accused No.4 who was actively campaigning for the Congress Party had put up the advertisement in his Twitter account, which would reveal that the advertisement related to the complainant. It is asserted that the accused No.4 has issued directions to accused Nos. 1 and 2 to proceed to advertise and such publication has defamed the complainant.

7. It is submitted that legal notice came to be issued calling upon the accused to withdraw the allegations. In light of absence of response, complaint has been filed.



8. It is noticed from the records produced that upon presentation of the complaint, cognizance was taken on 13.06.2023 and case was posted for sworn statement of complainant on 27.07.2023. The order sheet would indicate that sworn statement of the complainant was recorded and Exs. C1 to C14 were marked. Subsequently, C.W.2 to C.W.5 were examined. The Court heard arguments before issuing process to the accused on 23.02.2024. A detailed order came to be passed on 23.02.2024 while issuing summons.

9. The trial Court has taken note of the sworn statement, copy of authorisation, the documents marked as Exs.C1 to C14 and found that prima facie version of the complainant was supported. The Court also took note of statements of C.W.2 and C.W.5. The trial Court has held that the complainant could be construed to be a 'person'. It records that there were sufficient grounds for issuance of notice under Section 204 of Cr.P.C. and accordingly,



order is passed to register criminal case for the offence under Sections 499 and 500 of IPC and summons has been issued to accused 1 to 4.

10. The accused No.4 has then approached this Court seeking for setting aside of the proceedings.

11. The petitioner has contended that: advertisement relied on by the complainant does not contain any imputation against the complainant or any other identifiable individual; that the publication contains no material linking such advertisement to accused No.4; that the complaint is based on tweet of accused No.4 which has not been marked or exhibited before the trial Court; that the case rests on subjective inferences and perceptions of the complaint and not based on any objective material; that there is no evidence that accused no. 4 "gave instructions" to carry out the publication; that complaint ought to have been filed by the Government of Karnataka in accordance with Section 199(2) and 199(4)



of Cr.P.C. and the present complainant lacks *locus standi* to prosecute the complaint of defamation; that the tweet referred has neither been marked nor supported by 65B certificate (Indian Evidence Act) and cannot be looked into; that the order issuing process lacks application of mind; that the complainant is not the aggrieved person; that accused No.4 possessed no position of authority at the relevant point of time and that there could be no vicarious liability fastened on accused No.4 in the absence of specific allegation.

12. The learned counsel for the respondent - complainant would submit that: the Magistrate has rightly recorded a finding and at the stage of issuing process *prima facie* satisfaction is sufficient and evidentiary value to be attached to the documents is a matter to be established during trial; the copy of the petitioner's twitter handle with evidence of witnesses establishes the intent behind the advertisement to defame; that the definition of 'person' would include juridical persons; that there could



be defamation even of a political party as there is organizational reputation; that there is common intention contemplated under Section 34 of IPC which makes all of the accused responsible and legally liable; that the propagation of the defamatory advertisement through twitter handle would make the accused No.4 liable and that the exceptions under Section 499 would not protect the accused No.4 and Section 199 Cr.P.C is not applicable.

13. Heard both sides.

14. Learned Senior Counsel Sri. Shashi Kiran Shetty, representing Sri. Nishit Kumar Shetty, learned counsel, has advanced arguments on behalf of the petitioner while learned counsel Sri. Vinod Kumar M, has advanced arguments for the respondent.

15. For the purpose of initiating proceedings relating to an offence of defamation, the *sine qua non* is that proceedings should be initiated by "some person aggrieved". Section 199 of Cr.P.C embodies such



procedural requirement and Section 199(1) reads as follows:

"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."

(emphasis supplied)

16. It is a settled position that absent such requirement, proceedings at the instance of any other person would render the proceedings void. In the case of

Subramanian Swamy v. Union of India, Ministry of



Law and others¹, the Apex Court in Para 198 has held as under:

*"198. The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In *John Thomas v. K. Jagadeesan*² while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts*

¹(2016) 7 SCC 221

² (2001) 6 SCC 30 : 2001 SCC (Cri) 974



of each case. In *S. Khushboo*³, while dealing with "person aggrieved", a three-Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on *M.S. Jayaraj v. Commr. of Excise*⁴ and *G. Narasimhan*⁵ and observed 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. Thus, it is seen that the words "some person aggrieved" are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a "person aggrieved" is too specious a submission to be accepted."

³ (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299

⁴ (2000) 7 SCC 552

⁵ (1972) 2 SCC 680 : 1972 SCC (Cri) 777



17. Accordingly, the question as to whether the complainant herein could be person aggrieved requires recording of a finding.

18. The complainant before the trial Court is "Bharatiya Janata Party, represented by its State Secretary, BJP Karnataka, S.Keshava Prasad". Complaint is brought before the Court by the aforesaid entity who for all purposes is held out to be the person aggrieved.

19. A perusal of the complaint would reveal that the complainant is the National party as made out in Para 4, 8 and 9 of the complaint.

20. The complaint appears to indicate that its State Unit, the Government formed by it (BJP Sarkar) and the complainant i.e., the Bharatiya Janata Party (National Party) have been defamed. However, the complainant who has brought the legal grievance before the Court is the National Party i.e., Bharatiya Janata Party. If that were to be so, and the aggrieved person is the National Party i.e.,



Bharatiya Janata Party, then the complaint ought to have been filed by the duly authorized representative of the National Party. However, the letter of authorisation is issued by the President of the State Unit to its Secretary of the State Unit as made out by Ex.C.1. Such authorisation of the President of the State Unit cannot be accepted as legal authorisation to represent the BJP as a National Party. Further, there is no material to indicate that the Bharatiya Janata Party had authorised the President of the Karnataka Unit to initiate proceedings. Accordingly, the complainant is not represented by a competent person and in the absence of which the aggrieved person being represented by an incompetent person, vitiates the proceedings.

21. The procedural requirement of complaint being brought before the Magistrate by "some person aggrieved" would require the entity defamed in the present case to bring the complaint. The complaint broadly appears to make out a case that it is the party that is the aggrieved



person. The complainant seeks to make out a case by asserting that the allegations made in the advertisement at Exhibit-C series i.e., C2 to C6 makes an imputation to the complainant.

22. Insofar as accused No.4 and his role in publication of the advertisement, a perusal of advertisement at Exhibit-C series would indicate that except for the photograph of accused No.4 there is no other apparent nexus of accused No.4 with the advertisement.

23. In an action which seeks to fasten criminal liability, it must be demonstrated that the imputation made must be at the instance of a person who has *mens rea* to defame. This legal requirement comes out from the language of the provision as Section 499 of IPC stipulates that the person who is stated to have committed the act of defamation, must be a person "intending to harm or knowing or having reason to believe". In the absence of



any material to show that the advertisement was at the instance of accused No.4, the reliance on the advertisement by itself could not lead to the assertion that it was published by accused No.4 with the requisite intention to defame.

24. Accused No.4 may have been a leader of the party but did not hold any position in the organizational hierarchy as on the relevant date as is made out by the memo dated 11.02.2025. In terms of the memo, it is specifically made out that the accused No.4 was neither the President nor the Vice President of the Indian National Congress as on the date of advertisement. A mere photograph on the advertisement would not be sufficient to indicate that the advertisement was at the instance of accused No.4 when the legal provision stipulates that the person must have requisite *mens rea*.

25. The position of the accused No.4 is different and in contradistinction to the other accused and their



nexus to the advertisement by virtue of their position and the contextual background of the complaint.

26. It is however necessary to notice that the complainant's complaint also refers to tweet of accused No.4 wherein he is stated to have tweeted the advertisement along with certain additional remarks. It is stated that the said tweet in specific refers to BJP while forwarding the advertisement which would tie down accused No.4 as having defamed the complainant. However, strangely the text of the said tweet has not been marked along with other documents while sworn statement was recorded nor any Section 65B certificate produced in requisite format.

27. The trial Judge when taking cognizance has made reference to documents at Exs.C.1 to C14 which does not include the said tweet. If the order of the trial Judge issuing process has been passed after applying his mind to the material before him and such material in the



form of tweet was not marked as an exhibit, then what material would remain is only the advertisement before the Court when order was passed issuing summons. Sans the tweet, the advertisement by itself as noticed above cannot lead to any presumption of accused No.4 having defamed the complainant.

28. Insofar as the offence of defamation as regards an entity, Explanation 2 to Section 499 of IPC does indicate that there could be defamation of an entity such as the company or an association or collection of persons. Explanation 2 to Section 499 of IPC reads as follows:

"Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such."

29. An imputation that 'party X' is corrupt, is by itself defamatory and the entity which is alleged to be corrupt could be the political party. However, where the imputation made is against certain individuals or class of



persons in the entity, then the person aggrieved would be such individuals or class of persons within the larger entity who have been defamed.

30. Such legal exposition comes forth in the judgment of the Apex Court in the case of **S. Khushboo v. Kanniammal and another**⁶ as extracted below:

"26. 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."

⁶(2010) 5 SCC 600



31. Where a functionary such an office bearer of the party is defamed, then such functionary who would be the aggrieved person. In the present case, the imputation itself is by way of innuendo and such imputation is sought to be stretched to the party. However, sans the tweet the advertisement by itself makes no reference to the party but rather makes an imputation to the functionaries mentioned in the advertisement. The reference that is made in the advertisement is to constitutional functionaries and Government employees being beneficiaries and to the irregularities in Government Schemes. None of the persons or entities referred to above are before this Court. Accordingly, the aggrieved person in the advertisement at Exhibit-C series factually cannot be the political party.

32. There have been series procedural lapses as well since there is no enquiry under Section 202 of Cr.P.C. which is mandated where the accused is outside the territorial jurisdiction of the Court. Objective of such



enquiry under Section 202 of Cr.P.C. is to ensure that accused situated outside the territorial limits are not dragged into litigation before a Court without the Court being convinced of a *prima facie* case being made out to issue summons to the accused, after an enquiry. Considering that accused No.4 resides outside the territorial limits of the Court, non following of Section 202 of Cr.P.C. procedure has prejudiced the said accused and would also reveal a very casual approach of the complainant in not insisting for such enquiry before summons is issued to accused no.4.

33. The Court while issuing summons ought to apply its mind so as to ensure that the consequence of issuing process to an accused and thereby making him a part of the prosecution of the complaint cannot be done casually. The Court when issuing process has to make up its mind that atleast a *prima facie* case is made out against the accused. In the present case material before the Magistrate in the form of Ex.C1 to C14 consists only of



the advertisement and on the basis of such material as discussed above, no case is made out against accused No.4.

34. Though learned counsel for the complainant would contend that the tweet of accused No.4 is found in the file and would be marked at a subsequent stage, however, such explanation cannot cure the legal defect of not having the tweet on record when process was issued to the accused No.4. The marking of the Tweet though without 65B certificate would still have made a difference insofar as 65B certificate could have been produced at a subsequent point of time. However, absence the marking of the tweet, the material before the trial Judge when process is issued is legally deficient as there is no material to connect the accused No.4 with the offence of defamation.

35. Accordingly, the petition is **allowed**. The continuance of the proceedings would amount to an abuse



of the legal process and the proceedings in C.C.No.7399/2024 (P.C.R.No. 3878/2023) insofar as the petitioner - accused No.4 is concerned, is set aside.

**Sd/-
(S SUNIL DUTT YADAV)
JUDGE**

VP