

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 03.03.2026
Pronounced on : 12.03.2026
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Whether the operative part or
full judgment is pronounced: Full

CRM(M) No. 124/2020

Sanjay Gupta & Anr.

.....Petitioners

Through: Mr. Atul Raina, Advocate

Vs

Prem Kumar

.....Respondent

Through: Ms. Meenakshi S. Salathia, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

01. The petitioners, through the medium of the present petition, have challenged the complaint filed by the respondent against them alleging commission of offences under Section 500 RPC which is stated to be pending before the court of learned Judicial Magistrate 1st Class, Samba, (hereinafter referred as 'trial Magistrate'). Challenge has also been thrown to order dated

24.04.2017 passed by the learned trial Magistrate whereby process has been issued against the petitioners.

02. It appears that a complaint came to be filed by the respondent against the petitioners before the learned trial Magistrate alleging therein that the respondent/complainant is a business man dealing in repairing of computers having his shop at Ramgarh, Samba. It was further alleged that petitioner No. 1-Sanjay Gupta is owner of newspaper Dainik Jagran whereas petitioner No. 2-Abhimanyu Sharma, is the Chief Editor of said newspaper.

03. It was alleged that the petitioners without going into the truth of the matter published a news item that the respondent is an over ground worker of militants and that he along with other persons was taken into custody. In the news item it was further alleged that the respondent has direct links with top militants including 'Azahar Masood'. Thus, petitioners had knowingly published a defamatory news item against the respondent due to which his image has been lowered in the eyes of his relatives and other members of public at large. It was also alleged that the news item published in

the newspaper “Dainik Jagran” at the behest of the petitioners is fabricated and despite serving a legal notice upon the petitioners they did not tender any apology. Copy of the news item was placed on record by the respondent/complainant along with his complaint.

- 04.** The learned trial Magistrate after recording the statement of complainant and one witness passed the impugned order dated 24.04.2017 whereby after taking cognizance of the offence it was observed that the petitioners have *prima facie* committed offence punishable under Section 500 RPC, as such, there are sufficient grounds for proceeding against them.
- 05.** The petitioners have challenged the impugned complaint and proceedings emanating therefrom on the grounds that petitioner No. 1 is only responsible for general policy of the newspaper and that there are separate Resident Editors who are responsible for selection and publication of the news items. It has been further submitted that petitioner No. 2 is looking after the affairs of the publication as printer and editor. It has been submitted that the petitioner No. 2 is responsible for every act and

omissions with respect to the publication of the news items published in the newspaper under reference.

- 06.** It has been submitted that the news item that is subject matter of the impugned complaint was already in public domain and it was based on the information received from the investigating agency that was investigating the Nagrota attack. It has been contended that the learned trial Magistrate ought not have issued the process against the petitioners as it interferes with their right of freedom of speech and expression.
- 07.** I have heard learned counsel for the parties and perused record of the case.
- 08.** Before analyzing the facts emanating from the record of the trial court, it would be apt to notice the legal positions as regards the scope of power of High Court under Section 482 of Cr.P.C to interfere with the proceedings/complaint before a Magistrate.
- 09.** The legal position in this regard has been laid down by the Supreme Court in its various judgment including the judgments delivered in the cases of **State of Haryana and others V. Bhajan Lal and others, 1992 Supp (1)**

SCC 335 ; Pepsi Foods Ltd. and another V. Special Judicial Magistrate and others, (1998) 5 SCC 749. It has been consistently held by the Supreme Court that in a case where allegations made in the complaint and evidence collected in support of the same do not disclose commission of any offence and make out a case against the accused, the High Court can exercise its powers under Section 482 Cr.P.C to quash the proceedings against an accused. However, the inherent powers cannot be exercised to stifle or impinge upon the proceedings.

- 10.** With the aforesaid legal position in mind, let us now deal with the contention raised by the petitioners is that the complaint made by the respondent before the trial Magistrate does not disclose commission of any offence by the petitioners inasmuch as the imputations made in the newspaper against the respondent were already in public domain on the basis of reports furnished by the investigating agency and that there was no intention on the part of petitioners to harm the reputation of the respondent. On this basis, it is being contended that publication of the news item in question does not satisfy

the ingredients of offence of defamation as contained in Section 499 of RPC.

- 11.** Before determining the merits of the aforesaid contention of the petitioners, it would be appropriate to refer to the provisions contained in Section 499 of RPC which defines the offence of defamation. It 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.

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.

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.

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.

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.

Eight Exception – Accusation preferred in good faith to authorized 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.

Ninth Exception – Imputation made in good faith by person for protection of his or other interest – 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.

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.”

- 12.** A bare reading of the afore-quoted provision, makes it clear that an offence of defamation is made out whenever a person by words spoken etc., 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. The offence, however, would not get attracted if a case falls under any of the ten exceptions quoted hereinabove.

13. The Supreme Court in the case of **Subramanian Swamy V. Union of India, (2016) 7 SCC 221**, while interpreting the provisions of Section 499 of IPC observed that for constituting an offence of defamation, it must be shown that the accused had intention or had reason to believe that such imputation would harm reputation of the complainant. Thus, *mens rea* is a condition precedent to constitute the offence. There has to be an intention or knowledge on the part of the accused to cause harm to the reputation of the complainant. Without intention or knowledge, the offence would not be constituted.

14. When it comes to freedom of press, it has to be noted that a newspaper or a media house is free to obtain information from all kinds of sources and to propagate the same amongst the readers/viewers which is a fundamental right. However, the said right is subject to the reasonable restrictions, *inter-alia*, on the ground of defamation as contemplated in Clause (2) of Article 19 of the Constitution. Thus, while a newspaper has right to

dissemination of information obtained from antagonistic sources but it cannot disseminate false imputations against a person as the same is restricted in terms of Clause (2) of the Article 19 of the Constitution.

- 15.** In the light of the aforesaid legal position, let us now analyze the facts of the present case. In the news item which is the basis of the impugned complaint, the headline when translated into English reads as under :-

OGW-Prem has made a big disclosure upon his questioning.

- 16.** The news item goes on to state that the respondent-Prem Kumar, who is a resident of village Nanga of Ramgarh, an over ground worker of militants, has during the questioning disclosed that the attack at Army Regiment at Nagrota, Jammu and BSF Chowki at Ramgarh Sector is revenge of Pakistan against Surgical Strike. It goes on to state that Prem Kumar was arrested from his village as he had provided a vehicle to the terrorists of Lashkar-e-Taiba (a militant organization) for accomplishing the attack at Nagrota, Jammu. In the news item, it is also stated that upon further questioning of respondent/complainant, there is possibility of arrest of

more over ground workers. Another news item is also carried in the same newspaper according to which shop of respondent/complainant was subjected to search.

- 17.** A bare perusal of the aforesaid news item would reveal that contents thereof are, *per-se*, defamatory against the respondent as he has been projected as over ground worker of terrorists having deep connections with them. It has also been alleged that he has rendered assistance to the terrorists in accomplishing the attack on security forces at Nagrota and Ramgarh. Branding a person as over ground worker of terrorists or stating that the person has links with terrorists *ex-facie* lowers the image of such person in the estimation of those who know him.
- 18.** The contention of the petitioners that they had no intention to cause harm to reputation of the respondent while publishing the said news item cannot be accepted because Section 499 of RPC brings within its purview not only a case where the person making or publishing any imputation intends to harm him but it also brings within its purview a case where a person has knowledge or has reason to believe that such imputation will harm the reputation of the person against whom imputation is

made. So even if it is assumed that there was no intention on the part of the petitioners to harm the reputation of the respondents while publishing the offending news item still then having regard to the nature of the news item, it can prima facie be stated that they had the knowledge that the said news item would harm the reputation of respondent/complainant.

- 19.** The other contention that has been raised by the petitioners is that the offending news item was already in public domain and it was based upon the briefing given by the investigating agencies/security forces. The offending news item nowhere suggests that it is based upon briefing of security agencies or investigating agencies. The particulars of the investigating agency or the institution which has given such a briefing to the correspondent of the news paper is not mentioned or disclosed in the news item. The petitioners have not placed on record anything to show that the offending news item was already in public domain nor have they given any particulars in this regard. Therefore, the contention of the petitioners in this regard, cannot be accepted. The question whether the imputations

published in the offending news item are true or the same are based upon accounts given by any State agency, can be decided only during trial of the case, and not in these proceedings particularly in the absence of material on record in this regard.

- 20.** An additional contention has been raised by the petitioners for challenging the impugned complaint so far as it relates to petitioner No. 1. It has been submitted that the said petitioner has nothing to do with the offending news item as he is not the editor of the newspaper. It has been contended that petitioner No. 2 is responsible for looking after the affairs of the publication of Jammu edition of "Dainik Jagran". In this regard, a copy of 'Form of Declaration' published in the news paper has been placed on record which goes on to show that petitioner No. 2 happens to be the editor for J&K edition of the newspaper. The question that arises for determination is as to whether in these circumstances, impugned complaint so far it pertains to the petitioner No. 1 can proceed further.

21. In the above context, the relevant provisions of **Press and Registration Books Act, 1867** are required to be noticed. The same are reproduced as under :-

Section 1 – Interpretation clause

‘Editor’ means the person who controls the selection of the matter that is published in a newspaper.

‘Newspaper’ means any printed periodical work containing public news or comments on public news.

Section 5

Rules as to publication of newspapers. No newspaper shall be published in India, except in conformity with the rules hereinafter laid down:

(1) Without prejudice to the provisions of section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.

(2)

Section 7

“Office copy of declaration to be prima facie evidence. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court

empowered by this Act to have the custody of such declarations, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, or printed on such newspaper, as the case may be, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration, or the editor of every portion of that issue of the newspaper of which a copy is produced.”

- 22.** From a perusal of the aforesaid provisions, it is clear that a newspaper has to mention the names of its owner and editor so as to ensure transparency in publication. It is further manifest that a statutory presumption arises against the editor who is responsible for selection of the content for its publication in the newspaper thereby making him accountable unless rebutted.
- 23.** The Supreme Court has in the case of **K.M. Mathew V. K.A. Abraham & Ors. (2002) 6 SCC 670** after noticing the aforesaid provisions of the Act of 1867, held as under :-

“14. A conjoint reading of these provisions will go to show that in the case of publication of any newspaper, each copy of the publication shall contain the names of the owner and the editor who have printed and published that newspaper. Under Section 7 of the Act, there is a presumption that the Editor whose name is printed in the newspaper as Editor shall be held to be the Editor in any civil or criminal proceedings in respect of that publication and the production of a copy of the newspaper containing his name printed thereon as Editor shall be deemed to be sufficient evidence to prove that fact, and as the 'Editor' has been defined as the person who controls the selection of the matter that is published in a newspaper, the presumption would go to the extent of holding that he was the person who controlled the selection of the matter that was published in the newspaper. But at the same time, this presumption contained in Section 7 is a rebuttable presumption and it will be deemed as sufficient evidence unless the contrary is proved. Therefore, it is clear that even if a person's name is printed as Editor in the newspaper, he can still show that he was not really the Editor and had no control over the selection of the matter that was published in the newspaper. Section 7 only enables the court to draw a presumption that the person whose name was printed as Editor was the Editor of such newspaper, if the publication produced in the court shows to that effect.

15. The contention of the appellants in these cases is that they had not been shown as Editors in these publications and that their names were printed either as Chief Editor, Managing Editor or Resident Editor and not as 'Editor' and there cannot be any criminal prosecution against them for the alleged libellous publication of any matter in that newspaper.

16. The contention of these appellants is not tenable. There is no statutory immunity against Managing Editor, Resident Editor or Chief Editor against any prosecution for the alleged publication of any matter in the newspaper over which these persons exercise control. In all these cases, the complainants have specifically alleged that these appellants had knowledge of the publication of the alleged defamatory matter and they were responsible for such publication; and the Magistrates who had taken cognizance of the offence held that there was prima facie case against these appellants. It was under such circumstances that the summonses were issued against these appellants.

24. From the foregoing analysis of legal position, it is clear that Act of 1867, does not recognize any other legal entity, namely, Chief Editor, Managing Editor etc., for raising a presumption, however, such individuals can be proceeded against only if there are specific allegations made against them. The Act of 1867 only recognizes Editor for the purpose of holding him responsible in any civil or criminal proceedings in respect of publication of the newspaper.

25. In the present case, as per the declaration made by the newspaper 'Dainik Jagran' Jammu edition, petitioner No.2 happens to be its Editor. Even in the declaration published in the newspaper, the said petitioner is shown

to be the Editor. Therefore, presumption under Section 7 of the Act of 1867 arises against him and he is responsible for the selection of content in the newspaper. In the petition itself the petitioners have admitted that petitioner No. 2 is looking after the affairs of publication of the Jammu edition of the newspaper. Thus, petitioner No. 2 cannot escape his liability in respect of the offending news item.

26. When it comes to the petitioner No. 2, he is shown to be owner of the newspaper. This is clear from a bare perusal of the impugned complaint. There are no specific allegations with regard to his role in selecting the offending news item against the said petitioner in the impugned complaint. It is nowhere alleged that he was in any manner associated with the selection or publication of the offending news item. In the absence of any such allegations, prosecution against petitioner No. 1 can be sustained.

27. In view of what has been discussed hereinabove, the petition is partly allowed and the impugned complaint and the proceedings emanating therefrom to the extent of petitioner No. 1- Sanjay Gupta are quashed whereas the

impugned complaint and the proceedings emanating therefrom as against petitioner No. 2 shall continue. Thus, the petition to the extent of petitioner No. 2-Abhimanyu Sharma, is **dismissed**.

28. A copy of this order be forwarded to the learned trial Magistrate.

**(SANJAY DHAR)
JUDGE**

**JAMMU
12.03.2026
SUNIL**

