



## THE HIGH COURT OF SIKKIM : GANGTOK

### Criminal Revision Petition No. 05 of 2005

Shri A. Moulik  
Senior Advocate  
Having chamber at Tibet Road  
Gangtok, P.O. Gangtok-737 101  
East Sikkim

... Petitioner

- Versus -

Shri M. Chandran  
A resident of T.N.A. Campus  
Gangtok, P.O. Gangtok  
East Sikkim.

... Respondent.

**For the Petitioner :** Mr. A. Moulik, Sr. Advocate with Mr. N.G. Sherpa, Advocate.

**For the Respondent :** Mr. M. Chandran, Respondent in person.

### Criminal Revision Petition No. 06 of 2005

Francis Fanthome  
E-186A, Greater Kailash II  
New Delhi-110048

... Petitioner

- Versus -

i) State of Sikkim  
Through Public Prosecutor  
High Court of Sikkim  
Gangtok.

ii) M. Chandran  
S/o Shri V.T. Gopalan  
R/o Tashi Namgyal Academy Campus  
Gangtok.

... Respondents

**For the Petitioner :** Mr. N. Rai and Ms. Jyoti Kharg, Advocates.

**For the Respondents :** Mr. J.B. Pradhan, Public Prosecutor for the State.





Mr. M. Chandran, Respondent in person.

**Criminal Revision Petition No. 07 of 2005**

Francis Fanthome  
E-186A, Greater Kailash II  
New Delhi-110048

... Petitioner

- Versus -

i) State of Sikkim  
Through Public Prosecutor  
High Court of Sikkim  
Gangtok.

ii) M. Chandran  
S/o Shri V.T. Gopalan  
R/o Tashi Namgyal Academy Campus  
Gangtok.

... Respondents

For the Petitioner : Mr. N. Rai and Ms. Jyoti Kharga,  
Advocates.

For the Respondents : Mr. J.B. Pradhan, Public Prosecutor  
for the State.

Mr. M. Chandran, Respondent in person.



**Criminal Revision Petition No. 08 of 2005**

The T.N. Academy Board (A body corporate)  
Through its Member Secretary  
Principal, T.N. Academy  
Gangtok-737 101

... Petitioner

- Versus -

M. Chandran  
S/o Late Shri V.T. Gopalan  
R/o Tashi Namgyal Aacademy Campus  
Gangtok.

... Respondent.

For the Petitioner : Mr. A. Moulik, Sr. Advocate with Mr.  
N.G. Sherpa, Advocate.





For the Respondent : Mr. M. Chandran, Respondent in person.

PRESENT: HON'BLE MR. JUSTICE AJOY NATH RAY, CHIEF JUSTICE.

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DATE OF JUDGMENT : 20<sup>TH</sup> APRIL, 2007.

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### JUDGMENT

#### The Court:

1. This is a common judgment for all four matters. The applicants in these four Criminal Revision Applications are not called upon to reply to the respondent M. Chandran, who appears in person. The applicants respectively are one Mr. Fanthome, who was one time Principal of one Tashi Namgyal Academy, a school in East Sikkim; two, the Board of that Academy, and three, Mr. Moulik, the Senior Advocate who had the misfortune of appearing for Mr. Fanthome against the complainant M. Chandran.

2. There are two applications by Fanthome making the total number of applications four.

3. Summons have been issued on two complaints of Chandran, respectively dated 28.5.2004 and 25.9.2004.





These are both complaints alleging criminal defamation and invoking sections 499 and 500 of Indian Penal Code. Defamation is alleged in regard to statements relating to Court cases only, relying on the law of limited privilege only which is available in India in matters relating even to Court proceedings.

4. The type of complaint persisted in by Chandran with regard to criminal defamation can be seen from one criminal defamation case which was once earlier commenced against the learned Advocate Mr. Moulik and has now seen its end in the Supreme Court. That complaint is not the subject matter of any of these criminal revision applications, but it is quite typical of the complaints of the complainant Chandran, and is, therefore, material in the matter of exercise of the Court's discretion.

5. The said earlier complaint case, which was registered and numbered 5 of 2004, was that when Mr. Moulik was appearing as counsel for Mr. Fanthome in criminal case No. 27 of 2000 (which was also yet another criminal defamation case initiated by Chandran), he placed paragraph 9 of a particular judgment before the Court



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hearing his arguments, instead of placing paragraph 16 of the same judgment before the Court. This was all that was complained of. It is difficult to believe that this type of criminal complaint was persisted in, but it was indeed. On 3.4.2004 the learned Judicial Magistrate, East Sikkim dismissed the said complaint. The High Court dismissed the revision petition filed by Chandran ~~against the said dismissal~~ on 16.6.2004. The Supreme Court dismissed the SLP from the High Court's order of dismissal on 30.8.2004 and on being approached again the Supreme Court dismissed the review petition filed by Chandran <sup>in</sup> 17.11.2004. All these proceedings were against the Advocate Mr. Moulik for placing paragraph 9 before paragraph 16 of a signed and completed judgment, during his arguments in open Court, made in the course of defending Fanthome.



6. The short history of Chandran himself is interesting. It is a history of failure. He joined the Tashi Namgyal Academy as Vice Principal (Administration) on 28.5.1982. After a short tenure of less than a year he handed over charge to Mr. Fanthome, then Principal of the Academy on 25.4.1983. It is the case of Chandran that he



was not merely Vice Principal (Administration) but Vice Principal. Be that as it may, it seems <sup>as</sup> ~~that~~ he alleged, that he wanted to get a job in some other institution; that Fanthome did not give a good report and therefore he did not get the job. So in 1987, he filed a suit in tort alleging false representation against him made by Fanthome and claimed damages of Rs.10 lakh. The suit was dismissed in 1987 by the learned Additional District Judge; Chandran was unsuccessful in appeal also.

7. Chandran filed another Civil Suit in 1989 claiming again Rs.10 lakh against the said Mr. Fanthome allegedly for serving defamatory interrogatories on and against him. This is the commencement of his 'defamation series'. He tried to get the case removed from the State of Sikkim but was largely unsuccessful in his attempt <sup>made</sup> again before the Supreme Court. The Supreme Court only directed the Additional District Judge to decide the suit expeditiously.

8. These are all preliminary but important explanatory matter. The cases before this Court now are off <sup>of an</sup> shoots/offshoot in regard to the civil suit in Tort which was







first numbered 261 of 1987 and then numbered 14 of 1996. An earlier complaint was made by Chandran in the year 2000 which was numbered Criminal Case No. 27 of 2000. It was again for criminal defamation invoking sections 499 and 500 of the IPC. The complaint was against Fanthome. The complaint basically states as follows. On 31.3.1997 Fanthome had given evidence in the Civil Suit filed in Tort. In the list of documents sought to be relied upon by Fanthome, 4 letters of one Mr. Nair are mentioned which are items 1, 2, 3 and 4 in Fanthome's list. He claimed privilege in regard to these four documents. Nair was the erstwhile principal of T.N. Academy and ceased to be such on 09.12.1982. Thus Nair had seen Chandran in T.N. Academy for about seven months from May to December 1982.



9. The four letters of Nair are marked private and confidential and Fanthome stated that he was claiming privilege to preserve the trust and confidence of Nair. However, on 31.3.1997 when giving evidence, he produced the four letters written by Nair for inspection by the Court, and thereafter he took these back again. It is extremely important to note that these are all original letters, and are still claimed to be in the possession of Fanthome himself.



He claimed privilege (whether rightly or wrongly does not matter for our purposes) and never filed these in Court or in Court department and never gave up possession of these letters.

10. According to Chandran, there is defamatory material against him in these four letters. But how did he see the contents? His story is interesting. He had obtained an inspection order in his tort suit in regard to the documents of Fanthome from the District Court as early as on 4.3.1989. According to him, on the basis of this order he inspected the documents filed by Fanthome "4 or 5 days before 31.3.1997" and had also inspected the documents "a few times earlier". According to him, he found loose photocopies (he never alleged seeing the originals) of the four letters of Nair in the documents filed on behalf of Fanthome. According to him, the documents being kept there in loose condition, anybody could have read those. So, there is defamation. However, absurd, that is his case. How he inspected the documents again and again for 8 years after the inspection order <sup>was</sup> passed only once on 4.3.1989 is not understood.








11. In any event, one half of the criminal complaint leading to criminal case No. 27 of 2000 was based on these unexplained loose photocopies found allegedly by Chandran in the documents of Fanthome. The other half of the case relates to an explanatory note of 1982, which was allegedly expunged in 1982, and yet published against him by Fanthome in Court proceedings. More of this explanatory note later. In regard to the 4 loose letters, once he says he does not know how these came to be there in the Court department, and then again he says these were put there by Fanthome. His sheet anchor is an affidavit of Fanthome dated 15.2.1989 filed in the District Civil Court. There, Fanthome says in paragraph 3, "That of the 19 documents filed in Court on 13.2.89, under list, the documents numbered 1 to 4 of the said list are personal ...written by ex-principal K.N.P. Nair...disclosure of the same without the express consent of the writer would be a breach of trust and hence are privileged documents which this defendant cannot be compelled to produce for inspection by the plaintiff".



12. According to Chandran, Fanthome has admitted here that all 19 documents were filed in Court. This is absolutely unacceptable. Even Chandran does not allege



that he ever saw any original letter of Nair in the documents filed by Fanthome. Fanthome never relied on any photocopy. Fanthome's reference to the 'filing' of the 19 documents in his affidavit (including the 4 letters) can only mean his intending to rely on the 19 documents for defending the tort suit, not actual physical filing of the 4 letters. The drafting of the affidavit might be inaccurate, but no criminal case lies for mere inaccurate drafting.

13. Nobody would have known anything about the contents of Nair's letters, unless Chandran himself went on publishing his 'remembrance' about those letters; what interest he has in publishing matters, which according to him are against himself, again and again in Court papers, is best known to his own peculiar mind.

14. This off-shoot, by way of criminal defamation, from the dismissed tort suit filed by Chandran, was also itself dismissed. On 24.12.2002 the said off-shoot Criminal Case No. 27 of 2000 was dismissed by the learned Sessions Judge. The Revision Petition was dismissed by the High Court on 6.3.2003; costs of Rs.1000/- was imposed on Chandran. As usual he travelled up to the Supreme Court.







On 28.7.2003 his SLP was dismissed. On 25.9.2003 his Review Petition was dismissed by the Supreme Court of India.

15. Thereafter, he has started the present battle by filing two complaints, one dated 28.5.2004 and another dated 25.9.2004 mentioned in para 3 in the beginning of the Judgment. The complaints repeated the earlier history of the explanatory note of 1982 and the four letters of Nair although that chapter is now closed by dismissal of the Review Petition by the Supreme Court once and for all. Then in the complaint 28.5.2004, <sup>where</sup> complaints are made against Fanthome and the Board of T.N. Academy, it is said that the very same letters of Nair have been inspected again by Chandran. This time he has gone on to see and 'remember' other defamatory allegations. 11 such "new" defamatory heads are mentioned. He is proceeding to make complaint this time only on 7 of those 11 items. May be four are reserved for later harassment. He came to see these letters once again on 30.5.2001, and in no other a place than the High Court's Registry itself. The documents did come to the High Court for a short time. These documents are not the letters written originally by Nair which are still possessed by





Fanthorne, but are again the same four photocopies which Chandran somehow found loose and open, to be read by anybody in the Department of <sup>the</sup> District Civil Court. These documents had come to the High Court for a short period in regard to a civil appeal and those had come in a sealed cover.

16. The complaints of Chandran being made this time only in 2004, and the earlier of the two complaints being 28.5.2004, <sup>-2-</sup> same cause of action was needed within 3 years to get out of the limitation prescribed under Section 468 of the Criminal Procedure Code. So the story of inspection in the High Court on 30.5.2001 was spun out by Chandran. Was there any inspection order passed allowing Chandran to inspect on 30.5.2001? None is on the file. Is there any record of anybody breaking open the sealed cover for fresh inspection by Chandran on 30.5.2001? Nothing is on record. Was there any whisper made by Chandran in any document or correspondence about his inspection made on 30.5.2001 before he filed the first of his two present complaints on 28.5.2004? There is nothing on the file. And what is the complaint? Criminal defamation again. What is the subject of Criminal Defamation? The same four old letters of Nair.








How have the letters by way of photocopies come in the Court records? Nobody knows and nobody can ever prove, in <sup>regard to</sup> this, the hand of Fanthome or the T.N.A. Board or the learned Senior Advocate Mr. Moulik. Are there any witnesses apart from Chandran himself whom he chooses to cite? No, there are none at all. He is all alone. He has already deposed before the Magistrate on 19.7.2004 and 21.7.2004 with regard to both his complaints of 28.5.2004 and 25.9.2004 that he has no other witnesses to cite.

17. Yet he submits that his Criminal Defamation Cases must go on. Since Court proceedings enjoy only a qualified privilege in regard to protection against defamation in India, the Court should not to examine the details of evidence at this stage of quashing of complaint, and therefore, according to Chandran, let the proceedings go on, and let Fanthome and the T.N.A Board of directors face criminal prosecutions for as long as Chandran has energy to prosecute those.

18. I have no doubt that it is sheer malevolence on the part of Chandran which has caused him to institute proceeding after proceeding. He had even filed a case in Delhi for perjury against Fanthome and his Counsel Mr. N.





Rai, stating that Fanthome had made a false verification stating himself to be in Gangtok whereas he was in New Delhi at the material time. He made the complaint, as is his custom now, against Fanthome's counsel the learned Advocate N. Rai also. The complaint had been dismissed in <sup>-i-</sup>time by the Delhi Metropolitan Magistrate on 1.5.2004 and the order upheld by S.K. Agarwal, J of Delhi High Court on 24.1.2006 dismissing Chandran's application u/Ss. 397 & 401 Cr. P.C. from the order dated 1.5.2004 passed by the Court of Metropolitan Magistrate, Delhi. The High Court simply said that it cannot be shown that Fanthome could not have been at Gangtok at the material time although he is now admittedly working in New Delhi with the Council for the I.S.C.E. So now, another complaint by Chandran fails. What happens to costs? The last two sentences of Agarwal J.'s order are as follows: -

"Petitioner is a senior citizen appearing in person prays that the cost be waived. Allowed, as prayed."

**19.** Now we come to the complaint dated 25.9.2004 where the two persons complained against are Mr. Fanthome and his learned Advocate Mr. Moulik. Here again





the old story of the complaint leading to Criminal Case No. 27 of 2000 is repeated. It is thereafter said that there is a rider signed by Chandran himself by way of which it is mentioned that an earlier explanatory note against him has been directed to be expunged on 4.12.1982. This is at the bottom of certain Board Minutes of the T.N. Academy dated 26.11.1982. In between the two signatures at the bottom of the minutes, and the rider written by Chandran himself, there appears a date 29.11.1982. The alleged great fault on the part of Mr. Moulik was that he argued in Court, orally and by way of written submissions, that the date 29.11.1982 is not to be ascribed to the Minutes of 26.11.1982 but to the note written by Chandran himself, and therefore the note is unreliable, because it cannot be recorded on 29.11.1982 about expunging of an explanatory note, which expunging was made, even according to Chandran's own allegation, later on and only on 4.12.1982. As the explanatory note, according to Chandran, contains defamatory material against him, (this was ~~the~~ one half of the complaint which led to the criminal defamation case No. 27 of 2000, the other half of the complaint being about the said 4 photocopy letters), and since the submission and





arguments of Mr. Moulik themselves again defame Chandran, because the arguments allege falsity and tampering on the part of Chandran, Mr. Moulik should be punished under I.P.C. So, naturally, should Fanthome, by any means, be punished too, because the arguments and submissions are made on his behalf. This is the second complaint of criminal defamation dated 25.9.2004, which, until now, is the last in the series.

20. I find that Chandran has held people <sup>to</sup> at ransom by filing complaint after complaint. Even in Court, learned Advocates say, should he read the matter or not, because it might well be that if he reads this matter, Chandran will file another complaint against him saying that Court proceedings are only privileged in a qualified way and whatever his allegation about criminal defamation is, it should be tried and therefore, let summons be issued.

21. To be brief, the first of the two present complaints of Chandran <sup>is</sup> are based on an alleged repeat inspection made by him in the High Court on 30.5.2001 of four photocopy letters, put into Civil Court records, about which nobody knows how those got included there at all, and which







nobody knows who ever read, or was interested in reading, unless it is the Presiding Judge to whom Fanthome handed up the letters on 31.3.1997, when the evidence in the civil tort suit of 1987 was being heard, and which four letters the Judge handed back to Fanthome there and then.

22. The second present complaint of 25.9.2004 is that, Mr. Moulik made wrong submission as learned Advocate and that wrong submission is defamatory because the date ascribed wrongly to Chandran accuses him of tampering etc. No doubt, in quashing proceedings under Section 482, the Court cannot go into details of weighing evidence and probable evidence. I have purposely not gone into details but mentioned only the broad heads of the case made out by Chandran himself. There can be no doubt at all that he has been using, or better put, misusing, the machinery of <sup>the</sup> law and abusing of it for the purpose of harassing persons against whom he bears ill will, because of his own past history of repeated failure.

23. It is absolutely unjust that he be allowed to continue with this abusing<sup>ing</sup> and be allowed to use the legal machinery for his own perverted purpose. It is a serious matter that





*Sub.* the alleges his taking of inspection in our High Court Registry on 30.5.2001 which is not borne out by anything. There can be only two things possible; first, that he did not take the inspection and has made false statements, including on Court paper; and secondly, that he looked unauthorisedly, and without any permitting order, into Court papers, which makes it an act of criminal contempt. He is possibly guilty of both. It is possible that he falsely alleges 'inspection' on his part, meaning a regular seeing of records with <sup>prior</sup> a Court order <sup>passed</sup> therefor; it is possible, at the same time, that he made an irregular sortie into Court papers on a self-permitting basis, which is no doubt contumacious of the sanctity of the Court and its official papers.



24. It is important that deterrent costs be imposed on Chandran so that, if possible, he might keep away in future from the precincts of Courts of Law, without having any due and proper purpose for approaching those. It is also proper that Chandran face the defendants' or accused's side of the process of the Court, so that he gets a little taste of what he has been doling out to others so far.





**25.** The following orders are passed on the above basis: -

(i) The Criminal Revision Petition No. 5 of 2005 of Mr. Moulik succeeds as do the two Criminal Revision Petition Nos. 6 and 7 of 2005 filed by Fanthome and the Criminal Revision Petition No. 8 of 2005 filed by the Board of Governors of the T.N. Academy. The summons, and all the Criminal proceedings arising out of the two complaints of Chandran dated 28.5.2004 and 25.9.2004 are hereby permanently stayed and quashed.

(ii) Chandran is directed to pay costs of Rs. 30,000/- to the learned Senior Advocate Mr. Moulik in regard to his successful criminal revision petition No. 5 of 2005; costs of Rs.30,000/- to Mr. Fanthome in regard to his successful Criminal Revision Petition No. 6 of 2005; further costs of Rs.30,000/- to Mr. Fanthome in regard to his successful Criminal Revision Petition No. 7 of 2005; and costs of Rs.30,000/- to the T.N. Academy Board for their successful Criminal Revision Petition No. 8 of 2005.

(iii) If the costs are not paid within one week from date, the State of Sikkim and its officers and employees are directed to recover the same from Chandran as if the costs were imposed as fine by the learned Sessions Judge of the





District of East Sikkim and after such recovery hand over the costs to the parties who are entitled to receive those. The learned District and Sessions Judge, East Sikkim, will also act on this basis, and issue summons or process against Chandran as might be necessary.

(iv) The State is directed to take all steps for prosecuting Chandran forthwith in regard to the false statement of his taking inspection of the said four alleged photocopy letters of Nair in the High Court Registry on 30.5.2001; sanction for the purpose of prosecution for perjury is granted so far as this Court is concerned and any other sanction, as might be necessary, will be applied for by the State in due course.

(v) The Registry of the High Court is directed to register criminal contempt proceedings against Chandran for interfering with Court records on 30.5.2001 without due authentication or authorization. Such criminal contempt matter to be filed and made returnable before an appropriate Division bench of this High Court, as might be nominated, or before a Single bench, as nominated, if a Division bench cannot readily be constituted.








(vi) The State shall continue to file compliance report in regard to the above order in the Registry of the High Court and the Registry of the High Court shall also file compliance report in its own files and documents, in regard to the contempt proceedings directed to be initiated.

(vii) In regard to all matters relating to all items dealt with herein, and all matters incidental or ancillary thereto, Chandran is restrained from filing, initiating, continuing or prosecuting, any civil or criminal proceedings anywhere in India without first obtaining leave of this Court (the Hon'ble Supreme Court of India is naturally excepted, as it is above me).



  
( Ajoy Nath Ray, CJ )

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Deputy Registrar (Judt.)  
High Court of Sikkim  
at Gangtok