

**THE HIGH COURT OF SIKKIM : GANGTOK**

(Criminal Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Crl.M.C. No.09 of 2014

Petitioner : Shri Sonam Topgay Bhutia,
S/o Late T. Bhutia,
R/o Changma House,
Upper Syari,
P.O. Tadong,
Gangtok,
East Sikkim.

versus

Respondents : 1. Shri Chander Pal,
S/o Late Lekh Raj Pal,
Gangtok Central Division
Central Public Works Department (CPWD),
Gangtok,
East Sikkim.

2. State of Sikkim
through the Chief Secretary,
Government of Sikkim,
Gangtok,
East Sikkim.

Application under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Jorgay Namka, Advocate with Ms. Zola Megi, Ms. Chenga Doma Bhutia, Ms. Pema Bhutia and Ms. Panila Theengh, Advocates for the Petitioner.



Shri Sonam Topgay Bhutia vs. Shri Chander Pal and Another

Mr. Sonam Topgay Bhutia, Petitioner in person.

Mr. Samir Kumar Sen Gupta, Advocate with Mr. G. Lama and Mr. Soumik Sen Gupta, Advocates for the Respondent No.1.

Mr. Chander Pal, Respondent No.1 in person.

Mr. J. B. Pradhan, Additional Advocate General and Public Prosecutor with Mr. Karma Thinlay Namgyal, Senior Government Advocate and Additional Public Prosecutor, Mr. S. K. Chettri & Mrs. Pollin Rai, Assistant Government Advocates and Assistant Public Prosecutors, for the State-Respondent No.2.

O R D E R

(19th May, 2015)

Wangdi, J.


1. This application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), has been preferred seeking to quash Private Complaint Case No.06 of 2014 filed by the Respondent No.1 against the Petitioner for offence under Section 500 of the Indian Penal Code, 1860 (for short "IPC") in the Court of the Chief Judicial Magistrate, East and North Sikkim at Gangtok.

2. The facts and circumstances that led the Respondent No.1 to file the complaint against the Petitioner are set out in some detail hereunder for

convenience being germane to the disposal of this application.

(i) The Petitioner is a Class - I, Central Government Civil Contractor, who was awarded the contract work for construction of the Office building of the Accountant General, Sikkim at Deorali, Gangtok, East Sikkim, on a tender floated by the Chief Engineer (EZ) – I, CPWD, Kolkata, which he completed successfully on 15-04-2006. The work was carried out as per the contract agreement entered by and between the Petitioner and the Chief Engineer (EZ) – I, CPWD, Kolkata, of which the Respondent No.1 is a subordinate.

(ii) Disputes having arisen between the parties, one Shri B. K. Biswas, a retired CPWD Engineer, was appointed as a Sole Arbitrator in terms of the arbitration clause in the contract agreement for settlement of the disputes and differences. Eventually, an arbitration award was passed by the Sole Arbitrator which was sent by him with his covering letter dated 06-07-2011 despatched through Speed Post




simultaneously to the Petitioner, the CPWD, Gangtok Central Division, Sikkim, headed by Respondent No.1 and the Chief Engineer (EZ) –I, Kolkata, which the Petitioner received on 12-07-2011.

(iii) After its receipt, the Petitioner filed the award in the Court of the District Judge, East and North Sikkim at Gangtok on 18-10-2011 for its execution registered as Civil Execution Case No.27 of 2011. The award having been received on 12-07-2011 by the Petitioner, the period of 3 (three) months prescribed for setting aside the arbitral award under Section 34(3) of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996"), would have expired on 11-10-2011.

(iv) The CPWD, Gangtok Central Division, Sikkim, however, curiously chose to file the award in the Court of the Civil Judge, Senior Division, Siliguri, West Bengal, under Sections 34 and 9 of the Act of 1996, where it was registered as Misc. Case (Arbitration) No.66 of 2011.

(v) On 02-11-2011, CPWD, Gangtok Central Division, Sikkim, put in their appearance through their



Counsel in Civil Execution Case No.27 of 2011 in the Court of the District Judge, East and North Sikkim at Gangtok, which then was listed on 24-12-2011 for steps to be taken by the decree-holder, i.e., the Petitioner herein. On the very date, i.e., 02-11-2011, Misc. Case (Arbitration) No.66 of 2011 filed by the CPWD, Gangtok Central Division, Sikkim, before the Court of the Civil Judge, Senior Division, Siliguri, West Bengal, was also listed for hearing on the point of maintainability.

(vi) The Respondent No.1 by his letter dated 11-11-2011 informed the Petitioner that the competent authority had accepted a number of claims with admissible interest as settlement and that if it was accepted, the Petitioner should submit an undertaking in the prescribed form enclosed with the letter within 7 (seven) days of its receipt.

(vii) On 28-02-2012, the Petitioner moved an application under Order XXI Rule 41 read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC") in Civil Execution Case No.27 of 2011 to

examine an Officer of CPWD, Gangtok Central Division, Sikkim, in order to determine as to whether or not the judgment-debtor had any properties/means for satisfaction of the decree. Against this application, the CPWD, Gangtok Central Division, Sikkim, filed a written objection on 28-04-2012. During the course of the hearing of the application on 18-06-2012, the Learned Counsel for CPWD, Gangtok Central Division, Sikkim, submitted that some records in support of his submissions were required to be placed. This having been allowed, the Respondent No.1 filed a supplementary affidavit on 16-07-2012 and the matter was listed on 14-08-2012.

(viii) It is stated that in the supplementary affidavit it was specifically pleaded in paragraph 4 by the Respondent No.1 that the award passed by the Sole Arbitrator was received at his Office on 20-07-2011 which as per the Petitioner was a false statement.

(ix) Although on 21-09-2012, the application under Order XXI Rule 41 read with Section 151 CPC filed by the Petitioner was taken up for hearing but, by

order dated 25-04-2013 the very Civil Execution Case No.27 of 2011 was dismissed as being premature granting liberty to the Petitioner to execute the award afresh.

(x) Accordingly, on 14-05-2013, the Petitioner filed a fresh execution petition for execution of the arbitral award dated 06-07-2011 which was registered as Civil Execution Case No.05 of 2013.

(xi) On 17-05-2013, the Civil Judge, Senior Division, Siliguri, West Bengal, dismissed Misc. (Arbitration) Case No.66 of 2011 filed by the CPWD, Gangtok Central Division, Sikkim, as well as a subsequent application under Order XLVII Rule 1 read with Section 151 CPC on 20-05-2013. Against this, the CPWD, Gangtok Central Division, Sikkim, moved the Hon'ble High Court, Calcutta and by order dated 25-06-2013 (*wrongly recorded as '25-11-2013' in the application*) of that Court the fresh execution case before the Principal District Judge at Gangtok being Civil Execution Case No.05 of 2013 was stayed.


(xii) It is stated that the Petitioner, in order to ascertain the correctness of the statement made by the Respondent No.1 in paragraph 4 of the supplementary affidavit referred to earlier, made an application under the Right to Information Act, 2005, before the Director, Postal Services, Sikkim State, Gangtok, on 14-05-2013.

(xiii) To the Petitioner's application under the RTI Act, the Director, Postal Services, Gangtok, by his letter dated 21-05-2013 furnished the information sought for as regards the postal delivery made to CPWD, Gangtok Central Division, Sikkim, stating, *inter alia*, that no Speed Post/Registered Post articles were delivered to the Executive Engineer, CPWD, Gangtok, on 20-07-2011, as per their office record.

(xiv) This led the Petitioner to file an application before the Principal District Judge, East Sikkim at Gangtok under Section 340 Cr.P.C. against the Respondent No.1 which was registered as Crl. Misc. Case No.32 of 2013. On 25-11-2013, when the matter was taken up for hearing, the Petitioner reiterating his

contention in the application under Section 340 Cr.P.C., submitted that the statement made by the Respondent No.1 at paragraph 4 of his supplementary affidavit was false in view of the information received from the Director, Postal Services, Sikkim State, Gangtok, as per whom except for delivering certain Speed Post packets on 11-07-2011, 15-07-2011 and 16-07-2011 (*wrongly mentioned as '16-05-2013' in the reply of the RTI application*), no such post articles were delivered to the Respondent No.1 on 20-07-2011.

(xv) The Principal Sessions Judge, East Sikkim at Gangtok, however, by order dated 29-11-2013, dismissed Crl. Misc. Case No.32 of 2013 filed by the Petitioner. On the very day, i.e., 29-11-2013, the CPWD filed an application under Section 250 read with Section 357 Cr.P.C. before the Principal Sessions Judge, East and Sikkim at Gangtok, against the Petitioner seeking compensation for the accusation made against him in Crl. Misc. Case No.32 of 2013 which was registered as Crl. Misc. Case No.1 of 2014 (Crl. Misc. Case No.55A of 2013) but was, however, dismissed by order dated 12-06-2014.



(xvi) On 01-03-2014, the Respondent No.1 then filed Complaint Case No.06 of 2014 against the Petitioner before the Chief Judicial Magistrate, East and North Sikkim at Gangtok, under Section 500 IPC and the Chief Judicial Magistrate by his order dated 21-03-2014 took cognizance of the complaint registered as Complaint Case No.06 of 2014 and, vide order dated 28-04-2014 process under Section 204 Cr.P.C. was issued against him. It is against these that the present Petition has been preferred.

3. The principal ground raised to assail the proceedings before the Chief Judicial Magistrate, East and North Sikkim at Gangtok, is that on a bare perusal of the complaint filed by the Respondent No.1 it would show that the ingredients under Section 499 IPC are not at all made out.

4(i). Mr. Jorgay Namka, Learned Advocate, appearing on behalf of the Petitioner, submitted that filing of the application under Section 340 Cr.P.C. before the Principal District Judge was necessitated in view of a false statement made by the Respondent

No.1 which was clearly borne out from the records which the Principal Sessions Judge had overlooked while passing order dated 29-11-2013 dismissing the application registered as Crl. Misc. Case No.32 of 2013. It was urged that the order of dismissal did not alter the fact that a false statement had been made by the Respondent No.1 notwithstanding that the Petitioner did not choose to challenge the said order before this Court.

(ii) He would submit that the falsity of averment made in paragraph 4 by the Respondent No.1 in the supplementary affidavit filed in support of his written objection to the application under Order XXI Rule 41 read with 151 CPC filed by the Petitioner, stood established by the undisputed information furnished by the Director, Postal Services, Sikkim State, Gangtok, which clearly revealed that no article under Speed/Registered Post was delivered to the Respondent No.1 on 20-07-2011 as claimed by him except for some Speed Post packets on 11-07-2011, 15-07-2011 and 16-07-2011. It was urged that firstly, the complaint taken in its entirety, does not disclose offence under

Section 499 IPC having been was not made out against the Petitioner and secondly, the complaint under Section 340 Cr.P.C. having been filed before the competent Court, i.e., the District Judge, before whom such false statement had been made by the Respondent No.1, no prosecution would lie against him under that provision as he stood protected under the Fourth, Fifth, Eighth and Ninth Exceptions to Section 499 IPC.

5(i) Mr. Samir Kumar Sen Gupta, Learned Counsel, appearing for the Respondent No.1, contended that the proceedings instituted by the Petitioner under Section 340 Cr.P.C. seeking to prosecute the Respondent No.1 under Section 193 and other cognate provisions of the IPC for allegedly making false statement in his supplementary affidavit, had seriously impaired his estimation in his Organisation and in the eyes of the general public thereby making the Petitioner liable under Section 499 IPC. As per him, the case of the Respondent No.1 stood vindicated when the application under Section 340 Cr.P.C. moved by the Petitioner was dismissed by

the Principal Sessions Judge on the ground that no offence had been committed by him necessitating an inquiry against him.

(ii) In support of his submission, the Learned Counsel, placed the following decisions: -

- (i) ***Bhikachand and Another* vs. *Emperor* : *AIR 1927 Sind 54*;**
- (ii) ***M. N. Damani* vs. *S. K. Sihna and Others* : *AIR 2001 SC 2037*;**
- (iii) ***Umesh Kumar* vs. *State of Andhra Pradesh and Another* : *(2013) 10 SCC 591*; and**
- (iv) ***Shri Vinay Rai and Others* vs. *State of Sikkim* : *Crl.M.C. Nos.17, 18, 22, 23 and 24 of 2013*.**

6. I have given thoughtful and anxious consideration to the rival submissions made by the Learned Counsel for the parties and have also perused the records.

7(i). In a common order dated 15-10-2014 delivered in ***Shri Vinay Rai (supra)*** by Justice Sunil Kumar Sinha, Acting Chief Justice, as his Lordship then was who is now the Chief Justice of this Court, the parameters of powers and jurisdiction of the High

Courts under Section 482 Cr.P.C. has been most succinctly culled out as under: -

"6. The width of the powers of the High Court u/S. 482 of the Cr.P.C. and under Article 226 of the Constitution of India are unlimited and the High Court could make such orders as may be necessary to prevent abuse of the process of the Court, or otherwise to secure the ends of justice. Under Section 482 of the Cr.P.C., the High Court is free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained [**Rukmini Narvekar vs. Vijaya Satardekar & Ors. : (2008) 14 SCC 1**]. The High Court, in its jurisdiction u/S. 482 of the Cr.P.C., must make a just and rightful choice. It is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations leveled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law [**Rajiv Thapar & Ors. Vs. Madan Lal Kapoor : (2013) 3 SCC 330**].

7. Many a times, by way of illustration, the categories of cases, wherein inherent powers u/S. 482 of the CrP.C. or powers under Article 226 of the Constitution of India, can be exercised, have been defined by the Supreme Court. In **State of Haryana & Ors. Vs. Bhajan**

Lal & Ors. : 1992 Supp (1) SCC 335; we find following categories of cases, wherein such power may be exercised:

" (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with male fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance of the accused and with a view to spite him due to private and personal grudge."

8. Some more principles in this regard were further added and reiterated by the Hon'ble Supreme Court in paragraph 27 of the judgment of **Amit Kapoor (supra)**, wherein along with other principles, it was laid down that the quashing of the charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

(ii) On the anvil of the above position of law and some other decisions which shall be cited hereafter, we may examine as to whether the Petitioner has made out a case for this Court to exercise its powers under Section 482 Cr.P.C. to quash Private Complaint Case No.06 of 2014 pending before the Chief Judicial Magistrate, East and North Sikkim at Gangtok, as sought for by him.

8. As would appear from the above, the foundational allegation against the Petitioner is that the

Petitioner had falsely represented that Civil Execution Case No.27 of 2011 filed by him was dismissed in view of the statement made by the Respondent No.1 in paragraph 4 of the supplementary affidavit regarding which we have alluded to earlier.

9. In the backdrop of the above and the materials placed in the complaint, we may now examine as to whether any case was made out under Section 499 IPC punishable under Section 500 IPC against the Petitioner and as to whether the cognizance taken and process issued by the Chief Judicial Magistrate against the Petitioner was valid.

10(i). The contentious paragraph in the supplementary affidavit filed by the Respondent No.1 in Civil Execution Case No.27 of 2011, reads as under: -

"4. It is further stated and submitted on my behalf that the award passed by the Ld. Arbitrator, Sri B.K Biswas was received by the Department at my office on 20.07.2011."

(ii) In the application under Section 340 Cr.P.C. filed by the Petitioner before the District Judge, East and North Sikkim at Gangtok, it was his case that the

aforesaid statement affirmed under oath by the Respondent No.1, was false as revealed from the information furnished by the Director, Postal Services, Sikkim State, Gangtok, as per which no postal delivery of any letter or parcel or packet was delivered to the Respondent No.1 on 20-07-2011. It was pleaded that the statement made by the Respondent No.1 on oath in paragraph 4 reproduced above was false to his knowledge and was made with intent to interfere with the administration of justice to mislead the Court and in passing the order of dismissal of Civil Execution Case No.27 of 2011 thereby making him liable under Section 195(1)(b) of the Cr.P.C.

(iii) On the other hand, the case of the Respondent No.1 in Private Complaint Case No.06 of 2014, is that the application under Section 340 Cr.P.C. having been dismissed by the Principal Sessions Judge by order dated 29-11-2013 on the finding that no offence had been committed by the Respondent No.1 that called for an inquiry, it established the *mala fides* on the part of the Petitioner in filing the application by which he was made to sustain mental agony and loss of

his hard earned reputation and goodwill leading to the lowering of his prestige and the estimation of the others. These, therefore, clearly attracted the provisions of Section 499 IPC against the Petitioner.

(iv) On a perusal of the records of Private Complaint Case No.06 of 2014, the materials filed in support of the complaint relevant for the purpose of this application included, *inter alia*, the following: -

- (a) The records of proceedings of Civil Execution Case No.27 of 2011 which contained order dated 25-04-2013 by which the Civil Execution Case was dismissed (Annexure P2).
- (b) Copy of the application under Section 340 Cr.P.C. filed by the Petitioner (Annexure P3);
- (c) Application under Order XXI Rule 41 read with Section 151 CPC filed by the Petitioner in Civil Execution Case No.27 of 2011;
- (d) Written objection to (c) above filed on behalf of the Union of India;
- (e) Supplementary affidavit filed on behalf of the Union of India affirmed by the Respondent No.1 containing the offending paragraph no.4;
- (f) Written objection filed by the Respondent No.1 to the application under Section 340 Cr.P.C. filed by the Petitioner;

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- (g) Records of proceedings of Crl. Case No.32 of 2013 pertaining to the application under Section 340 Cr.P.C. which contained order dated 29-11-2013 dismissing the application under Section 340 Cr.P.C.;
- (h) Application under the RTI Act submitted to the Director, Postal Services, Raj Bhawan, P.O. Gangtok dated 14-05-2013.

(v) The relevant orders passed by the Chief Judicial Magistrate, East and North Sikkim at Gangtok, in Private Complaint Case No.06 of 2014 under Sections 203 and 204 Cr.P.C. dated 21-03-2014 and 28-04-2014 respectively, are reproduced below: -

Order dated 21-03-2014

"Complainant present with Ld. Sr. Counsel Shri S.K. Sengupta, Shri Manas Kumar Barman, Shri Soumik Sengupta and Shri Gulshan Lama.

Date is fixed for complainant.

Examined the complainant and his statements recorded.
Cognizance taken.

Let the matter come up for further Orders on 28.04.2014.

To: 28.04.2014.

Order dated 28-04-2014

Complainant present with Ld. Sr. Counsel Shri S.K. Sengupta assisted by Ld. Counsel Shri Gulshan Lama.

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Date is fixed for Orders.

On perusal of the complaint, documents filed along with complaint and after perusal of the pre-summoning evidence of the complainant I find that there are sufficient materials to proceed against the accused under Section 500 IPC, 1860.

Accordingly, issue summons to the accused at the cost of the complainant returnable by 03.06.2014.

To: 03.06.2014."

[underlining mine]

(vi) On a bare reading of the order dated 28-04-2014, it would appear that the Chief Judicial Magistrate, East and North Sikkim at Gangtok, had perused the complaint and the documents filed along with the complaint which were considered along with the pre-summoning evidence rendered by the Respondent No.1 in arriving at a finding that there were sufficient materials to proceed against the accused under Section 500 IPC.

11. In *Chandra Deo Singh* vs. *Prokash Chandra Bose alias Chabi Bose and Another* : *AIR 1963 SC 1430*, it has been held that *"the courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction"*.

12. Similarly in *Vadilala Panchel* vs. *Dattatraya Dulaji Ghadigaonkar and Another* : *AIR 1960 SC 1113*, it has been observed that the scope of inquiry under Section 202 Cr.P.C. *"is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned"*.

13. Relying upon the aforesaid two decisions in *Smt. Nagawwa* vs. *Veeranna Shivalingappa Konjalgi and Others* : *AIR 1976 SC 1947*, it was held as under: -

"4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Sections 202 of the Code of Criminal Procedure is extremely limited – limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint – (i) on the materials placed by the complaint before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

[underlining mine]

14. In *Madhavrao Jiwaji Rao Scindia and Another* etc. vs. *Sambhajirao Chandrojirao Angre and Others, etc.* : *AIR 1988 SC 709*, it has been laid down as under: -

"7. The legal position is well-settled that when a prosecution at the initial stage is asked

to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." [underlining mine]

15. In *Rukmini Narvekar vs. Vijaya Satardekar and Others : (2008) 14 SCC 1*, it has been held that under Section 482 Cr.P.C. the High Court is free to consider even materials, that may produced on behalf of the accused, to arrive at a decision whether the charge is framed and maintained.

16. In the ambit of the above proposition of law, it would, therefore, be permissible for this Court while exercising its powers under Section 482 Cr.P.C., to consider the materials on record filed in support of the complaint as evidence as well those produced by the accused to ascertain as to whether any offence as alleged had been made out against an accused.

17(i). On a perusal of the order of the District Judge, East Sikkim at Gangtok dated 25-04-2013 by which Civil Execution Case No.27 of 2011 filed by the Petitioner was dismissed, in paragraph 13 thereof we find the Court having noted that in the supplementary affidavit filed by the judgment-debtors, i.e., the Respondents therein, affirmed by the Respondent No.1, it had, *inter alia*, been stated that the impugned award passed by the Sole Arbitrator on 06-07-2011 in New Delhi was received by the Office of the judgment-debtor on 20-07-2011. Apart from that, it had also been noted that the judgment-debtor had averred that under Section 34(3) of the Act of 1996 an application for setting aside an award may not be made after 3 (three) months have elapsed from the date on which the party making that application had received the arbitral award, provided that if the applicant was prevented from making the application within the 3 (three) months, the Court may entertain the application within a further period of 30 (thirty) days but not thereafter. It then noted the submission on behalf of the Respondent No.1 that since the Civil Execution

Case was filed by the Petitioner herein before the expiry of the statutory period of 90 (ninety) day plus 30 (thirty) days it ought to be rejected summarily.

(ii) Accepting the above submissions in paragraph 17 of the order, it was observed that the award dated 06-07-2011 passed by the Arbitrator was received in the Office of the judgment-debtor on 20-07-2011 and that, since the execution proceedings were instituted by the Petitioner approximately 88 (eighty eight) days after that date, i.e., before expiry of 120 (one hundred and twenty) days, prescribed under Section 34 of the Act of 1996 which fell on 19-11-2011 computing from 20-07-2011, it was held that the execution petition was prematurely filed thereby dismissing the execution proceedings.

(iii) Therefore, it is quite evident that the District Judge before whom the execution proceeding was pending, accepted the date of receipt of the arbitral award by the Respondent No.1 as being 20-07-2011 as stated in paragraph 4 of the supplementary affidavit and rejected the enforcement petition filed by the

Petitioner under Section 35 of the Act of 1996 as it was found to have been filed before the expiry of 120 (one hundred and twenty) days after that date as stipulated under Section 34(3) of the Act of 1996.

18(i). The Petitioner, in his application under Section 340 Cr.P.C., had specifically averred that the Principal District Judge had dismissed Civil Execution Case No.27 of 2011 on the basis of the statement made by the Respondent No.1 in paragraph 4 of his supplementary affidavit by holding that it was filed prematurely as contended by the judgment-debtor. That the statement in paragraph 4 of the said supplementary affidavit, oath sworn by Respondent No.1, was false to his knowledge and had been made with the intent to interfere with the administration of justice to mislead the Court in passing the order of dismissal.

(ii) As per the Petitioner, the falsity of the statement was revealed by the information received from the Director, Postal Services, Sikkim State, Gangtok, in response to an application under the RTI

Act, 2005, as per which no postal delivery of any letter or parcel or packet was made to the Respondent No.1 on 20-07-2011.

(iii) I have perused the reply of the Director, Postal Services, forming part of the complaint under Section 340 Cr.P.C. and find that it clearly reveals that to the query at (i)(a) seeking particular of all postal deliveries made to the Executive Engineer, CPWD, Gangtok Central Division, during the period 10-07-2011 to 20-07-2011, it has been answered that certain number of posts were received from different destinations, like, Darjeeling, Matigara, Kolkata, Siliguri, New Delhi, on 11-07-2011, 15-07-2011 and 16-07-2011. To the query no.(i)(c) of the Petitioner's application, it has most categorically been stated that ***"(c) There is no any (sic) Speed Post/Regd Post articles delivered to Ex. Engineer, CPWD, Balwakhani on dtd. (sic) 20/07/2011 as per this office record"***. It, therefore, stands established that no articles were delivered to the Respondent No.1 on 20-07-2011 and consequently computation of the period of limitation under Section 34(3) of the Act of 1996 commencing from the date

asserted by him which the Principal District Judge was misled in accepting, was manifestly incorrect.

(iv) The order dated 29-11-2013 dismissing the application under Section 340 Cr.P.C., would show that the Principal District Judge had proceeded on the premise that the Petitioner's case was that the Respondent No.1 had also received the arbitral award on 12-07-2011 when the Petitioner had himself received it. The case of the Petitioner was that apart from the fact that there is no such pleading in his application filed under Section 340 Cr.P.C., the very sworn statement of the Respondent No.1 in his supplementary affidavit that he had received the award on 20-07-2011, was false as revealed from the information received from the Director, Postal Services, Sikkim State, Gangtok. In passing the order dated 29-11-2013, the Principal District Judge appears to have completely overlooked this aspect and was misled into directing her attention to the correctness of the assertion of the Petitioner that he had received the award on 12-07-2011 and, that as the Petitioner had failed to establish this, it was concluded that no case of

deliberate falsehood was *prima facie* made out against the the Respondent No.1 on the charge thereby resulting in the dismissal of the application.

(v) It was as a consequence of such dismissal that led the Respondent No.1 to institute the proceeding under Section 500 IPC against the Petitioner for allegedly having defamed him.

(vi) It would appear from the order dated 29-11-2013 dismissing application under Section 340 Cr.P.C., that there is no finding at all as to whether or not the statement in paragraph 4 affirmed by the Respondent No.1 that he had received the arbitral award on 20-07-2011, was false. Thus, the allegation remains unaltered and factually correct in view of the information furnished by the Director, Postal Services, Sikkim State, Gangtok. Therefore, even though the application under Section 340 Cr.P.C. was dismissed albeit on an erroneous premise for the reasons aforesaid, no case under Sections 499/500 IPC can be said to have been made out against the Petitioner.

19. In the discussions alluded to above, the documents dealt with are the very ones filed in support of the complaint under Section 500 IPC which, as per the Chief Judicial Magistrate, in his rather cryptic order dated 28-04-2014 being bereft of any discussion on the evidence, were considered by him in arriving at the conclusion that those were sufficient materials to proceed against the Petitioner under Section 500 IPC. However, the Chief Judicial Magistrate quite evidently appears to have completely overlooked the facts appearing on the face of those documents. If he had done so, it would not have resulted in him passing the orders dated 21-03-2014 and 28-04-2014. I am thus of the firm view that the order seriously suffer from the vice of non-application of mind.

20. In *A. K. Jain and Another vs. State of Sikkim and Another* : **1992 CRI.L.J. 843**, it has been held that the issue of process under Section 204 Cr.P.C. or dismissal of complaint under Section 203 Cr.P.C. is a matter for judicial determination and where the order summoning the accused does not show application of mind of the Magistrate and discusses no evidence, the

order not being a speaking order, is liable to be quashed.

21. The facts and circumstances discussed above, in my view, are special features which appear in this case and as per the ratio laid down in ***Madhavrao Jiwaji Rao Scindia (supra)***. Such special features are required to be considered to decide as to whether it is expedient and in the interest of justice to permit a prosecution to continue.

22. In somewhat a similar situation, it was also held in ***V. Palani vs. S. P. Chandrabose : 2003 CRI.L.J 2594 (Madras)*** that filing of private complaint under Section 500 IPC which ultimately was quashed, would not amount to defamation.

23. In another decision of the Andhra Pradesh High Court dated 16-03-2006 in ***S. Mohan Rao vs. Sri Hanumanthu Rajagopala Rao and Another*** rendered by a Single Bench in ***Criminal Petition No.1444 of 2005*** in which the facts are also similar to the present one, it was held as under: -

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"9. Be that as it may, the serious question which may have to be decided is in relation to Section 500 IPC, the defamatory allegation said to have been made in the course of a prior judicial proceeding. The copies of the Judgments are being relied upon for this purpose. No doubt, yet another allegation had been made relating to the Press Note said to have given to Andhra Jyothi Newspaper on 29-5-1994 and the allegation is that A-2 briefed the Press. Hence the question is when a person was prosecuted and in fact convicted by imposition of fine in the Court of first instance which no doubt was reversed in the Appeal acquitting the 1st respondent/complainant herein and the defacto complainant was successful in the Criminal Revision Case preferred by the petitioner/A-1 herein, a third party to the said judicial proceeding, whether the allegations said to have been made in the course of such judicial proceedings be taken as defamatory so as to attract the provisions of Section 500 IPC. On a careful scrutiny of the averments made in the complaint, this Court is satisfied that the Investigating agency being satisfied with the report given had thought it fit to initiate prosecution in accordance with the provisions of the Code and on appreciation of evidence the first Court came to a definite conclusion that it is a fit case at least to impose fine and may be benefit of doubt would have been given to the complainant at the appellate stage and the same being confirmed even in the Criminal Revision Case filed by the third party/petitioner/A-1. By this itself, it cannot be said that the allegations made in such a report in pursuance of which the Investigating agency thought it fit to launch prosecution and merely because some acquittal had been recorded at the appellate stage, that cannot be taken as advantage to invoke the provisions of Section 500 IPC.

....."

[underlining mine]

24. In *Rajiv Thapar and Others* vs. *Madan Lal Kapoor* : (2013) 3 SCC 330, while propounding that it was permissible for the Court to consider the



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documents produced even by the accused, it was, *inter alia*, observed as under: -

"29. To invoke its inherent jurisdiction under Section 482 of the CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

[underlining mine]

Above the observation in ***Rajiv Thapar (supra)*** would apply in full force in the present case as the very materials placed in support of the complaint, leave alone the defence, completely displaces the accusation against the Petitioner.

25(i). There is another aspect of the case that calls for consideration of this Court. The submission on behalf of the Learned Counsel for the Petitioner was that the case of the Respondent No.1 fell within various Exceptions to Section 499 IPC. On a perusal of the provision, quite apparently the Petitioner's case falls under the Eighth Exception which prescribes that ***"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"***. The very first illustration to the Eighth Exception reads as ***"If A in good faith accuse Z before a Magistrate;— A is within this exception."***

(ii) It is no doubt true that good faith is held to be a question of fact which would require determination after adducing evidence. This, however, cannot be a rule of general application. If the facts of a case as in the present one is clear and ambiguous, it would be travesty of justice to relegate to accused to go to the ordeal of trial and finally to be acquitted of the charge.

(iii) Good faith requires care and caution and prudence in the background of context and circumstances. It is trite that Judicial Officers, such as, Judges and Magistrates, are directly responsible for disposing of complaints made to them within their jurisdiction and complaints so made would be protected, however, libelleous they might otherwise be [Dr. Hari Singh Gour's Penal Law of India, 11th Edition, page 4789].

(iv) From the earlier discussions, it has already been noted that the accusation made by the Petitioner against the Respondent No.1 stands established and unaltered. As the said accusation was made before the lawful authority for action as per law the Petitioner would be protected under the Eighth Exception to Section 499 IPC and, therefore, even if the charge against the Petitioner is eventually proved at the trial, he will stand acquitted.

26. As held in *Madhavrao Jiwaji Rao Scindia (supra)*, quite evidently the chances of an ultimate conviction in the present case is bleak and, therefore,

no useful purpose is likely to be served by allowing the criminal prosecution to continue.

27. Similarly, in *R. R. Diwakar and Others* vs. *B. Guttal* : *1975 CRI.L.J. 90 (Karnataka)* following the decision in *R. P. Kapur* vs. *State of Punjab* : *AIR 1960 SC 866*, the earliest decision that laid down the parameters of the powers to be exercised under Section 482 Cr.P.C. by the High Courts, it was held that it would be manifestly unjust to permit the continuation of the criminal proceedings if there is no possibility of the case to end in conviction of the accused. This proposition has been followed in a catena of later decisions of the Apex Court.

28. The other aspect of the case that adds to its special feature is that the present complaint appears to be a counter-blast to the Petitioner having filed the application under Section 340 Cr.P.C. The records of the case, as discussed earlier, would reveal that as soon as the application under Section 340 Cr.P.C. filed by the Petitioner registered as Crl. Misc. Case No.32 of 2013, was dismissed vide order dated 29-11-2013, the

Respondent No.1 on the very day had filed an application under Section 250 read with Section 357 Cr.P.C. registered as Crl. Misc. Case No.1 of 2013 (Crl. Misc. Case No.55A of 2013) against the Petitioner seeking compensation for the accusation made against him. When this application was dismissed, the Respondent No.1 had preferred a revision in this Court being Crl.Rev.P. No.14 of 2014 but, that was also dismissed by order dated 25-11-2014. The Respondent No.1 then filed the present complaint being Private Complaint Case No.06 of 2014 before the Chief Judicial Magistrate, East and North Sikkim at Gangtok. The relentlessness in the manner in which proceedings were initiated against the Petitioner would lead one to reasonably conclude that those as well as the present proceeding have been preferred with the oblique purpose of seeking retribution against the Petitioner.

29. The decisions cited at the bar by Shri Samir Kumar Sen Gupta, appears to be of no assistance to the Respondent No.1, as those were rendered in the facts and circumstances obtaining in those cases.

(i) The case of *Umesh Kumnar (supra)* in fact would support the Petitioner as it has been held there that in exercise of powers under Section 482 Cr.P.C., the High Court can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceeding against the accused. The only embargo placed is that it cannot look into the acceptability of the materials as it is essentially a matter for trial. In the present case, the object of this Court in looking into the documents filed in support of the complaint was only for the purpose of its evaluation to see as to whether *prima facie* sufficient ground existed for proceeding against the Petitioner. Moreover, the documents are records of judicial proceedings of which the Courts can take judicial notice.

(ii) The cases of *M. N. Damani (supra)* and *Bhikachand (supra)* are those where serious allegations involving moral turpitude were made against the Petitioners that were found to be false by the Magistrate which is different to the facts of the present case where although the application under Section 340

Cr.P.C. filed by the Petitioner was dismissed, the accusation against the Respondent No.1 remained unaltered and factually correct for the reasons alluded to earlier. In any case, those decisions did not involve consideration of the Eighth Exception to Section 499 IPC.

(iii) The case of *Vinay Rai and Others (supra)* disposed of by this Court by order dated 15-10-2014 are ones where the Petitioners were facing charges under Sections 406, 420, 467, 120B read with Section 34 IPC in the Court of the Chief Judicial Magistrate, South and West Sikkim at Namchi, on a charge-sheet filed by the Police. The application seeking to quash the proceedings was rejected as this Court found sufficient materials against the Petitioners to continue with the criminal prosecution against them in as much as they were *prima facie* found to be using the umbrella of the University to issue invalid degrees/diplomas/certificates to lakhs of students through distance mode after realising huge amounts of money. The facts are, therefore, obviously distinguishable from those in the present case.

30. For the aforesaid reasons, I am of the view that the cognizance of the complaint taken by the Chief Judicial Magistrate, East and North Sikkim at Gangtok, and the process issued thereby cannot be countenanced in the eyes of law as no offence under Section 500 IPC is made out in the facts and circumstances of the case.

31. Consequently, the proceedings in Private Complaint Case No.6 of 2014 pending before the Chief Judicial Magistrate, East and North Sikkim at Gangtok, deserve to be quashed and is hereby quashed.

32. In the result, the application is allowed.

33. No order as to costs.

34. Let a copy of this order along with the original records of the case be transmitted to the Court of the Chief Judicial Magistrate, East and North Sikkim at Gangtok, forthwith for its due compliance.

Sd/-
(**S. P. Wangdi**)
Judge
19-05-2015

Approved for reporting : **Yes**

Internet : **Yes**

