

K. K. MISHRA

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v.

THE STATE OF MADHYA PRADESH & ANR.

(Criminal Appeal No. 547 of 2018)

APRIL 13, 2018

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**[RANJAN GOGOI, R. BANUMATHI AND
MOHAN M. SHANTANAGOUDAR, JJ.]**

Code of Criminal Procedure, 1973 – s.199(2) and (4) – Prosecution case that appellant made defamatory statements against the Hon'ble Chief Minister of the State in a press conference – Complaint was filed by the public prosecutor u/s.199(2) after receipt of sanction from the Competent Authority of the State Government on the very same day – Appellant convicted u/s.500 IPC by the Special Judge, trial Court – Appeal against the same pending before the High Court – Appellant also challenged the maintainability of criminal proceeding instituted u/s.199(2), which was dismissed by the High Court – On appeal, held: None of the allegedly defamatory statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with discharge of public duties by or the office of the Hon'ble Chief Minister – Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties, the remedy u/s.199(2) and (4) Cr.P.C. will not be available – From extract of cross-examination of the public prosecutor, it is clear that the public prosecutor had admitted the absence of any scrutiny by him of the materials on which the prosecution was sought to be launched – Public Prosecutor further, admitted that he had filed complaint against the accused appellant on the orders of the State Government – A Public Prosecutor filing a complaint u/s. 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the principles on the basis of which the special provision u/s.199(2) and (4) Cr.P.C. has been structured – Therefore, complaint not maintainable – Consequently, order of the trial Court set aside and appeal pending in the High Court also closed – Penal Code, 1860 – s.500 – Constitution of India – Art. 142.

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A **Allowing the appeal, the Court**

HELD: 1. If the allegedly defamatory statements, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199 (2) Cr.P.C. by the order of the State Government are to be carefully
B **looked into, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the**
C **Hon'ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and 199(4)**
D **Cr.P.C. will not be available. It is the remedy saved by the provisions of sub-section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to. [Para 11] [321-G-H; 322-A-C]**

E **2. From the cross-examination of the Public Prosecutor, it is clear that the Public prosecutor had admitted the absence of any scrutiny by him of the materials on which the prosecution is sought to be launched. In fact, the Public Prosecutor had gone to the extent of admitting that he had filed the complaint against the accused appellant on the orders of the State Government.**
F **[Para 13] [323-A-B]**

3. The testimony of the Public Prosecutor in his cross-examination effectively demonstrates that the wholesome requirement spelt out by Section 199(2) and 199(4) Cr.P.C., as expounded by this Court in Subramanian Swamy, has not been
G **complied with in the present case. A Public Prosecutor filing a complaint under Section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the**

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principles on the basis of which the special provision under Section 199(2) and 199(4) Cr.P.C. has been structured as held by this Court in P.C. Joshi and Subramanian Swamy. The public prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him. [Para 14] [324-A-D]

4. In the present case, the press meet was convened by the appellant. After few days, the government accorded sanction to the public prosecutor to file complaint under Section 500 IPC against the appellant. As seen from the records, the complaint was filed by the public prosecutor against the appellant on the very same day. The haste with which the complaint was filed *prima facie* indicates that the public prosecutor may not have applied his mind to the materials placed before him as held in *Bairam Muralidhar case*. Therefore, the complaint is not maintainable on the very face of it and would deserve interference. The very initiation of the prosecution has been found to be untenable in law. [Paras 14, 15] [324-E-H]

P. C. Joshi and another v. The State of Uttar Pradesh AIR 1961 SC 387 : [1961] SCR 63; Urmila Devi v. Yudhvir Singh (2013) 15 SCC 624 : [2013] 16 SCR 542; Subramanian Swamy v. Union of India (2016) 7 SCC 221 : [2016] 3 SCR 865; Bairam Muralidhar v. State of Andhra Pradesh (2014) 10 SCC 380 : [2014] 8 SCR 328 – relied on.

Case Law Reference

[1961] SCR 63	relied on	Para 8	F
[2013] 16 SCR 542	relied on	Para 10	
[2016] 3 SCR 865	relied on	Para 12	
[2014] 8 SCR 328	relied on	Para 12	G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 547 of 2018.

From the Judgment and Order dated 24.07.2017 of the High Court of M.P. Principal Seat at Jabalpur in CRR No. 515 of 2017.

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A K. T. S. Tulsi, Vivek Tankha, Sr. Advs., Vaibhav Srivastava, Kuber Boddh, Prateek Khandelwal, Aman Pandey, Siddhanth, Kabir Dixit, Advs. for the Appellant.

B P. S. Narasimha, ASG, Purushaindra Kaurav, Adv. Genl., Mishra Saurabh, AAG, Mukul Rohatgi, Sr. Adv., Ms. Swarupama Chaturvedi, B. N. Dubey, Ankit Kr. Lal, Advs. for the Respondents.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted.

C 2. By the order impugned, the High Court of Madhya Pradesh has negated the challenge made by the appellant to the maintainability of a criminal prosecution/proceeding instituted under Section 199(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) alleging commission of offences under Sections 499 and 500 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) against the Hon’ble Chief Minister of the State of Madhya Pradesh. The complaint has been filed by the Public Prosecutor on 24th June, 2014 before the District & Sessions Judge, Bhopal (Madhya Pradesh) after receipt of sanction from the Competent Authority of the State Government on the very same day i.e. 24th June, 2014.

E 3. At the very outset, we deem it necessary to put on record that during the pendency of the present proceedings the prosecution against the accused appellant has been concluded by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh by judgment and order dated 17th November, 2017 in Sessions Trial No.573 of 2014. F The accused appellant has been found guilty of the commission of the offence punishable under Section 500 IPC and, accordingly, he has been sentenced to undergo simple imprisonment for two years with fine of Rs.25,000/- (Rupees twenty thousand). We are told at the Bar that an appeal against the said order is presently pending before the High Court of Madhya Pradesh and the accused appellant is presently on bail.

G 4. At this stage, we would like to recapitulate our order dated 5th January, 2018 reiterating that, notwithstanding the conviction of the accused appellant, this Court would like to consider the question of the validity of the very initiation of the prosecution against the appellant.

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5. While Section 499 IPC defines and deals with the offence of A
defamation, punishment for the said offence is provided by Section 500
IPC. In the present case, the alleged offence of defamation against the
Hon'ble Chief Minister of the State of Madhya Pradesh, according to
the prosecution, has been committed by the accused appellant on account
of certain statements made with regard to the Hon'ble Chief Minister in B
the course of a Press Conference that the appellant had addressed as a
Chief Spokesperson of the Indian National Congress, Madhya Pradesh
organized on 21st June, 2014 at the MP Congress Committee, 1461 Indra
Bhawan Shivaji Nagar, Bhopal.

6. Though a reading of the transcript of the Press Conference, C
which has been placed on record, may indicate a reference to the Hon'ble
Chief Minister in respect of several acts and events, for the purposes of
the present case we will, necessarily, have to confine ourselves to only
three statements allegedly made in the Press Conference with reference
to the Hon'ble Chief Minister. This is because in the order granting
sanction/permission dated 24th June, 2014 for filing of a complaint under D
Section 199 (2) Cr.P.C. it is only the aforesaid three statements which
have been taken note of as being defamatory and, therefore, taken
cognizance for purpose of grant of sanction/permission under Section
199(2) of the Cr.P.C. The aforesaid three statements mentioned in the
order dated 24th June, 2014 granting sanction/permission are as follows:

“1. 19 amongst the Transport Inspection appointed in Madhya E
Pradesh are from the in-laws house Gondiya (Maharashtra)
of Chief Minister Shivraj Singh Chouhan.

2. Conversation has been made with the accused persons of the
Vyapam Scam from the mobile of Sanjay Chouhan son of F
Phoolsingh Chouhan-Mama of the Chief Minister Sh. Shivraj
Singh Chouhan.

3. Conversation has been made from the Chief Minister's house
by an influential woman through 139 phone calls with the
accused of Vyapam Scam Nitin Mahendra, Pankaj Trivedi, G
Lakshmikant Sharma.”

7. Section 199(2) Cr.P.C. provides for a special procedure with
regard to initiation of a prosecution for offence of defamation committed
against the constitutional functionaries and public servants mentioned
therein. However, the offence alleged to have been committed must be H

A in respect of acts/conduct in the discharge of public functions of the
concerned functionary or public servant, as may be. The prosecution
under Section 199 (2) Cr.P.C. is required to be initiated by the Public
Prosecutor on receipt of a previous sanction of the Competent Authority
in the State/Central Government under Section 199 (4) of the Code. Such
B a complaint is required to be filed in a Court of Sessions that is alone vested
with the jurisdiction to hear and try the alleged offence and even without
the case being committed to the said court by a subordinate Court.
Section 199(2) Cr.P.C. read with section 199(4) Cr.P.C., therefore,
envisages a departure from the normal rule of initiation of a complaint
before a Magistrate by the affected persons alleging the offence of
C defamation. The said right, however, is saved even in cases of the
category of persons mentioned in sub-section (2) of Section 199 Cr.P.C.
by sub-section (6) thereof.

8. The rationale for the departure from the normal rule has been
elaborately dealt with by this Court in a judgment of considerable vintage
D in *P.C. Joshi and another vs. The State of Uttar Pradesh*¹ [paragraph
9]. The core reason which this Court held to be the rationale for the
special procedure engrafted by Section 199(2) Cr.P.C. is that the offence
of defamation committed against the functionaries mentioned therein is
really an offence committed against the State as the same relate to the
E discharge of public functions by such functionaries. The State, therefore,
would be rightly interested in pursuing the prosecution; hence the special
provision and the special procedure.

P.C. Joshi (supra), however, specifically dealt with the provisions
of Section 198B of the Code of Criminal Procedure, 1898 (“old Code”)
F which are pari materia with the provisions of Section 199 of the Cr.P.C.
 (“new Code”).

9. The above would require the Court to consider as to whether
the statements made by the accused appellant in the Press Conference
which have been taken note of in the order dated 24th June, 2014 granting
sanction/ permission can legitimately be said to be attributable or
G connected with the discharge of public functions of the office of the
Hon’ble Chief Minister. In other words, whether the said statements
have any reasonable nexus with the discharge of Official duties by the
Hon’ble Chief Minister.

¹ AIR 1961 SC 387

10. The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) Cr.P.C. though in the opposite context i.e. to prosecute an offender for offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C. which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite. While dealing with the requirement of sanction under Section 197 Cr.P.C. this Court in Urmila Devi vs. Yudhvir Singh² had taken the following view which may have some relevance to the present case.

“59. The expression “*official duty*” would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code.”

11. If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199 (2) Cr.P.C. by the order dated 24th June, 2014 are to be carefully looked into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable

² (2013) 15 SCC 624

A connection with the discharge of public duties by or the office of the Hon'ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon'ble Chief Minister belongs and the making of phone calls by the relatives of the Hon'ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon'ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and 199(4) Cr.P.C. will not be available. It is the remedy saved by the provisions of sub-section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon'ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to.

12. There is yet another dimension to the case. In *Subramanian Swamy vs. Union of India*³ one of the grounds on which the challenge to the constitutional validity of Section 499 and 500 IPC was sustained by this Court was the understanding that Section 199(2) and 199(4) Cr.P.C. provide an inbuilt safeguard which require the Public Prosecutor to scan and be satisfied with the materials on the basis of which a complaint for defamation is to be filed by him acting as the Public Prosecutor. In this regard, an earlier decision of this Court in *Bairam Muralidhar vs. State of Andhra Pradesh*⁴ while dealing with Section 321 Cr.P.C. (i.e. Withdrawal from prosecution) was considered by this Court and it was held as follows:

“...It is ordinarily expected that the Public Prosecutor has a duty to scan the materials on the basis of which a complaint for defamation is to be filed. He has a duty towards the court. This Court in *Bairam Muralidhar Vs. State of A.P [(2014) 10 SCC 380]* while deliberating on Section 321 CrPC has opined that the Public Prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion. It further observed that he cannot remain oblivious to his lawful obligations under the Code and is required to constantly remember his duty to the court as well as his duty to the collective. While filing cases under Sections 499 and 500 IPC, he is expected to maintain that independence and not act as a machine.”

(underlining is ours)

³ (2016) 7 SCC 221

⁴ (2014) 10 SCC 380

13. In the proceedings before the learned trial Court, the Public Prosecutor who had presented the complaint under Section 199(2) Cr.P.C. was cross-examined on behalf of the accused appellant. From the relevant extract of the cross-examination of the Public Prosecutor, which is quoted below, it is clear to us that the Public prosecutor had admitted the absence of any scrutiny by him of the materials on which the prosecution is sought to be launched. In fact, the Public Prosecutor had gone to the extent of admitting that he had filed the complaint against the accused appellant on the orders of the State Government. The relevant extract of the cross-examination of the Public Prosecution is as under:

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“47. It is correct to say that I have not given any proposal in capacity of public prosecutor to the Government that I want to file a complaint against Shri K.K. Mishra in connection with giving defamatory statement. It is correct to say that I have filed the present case in the official capacity of Public Prosecutor. It is correct to say that I have not filed the present complaint on behalf of the Government (Volunteered to say) that I have filed the above case being a Public Prosecutor. It is correct to say that on the order of the Government, I have filed the complaint. If the Government had not directed me, then, I would not have filed a complaint as a Public Prosecutor.

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49. xxxxxxxxxxxx

50. Before receiving the permission, I have not seen any document and did not consider whether complaint has to be filed or not. It is correct to say that I have not submitted any document in connection with this fact that Jagdish Devda was a Minister in the Government of Madhya Pradesh and Shri Shivraj Singh Chouhan was positioned as Hon’ble Chief Minister of Government of Madhya Pradesh on the date of Press Conference (Voluntarily state that) the accused himself, while addressing Shri Shivraj Singh Chouhan as Chief Minister, has made all the allegations.

51. It is correct to say that before filing the complaint, I have not given any legal notice to the accused in connection with this

A fact that whether objections were raised against the Hon'ble Chief Minister in Press Conference or not.”

14. The testimony of the Public Prosecutor in his cross-examination effectively demonstrates that the wholesome requirement spelt out by Section 199(2) and 199(4) Cr.P.C., as expounded by this Court in *Subramanian Swamy* (supra), has not been complied with in the present case. A Public Prosecutor filing a complaint under Section 199 (2) Cr.P.C. without due satisfaction that the materials/allegations in complaint discloses an offence against an Authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the principles on the basis of which the special provision under Section 199(2) and 199(4) Cr.P.C. has been structured as held by this Court in P.C. Joshi (supra) and Subramanian Swamy (supra). The public prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him. As held in *Bairam Muralidhar* (supra)

D “.....He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

E In the present case, the press meet was convened by the appellant on 21.06.2014. The government accorded sanction to the public prosecutor to file complaint under Section 500 IPC against the appellant on 24.06.2014. As seen from the records, the complaint was filed by the public prosecutor against the appellant on the very same day i.e. 24.06.2014. The haste with which the complaint was filed *prima facie* indicates that the public prosecutor may not have applied his mind to the materials placed before him as held in *Bairam Muralidhar case* (supra). We, therefore, without hesitation, take the view that the complaint is not maintainable on the very face of it and would deserve our interference.

G 15. On the conclusions that have been reached by us, as indicated above, the conviction of the accused appellant and the sentence imposed would not have any legs to stand. The very initiation of the prosecution has been found by us to be untenable in law. Merely because the trial is over and has ended in the conviction of the appellant and the matter is presently pending before the High Court in appeal should not come in

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the way of our interdicting the same. The requirements of justice would demand that we carry our conclusions to its logical end by invoking our special and extraordinary jurisdiction under Article 142 of the Constitution of India. Consequently, we allow this appeal; quash the impugned prosecution/proceedings registered and numbered as Sessions Session Trial No.573 of 2014; and set aside the order dated 17th November, 2017 passed by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh in Sessions Trial No.573 of 2014 convicting the accused appellant under Section 500 IPC and sentencing him as aforesaid. The appeal pending before the High Court against the order dated 17th November, 2017 passed by the learned Special Judge, Prevention of Corruption Act, Bhopal, Madhya Pradesh in Sessions Trial No.573 of 2014 shall also stand closed in terms of the present order. Bail bond, if any shall stand discharged accordingly.

16. The appeal is allowed in the above terms.

Ankit Gyan

Appeal allowed.

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