IN THE HIGH COURT OF UTTARA~~NCHAL~~KHAND AT NAINITAL
CRIMINAL APPELLATE JURISDICTION
CRIMINAL MISC. (Main) No. 368 2010

Memorandum of Parties

1. M/s Pathfinder Publishing Pvt Ltd
   AB-12, 2nd Floor,
   Safdarjung Enclave,
   New Delhi- 110 029

2. B Mahesh Sarma
   Editor
   Careers 360 Magazine
   AB- 12, 2nd Floor,
   Safdarjung Enclave,
   New Delhi- 110 029

3. Maheshwar Peri
   Publisher
   Careers 360 Magazine
   AB- 12, 2nd Floor,
   Safdarjung Enclave,
   New Delhi- 110 029

... Petitioners

Vs.

1. The State
   through the Standing Counsel
   of the State of of Uttarakhand

2. Indian Institute of Planning & Management
   Centre
   74, Rajpur Road,
   Dehradun
   Uttarakhand

... Respondents

through

Manish Arora
Advocate

Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

C-482 No. 368 of 2010

M/s Pathfinder Publishing Pvt. Ltd. and others .....Applicants
Versus

The State & another. .....Respondents

Present: Mr. Anup Bambani & Mr. Manish Arora, Advocates for the applicants
Mr. Nandan Arya, AGA for the State.
Mr. Manoj Desai & Mr. Parikshit Saini, Advocates for respondent no.2.

Hon'ble Sudhanshu Dhulia, J

This criminal misc. application under Section 482 Cr.P.C. has been filed before this Court by the applicants invoking the inherent powers of this Court under Section 482 Cr.P.C. The applicants have challenged the summoning order dated 12.10.2009 passed by the learned A.C.J.M. III, Dehradun in Criminal Complaint No. 5020 of 2009 whereby they have been summoned for an alleged offence under Section 500/501/502 IPC read with Section 34/35 IPC. Vide an interim order dated 29.04.2010 this Court had stayed further proceeding in the court below. Pleadings have now been exchanged. The matter is being now heard finally.

Heard Mr. Anup Bambani & Mr. Manish Arora, Advocates for the applicants and Mr. Nandan Arya, AGA for the State and Mr. Manoj Desai & Mr. Parikshit Saini, Advocates for respondent no.2/complainant at length.

Facts giving rise to the present petition are as under :-

Applicant no. 1 is a Pvt. Ltd. Company incorporated under the Companies Act, which ownes and publishes a magazine called "Careers 360", which is a monthly magazine published in English as well as in Hindi. Applicant no. 2 is the Editor of the said magazine and Applicant no. 3 is the publisher. The contents of the complaint state that the applicants reside and work for gain in Delhi. Their Registered office is at Level-3, "Akasam" 10-1-17/1/1 Masab Tank, Hyderabad-500028. However, the complaint also states that the magazine has a circulation in Dehradun in Uttarakhand and hence there is a cause of action for filing

the complaint in Dehradun. Respondent no. 1 is State. Respondent no. 2/complainant is a Society registered under Societies Registration Act, 1860 and provides higher education in management and other related affairs. In its issue dated July, 2009 of the applicant's magazine "Careers 360" there appeared an article titled "IIPM makes yet another claim - Over to you Mr. Sibal" whereby the applicants challenged the claim of the complainant society such as their awarding MBA/BBA degree from Buckingham University London, U.K. It was stated that this is a false claim as on enquiries made by "Careers 360" Buckingham University has denied any arrangement with IIPM. The applicants state that the aim and object for publishing the article was to warn and caution gullible students from undertaking a course which is not recognized by the University, though such claims are being made by the complainant. In para 5.2 of the application before this Court, the applicants state as under :-

> "The said article was part of a continuing investigation and drive that the said Magazine is undertaking on the subject of rampant profiteering by bogus private institutions whereby there has been a mushrooming in our country of what are commonly known as 'diploma mills' which are private educational institutions business which offers gullible students, certificates and diplomas with no official recognition or value; and thereby fraudulently mislead and deceived unsuspecting youth into joining such private institutes at great cost both to the future of the students and the financial resources of their parents. Although the said Article that appeared in the July, 2009 issue of the said Magazine is subject matter of the said Criminal Complaint, for sake of completeness the petitioners are filing herewith a copy of the Article titled "IIPM-Best only in claims" that appeared in issued dated June, 2009 of the said Magazine."

The applicants also assert that whatever they have published was true and nothing in the article was either malicious or defamatory against respondent no. 2 institution. Another article, which the complainant allege is defamatory and which appeared in "Careers 360" issue dated July, 2009 states as follows :-

> "One of the many false claims by IIPM, that we exposed in the lst issue of Careers 360 (www.careers360.com), was about the BBA/MBA degrees on offer. The degrees awarded by IIPM in collaboration with the IMI Belgium were, in fact, unrecognized. Even after the expose IIPM continued to use

IMI, Belgium. As recent as 15th June, an ad released in the Times of India mentioned the IMI degrees on offer.

On 18th June post our expose, we saw an ad in TOI and Hindustan Times, where the BBA/MBA degree was now being offered from Buckingham Business School. Aware of past history of the claims made by IIPM, we sent a mail to the University of Buckingham to verify this new claim. Their response left us despairing (see the mail above). The University of Buckingham's response implies that:

1. That university of Buckingham hasn't consented to the advertisements (and the claims made in it).

2. That no such consent would be forthcoming until their programmes (IIPM's programmes) are formally accredited under the QAA guidelines."

3. That no such arrangement exists as on date.

So as we file this story, the students are not guaranteed of a University of Buckingham degree. We called up the Vice Chancellor's office of the University of Buckingham on 23rd June and wrote to him on the 24th of June (after the response from their PR department) but haven't received any response.

However, we are at a loss to deal with the brazenness of these claims; each bigger than the other. Is there a way to discourage such institutes from making these false claims in the name of great education? Would Mr. Kapil Sibal, the current HRD minister and one India's best lawyers, take an active interest to bring in some transparency to prevent institutes from taking students for a ride? Can the regulators, government and judiciary impose certain accountability for such claims on all institutes? Or would this be another investigation that bites the dues for want of follow-up and regulatory action? We have done our job. It is over to you Mr. Sibal."

The applicants claim that the purpose and the effort of the author of the article was to address the issue of hollow claims made by respondent no. 2 institution which were misleading young students and their unsuspecting parents into believing that enrollment of students in IIPM would ultimately mean their getting a graduation degree of from a foreign University - a claim which was evidently incorrect according to the applicants. The applicants further assert that false claim such as one being made by respondent no. 2 institution are a drain on the hard earned money of the parents, apart from the fact that they also jeopardize the future of the unsuspecting students. This, the applicants assert, was the main intent and thrust of the article, written by them. The applicants further assert that by writing and publishing that article in the magazine,

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they were merely fulfilling their professional duty by invoking the public at large of the hollowness of respondent no.2 institution and in order to caution the prospective students from taking admission into respondent no. 2 institution. The applicants would also argue that the intention behind writing the article was that there should be a system of checks and a regulatory mechanism in place which must examine the claims of institution such as respondent no. 2. The article was also meant for the purpose that the higher education infrastructure in the country should not be permitted to be hijacked by people whose interest lies in profiteering from education. The applicants further claim that they wrote this article after they cross-checked with the Buckingham University and the e-mail received from the Buckingham University wherein the University has stated as under :-

> "The University does not have a formal agreement with the IIPM although it has been holding talks with them in Delhi for some time. The advertisement referred to were not published with the University's consent and no such consent would be forthcoming until their programmers have been formally accredited under the QAA Guidelines or Collaborations in Higher Education"

All this was published in their magazine. Apart from this the applicants have given a list of the alleged false claim being made by the IIPM and also their investigation of these claims and the result of the investigation. Counsel further claims that neither IIPM can grant or confer degrees nor does it have any arrangements with any University. Counsel for the petitioner also states that even if it has any arrangement with any University such a degree cannot be granted, as it has been specifically stated by the University Grants Commission in its public notice dated 31.7.2010. Therefore the claim of IIPM for granting any kind of degree is on the face of it incorrect. The applicants have also annexed by means of an affidavit a recent notice issued by the University Grants Commission stating that IIPM is not authorized to grant any degree or diploma, under the law, presently in force in the country. The notice reads as follows :-

> "It is hereby informed to the public at large and students that Indian Institute of Planning and Management (IIPM), New

> Delhi is not a University within the meaning of Section 2(f) of the University Grants Commission Act, 1956, the Indian Institute of Planning and Management (IIPM), New Delhi does not have right of conferring or granting degrees as specified by the University Grants Commission under Section 22(3) of the University Grants Commission Act. It is further clarified or information that Indian Institute of Planning and Management is neither entitle to award BA/BBA/BCA degree nor it is recognized by UGC, MHRD and AICTE.
>
> The public and students are also hereby informed that the Universities established either by a Central Act or a State Act or an Institutions deemed to the University under Section 3 of the University Grants Commission Act can confer or grant only those degrees which are specified by the University Grants Commission under Section 22(3) of the University Grants Commission is available on the University Grants Commission website www.ugc.ac.in for information of all concerned."

Having noted the above averments it must be stated though that this Court has only to examine whether the alleged article is prima facie defamatory, and as to whether the summons were rightly issued to the appellants.

Once a complaint was filed before the Magistrate, the Magistrate proceeded under Section 200 Cr.P.C. and examined the complainant i.e. Respondent no. 2 and his statement was recorded. Thereafter other three witnesses were examined under Section 202 Cr.P.C. The learned Magistrate came to the conclusion on the basis of the statement given by the complainant as well as the other witnesses under Section 200 read with Section 202 Cr.P.C. that the case under Section 500,501,502 read with 34 and 35 IPC is made out against some of the accused i.e. the present applicants and subsequently summons were issued against them.

While the contention of the counsel for the applicants before this Court is that no offence under Section 500/501/502 IPC is made out against them for the reason that the article written by them in the magazine was neither malicious nor defamatory. The counsel would argue that no offence of defamation is made out in as much as there was no intention to harm the reputation of the complainant, the object was only to caution gullible students from taking admission into a course which was not what it was being projected. Moreover, it has been argued that in any case they are exempted under the first exception, ninth

exception and tenth exception to Section 499 IPC for the reasons that firstly what they have published in that article was true and the publication itself was for the public good, as the intention of writing and publishing that article was to caution gullible and unsuspected students and warn them about the false claim being made by the complaint/respondent no. 2 and therefore this action was also for public good. Hence there is no defamation.

Learned counsel for respondent no. 2 i.e. the complainant, on the other hand, would argue that the language and the contents of the article were per se defamatory. They were published with an intent and purpose to defame the institution. Moreover, the counsel for respondent no. 2 would also argue that whether what was published was "true" and whether it was for "public good", is a matter which can be examined only during a trial. At present only notices have been issued to the applicants and they are invoking the exceptions to Section 499 IPC which is always available to them before the trial court. Moreover, the counsel for respondent no. 2 would also argue that inherent powers of this Court under Section 482 Cr.P.C. cannot be invoked for the purpose they have presently been invoked, as there is no abuse of the process of Court.

This Court has therefore to firstly examine the content of Section 499 and 500 IPC and see as to whether offence under Section 500/501/502 IPC was actually made out against the applicant and thereafter whether this Court under the present facts and circumstances of the case can invoke its inherent and extraordinary powers under Section 482 Cr.P.C. and quash the summoning order and set aside the proceedings initiated against the applicants.

Learned counsel for the petitioners Mr. Anup Bambani has submitted that it is indeed a case where an interference of this Court is required under its inherent powers under Section 482 of Cr.P.C. inasmuch as the cognizance taken by the learned Magistrate by issuing summons to the petitioners is nothing but an abuse of the process of law. The counsel would further argue that very fact that the petitioners will have to submit to a criminal process would cause immense hardship to

them though no case is made out against the petitioners, on the basis of the averments in the complaint. Moreover in the light of the fact that the publication was made by them was true and also in public good as well as it was done with the intention to caution the general public, they would be covered by exceptions to Section 499 IPC, referred above and hence on this ground as well no cognizance was liable to be taken and entire process then therefore becomes an abuse of the process of law. He therefore submits that in such a situation where cognizance has been wrongly taken by the court below this Court may use its inherent powers under Section 482 of Cr.P.C. He has heavily relied upon two judgments of the Apex Court which are (1) **Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others (1998) 5 SCC 749** and (2) **Adalat Prasad v. Rooplal Jindal and others (2004) 7 SCC 338.**

In the **State of Haryana Vs. Bhajan Lal 1992 SCC (Cri) 426,** the Hon'ble Apex Court had examined the extraordinary and inherent powers of this Court under Article 226 of the Constitution of India as well as under Section 482 of Cr.P.C. and has clearly stated that these powers have to be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In this seminal judgment the Apex Court also drew certain illustrations where these powers have to be exercised, although these guidelines were not inflexible nor did it lay any rigid formula.

The Apex Court in Pepsi Foods' case (supra) while considering several judgments, including Bhajan Lal's case (supra) it stated that where the Court comes to the conclusion that, inter alia, summoning of the accused has not been done properly, the Court must exercise its powers under Section 482 Cr.P.C. In Pepsi Foods' case (supra) the Apex Court has held as under :-

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the

> evidence both oral and documentary in support thereof and would that be sufficient for the complaint to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

It further stated that the provision of 482 of the Cr.P.C. is "to advance justice and not to frustrate it".

Learned counsel for the petitioners would also argue that there was no material for the learned Magistrate to have proceeded against the petitioners and issue summons under Section 204 Cr.P.C. In fact on the basis of the material which were before the learned Magistrate, the complaint was liable to be rejected under Section 203 Cr.P.C. However, since this stage has already been crossed and summons have already been issued to the petitioners, the only remedy available for them is to invoke the inherent jurisdiction of the High Court under Section 482 Cr.P.C., or face the trial before the learned Magistrate. This being a complaint case it has to be proceeded under Chapter XX of Cr.P.C. In summons cases which are triable by Magistratesm there is no formal framing of charges as in a sessions trial or even in a trial of warrant case before the Magistrate. Instead of formally framing of the charges only the particulars of the offence have to be stated to the accused, by the learned Magistrate under Section 251 Cr.P.C. Section 251 Cr.P.C. reads as under :-

> "**251. Substance of accusation to be stated.-** When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

Thereafter the Magistrate proceeds to hear the prosecution and takes all evidence which is led before the court by the prosecution and thereafter he hears the accused and appreciates the evidence which is led

by the accused in his defence. In other words, full trial commences under Section 254 Cr.P.C. Section 254 Cr.P.C. reads as under :-

> **"254. Procedure when not convicted.-**(1) If the Magistrate does not convict the accused under Section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take al such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.
>
> (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or produce any document or other thing.
>
> (3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purpose of the trial be deposited in Court."

It is only after the above proceeding that an accused would either be acquitted or convicted under Section 255 Cr.P.C. All the same, the question is if no case is made out against the applicants will it be proper that they be subjected to face a tedious if not an onerous trial. The catena of decision of the Supreme Court, some of which have been cited above point to the contrary. The counsel for the respondent, on the other hand, would argue that the petitioners have not denied their publication of the article in their magazine, which is said to be defamatory. It is also submitted that whether defamation is made out or not will only be seen in the trial not before this Court more particularly they are relying upon first exception to Section 499 IPC. Section 499 which defines defamation and extremely relevant for our purpose must be reproduced in its totality in order to get a right perspective. Section 499 IPC reads as follows :-

> "499. Defamation. – Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.
>
> Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

Learned counsel for the respondent/complaint would argue that the petitioners are invoking First, Ninth and Tenth exception given in Section 499 IPC, in their defence. These Exceptions read as follows :-

"First Exception.- **Imputation of truth which public good requires to be made or published.-** It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact."

Ninth Exception.- **Imputation made in good faith by person for protection of his or other's interests.-** It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception - **Caution intended for good of person to whom conveyed or for public good.-** It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

Now, the counsel for the respondent/complainant would argue that whether or not what has been published is "true" and as to whether it is for public good "is a question of fact". Since it is a question of fact it can only be examined by the trial court and not by this Court. Learned counsel for the respondent/claimant has relied upon a number of decisions of the Apex Court in his favour. We will examine these decisions one by one. The first decision, learned counsel for the respondent/claimant has cited in his favour is **Sewakram Sobhani Vs. R.K. Karanjia, Chief Editor, Weekly Blitz and others** reported in

(1981) 3 SCC 208, where the Hon'ble Apex Court by a majority judgment had laid down that what is public good is a question of fact and the High Court cannot examine this in its jurisdiction under Section 482 Cr.P.C. or that what has been stated by the accused is actually in public good so as to relieve him on all the charges under Section 500 IPC. It is only a matter for the trial to see as to the defence taken by the accused "of speaking truth in public good" exists or not. Now let us examine the facts of the case on which the above decision was given by the Apex Court. During the period of emergency several detenues belonging to the opposite party were lodged, inter alia, in jail in the State of Madhya Pradesh. There were males as well as females detenues. Blitz paper in its issue dated December 25, 1976 flashed a report stating that there was a mixing of male and female detenues in the Central Jail, Bhopal and further that the appellant had excess to mix with one female detenues and thirdly this female detenu became pregnant through the appellant. The defence of the accused in its application under Section 482 Cr.P.C. was that what they have stated in the newspaper is based on a confidential enquiry held by the Government and whatever they have stated is nothing more or less than the finding of the enquiry instituted by the Government and, therefore, they are protected under exceptions to 499 IPC. The High Court in its jurisdiction under Section 482 Cr.P.C. held that the publication of the news item was for public good and in public interest and therefore the proceedings were quashed under Section 482 Cr.P.C. The Apex Court, however, held that the quashing of the criminal proceeding was wrong on the basis of 9th exception as "public good" is a matter to be examined by the trial and it was stated that "journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue". Hon'ble Justice Baharul Islam though dissented in the said judgment and was of the opinion that High Court was right in quashing the proceeding against the accused as the material which was published was in public good and it was based on the finding of the

enquiry held by the Government. The other judgments cited by the learned counsel for the respondent/claimants reiterating the above position of law are **Jeffrey J. Diermeier and another Vs. State of West Bengal and another** reported in **2010 (5) Scale 695 ; M.A. Rumugam Vs. Kittu @Krishnamoorthy** reported in **AIR 2009 SC 341; John Thomas Vs. Dr. K. Jagadeesan** reported in **(2001) 6 SCC 30; Balraj Khanna and others Vs. Moti Ram** reported in **AIR 1971 SC 1389** and **Smt. Manjula Vijaya Shetty & another Vs. Smt. Sharada** reported in **1991 (1) Crimes 761.**

The learned counsel for respondent no.2 Sri Manoj Desai further reiterated his earlier stand that the defence of "truth" or "public good" is available to the petitioners only before the trial as "truth" and "public good" are a matter of fact, which can only be examined by the trial Court.

After hearing the arguments of the applicant as well as the respondents, this Court is of the view that in case the petitioners are only relying upon the exceptions to Section 499 of I.P.C., then no matter how attractive the argument of the applicants might be for an interference of this Court under Section 482 of Cr.P.C., yet in view of the law laid down by the Apex Court in **Sewakram Sobhani**'s case (supra), and also in view of Section 105 of the Evidence Act, an interference by this Court at this stage under Section 482 of Cr.P.C. might not be proper.

Section 105 of the Evidence Act reads as follows:-

> **"105. Burden of proving that case of accused comes within exceptions.**—When a person is accused of any offence, the burden of proving the existence of circumstances brining the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

What is of importance is that "the Court shall presume the absence of such circumstances." In other words a resort to an exception, would mean that the onus would shift on the defendant who claims the existence of an exception in his favour. This is the present case, being a summons case triable by a Magistrate, the defendant must present

himself before the Court and demonstrate, in the trial, how such an exception indeed exists. Therefore, insofar as the applicants are relying upon the exceptions, they must demonstrate its existence in a trial. But then the fact of the matter is that the applicants are not merely relying upon the exceptions to Section 499 of IPC as the counsel for the applicants would argue that no case is made out against them on a bare reading of the definition of "defamation" under Section 499 I.P.C. The counsel would also argue that the main thrust of the article (being said to be defamatory) was to caution the students, and it was not written with an intent to harm the reputation of the respondents. The essence of the offence is "intention" to harm the reputation of a person or knowledge or reason to believe that his writing or publication will harm the reputation of a person. In this case no such intention appears on a bare reading of the article. The sole purpose of the article was to caution gullible students. This Court also does not find anything, defamatory in the article. Under these circumstances, therefore, it would be wholly unjustified and in fact it will be an abuse of the process of Court if the petitioners are subjected to undergo a trial.

In **B.S. Joshi and others v. State of Haryana and another (2003) 4 SCC 675,** the Apex Court while referring another case in **State of Karnataka v. Muniswamy (1977) 2 SCC 699** stated that "...in the exercise of this wholesome power (*Section 482 Cr.P.C.)* the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the "legislature". This court said that the compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be

impossible to appreciate the width and contours of that salient jurisdiction."

The Apex Court also observed that when there is no likelihood of the accused to be convicted of an offence, the court must interfere at the preliminary stage itself under Section 482 Cr.P.C. In **Madhavrao Jiwajirao Schindia v. Sambhajirao Chandrojirao Angre 6 (1988) 1 SCC 692**, the Apex Court had to say this :-

> "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 is 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."

The entire edifice of our justice system rests on the principle of truth! The exercise in a Court is nothing if it is not a pursuit for truth and justice. The common expression in a Court room is "Satyamev Jayate"— Truth shall triumph. Truth is also the best defence in a case of defamation. A truth spoken for public good can never be called defamatory. When the author of the disputed article stated in the article itself, in no ambiguous terms, that what he has stated is true and has been verified from Buckingham University and the Berkeley University that they have no arrangements with IIPM, then the first question the learned Magistrate should have asked the complainant was - " Do you have the authority to grant this degree from Buckingham University? If yes, show the proof? This was not done. In fact even this Court not once but repeatedly asked this question to the counsel for the respondent Sri Manoj Desai, as to his authority to grant such degree and if they have they must show it to the Court, the petition would then be liable to be dismissed. But no such evidence was shown, even to this Court! The learned counsel kept on repeating that the complainant have

"arrangements" with Buckingham University and that they send their students to Buckingham and that they outsource lecturers from Buckingham, etc., etc., but no proof of their claim that they grant degree from Buckingham University! Yet IIPM in its bold advertisements published in Education Times dated June 22, 2009 in Times of India and annexed as Annexure-J to the writ petition and which has not been denied by the respondent/claimant, states as follows :-

"INDIA'S GLOBAL B-SCHOOL IIPM
NOW STUDENTS DOING IIPM'S UNIQUE
PLANNING & ENTREPRENEURSHIP
PROGRAMME ALSO BECOME ELIGIBLE FOR AN
MBA & BBA
DEGREE
FROM Buckingham Business School, The University of Buckingham, UK
UK's NO. 1 UNIVERSITY
for the years 2006, 2007 & 2008 in National Student Survey and
RATED AS UK'S NO. 1 B-SCHOOL"

This Court has already held that sole reliance on exceptions would mean the matter has to be determined in a trial alone, as these are factual aspects only to be determined in a trial. All the same, the learned Magistrate should have made at least the minimum enquiry as to the foundation of the allegations and must have asked the complainant as to whether they are authorized under the law to grant a degree as it claims. This was not done by the learned Magistrate. The emphasis on 'truth' by this Court is not a reference on the exception to Section 499, but generally as a matter of caution, must be examined by the Court before issuing summons.

On these facts, this Court is of the opinion that the criminal proceedings, which are presently pending against the petitioners are nothing but an abuse of process and in order to meet the ends of justice, summoning order dated 12.10.2009 are liable to be set aside and are therefore set aside. The proceedings in Criminal Complaint Case No. 5020 of 2009 which is pending before the A.C.J.M, 3rd Dehradun are also set aside.

The instant C-482 petition is accordingly allowed. No order as to costs.

Registry is directed to send a copy of this order to the court concerned for necessary compliance.

(Sudhanshu Dhulia, J)

8.10.2010
Avneet

Compared by

True Copy
Section Officer
Copying Section
High Court of Uttarakhand
NAINITAL.
20/10/10