

Kishore Kunal Vs. the State of Bihar

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SooperKanoon Citation : sooperkanoon.com/136190

Court : Patna

Decided On : Sep-04-2008

Judge : Samarendra Pratap Singh, J.

Acts : Arms Act; Indian Penal Code (IPC) - Sections 499 and 500; Code of Criminal Procedure (CrPC) - Sections 192(1), 197, 200, 202, 204, 386, 389, 390, 391, 397, 397(2), 401, 468 and 482; [Constitution of India](#) - Article 226

Appeal No. : Cr. Revision No. 592 of 2007

Appellant : Kishore Kunal

Respondent : The State of Bihar

Advocate for Def. : Pramod Mishra, Adv.

Advocate for Pet/Ap. : Kamal Nayan Choubey, Sr. Adv. and Ambuj Nayan Chaubey, Adv.

Disposition : Application allowed

Judgement :

Samarendra Pratap Singh, J.

1. The petitioner, who resigned from the services of IPS ten years prior to the age of his superannuation, has filed this revision application for quashing the

composite order dated 4.10.2005 passed by Shri K.K. Singh, Judicial Magistrate 1st Class, Begusarai in Complaint Case No. 1578(c) of 2000 by which cognizance of offence under Section 500 of the Penal Code has been taken and process under Section 204 Cr.P.C. has been issued to face the trial.

2. It would appear from the very complaint, that a report sent by the petitioner in his capacity as I.G. (CISF) Barauni, in January 1997 to the Home Ministry, and his alleged leaking to the press has culminated into his prosecution under Section 499 of the Penal Code.

3. The prosecution case in short as made out in the complaint dated 21.12.2000 (Annexure-1) filed by Opposite party No. 2 Ram Lakhan Singh in the Court of Chief Judicial Magistrate, Begusarai giving rise to Complaint Case No. 1578C/2000 is as follows:

i) The complainant stated that he had fought assembly elections in the years 1990, 1995 and 2000 as well as Lok Sabha election in the year 1996. He stated that as he once spear headed public protest against the then Superintendent of Police, he was implicated in a murder case bearing No. 525 of 1996 in which he was finally acquitted.

ii) He alleged that on 17.1.2000, after coming out of jail, he was shocked to read Hindi daily 'Aaj' and 'Hindustan' dated 9.2.1997 and 14.2.1997 respectively, a copy of which was given by witness No. 1.

iii) He alleged that the petitioner Kishore Kunal, IG (CISF) has sent a report to the Home Ministry wherein he referred to him as a habitual criminal, extortionist, oil cheat and Mafia which allegations are baseless. He further alleged that the petitioner has sent the aforesaid concocted report and leaked the same to the press, in order to malign his prestige and finish his political career. The accused petitioner was not authorized to leak the report in press.

iv) The complainant claims that such derogatory publication in newspaper has lowered his prestige and reputation and caused mentally agony.

v) On reading the newspapers the witnesses were also shocked. The complainant sent a lawyer's notice to the accused who did not give any reply.

4. It will appear from the materials on record that though the complaint was filed on 21.12.2000, the complainant appeared for Solemn Affirmation (S.A.) under Section 200 Cr.P.C. on 10.5.2002, almost after 11/2 years, and thereafter case was transferred to the Court of the concerned Judicial Magistrate, 1st Class for enquiry, under Section 192(1) Cr.P.C. Two witnesses namely P.W.1 Basisth Narain Singh, and P.W.2 Ashok Kumar Singh were examined on 21.5.2002 and 22.11.2004 respectively. The learned Magistrate by order dated 4.10.2005, took cognizance of offence under Section 500 of the Penal Code and summoned the petitioner to face trial. A petition for recall of the order dated 21.10.2005 and dropping of the proceeding was also rejected by order dated 17.4.2007.

5. This Court by order dated 9.5.2007 issued notice to Opposite party No. 2, the complainant, and it was further directed that no coercive steps would be taken against the petitioner. On appearance of Opposite party No. 2, the case has been heard on merit at length.

6. Mr. Kamal Nayan Choubey, Learned Senior Counsel appearing for the petitioner submits that the latter after resigning from service of Police has endowed himself to the public cause and at the moment is posted as Administrator cum Officer on Special Duty, Bihar State Board of Religious Trust. He assails the order taking cognizance and issuance of summons on the following grounds:

a) The act alleged has been committed in official discharge of duty while being posted as I.G., C.I.S.F. at Barauni and as such sanction under Sections 197 Cr.P.C. was necessary for his prosecution.

b) The instant prosecution is full of false hood and out and out a malicious prosecution and has been lodged to wreak vengeance on account of personal bias.

c) Even assuming the entire prosecution case to be true, the complainant's case does not fulfill the ingredients of Section 499 I.P.C. read with Explanation-4. The

evidence of the two prosecution witnesses as well as the complaint petition would show that the complainant is accused in quite a number of cases and has been to jail time and again.

d) The instant prosecution is barred under Section 468 Cr.P.C. as newspaper report was admittedly published in different local newspapers on 9.2.1997 and 14.2.1997 and the complaint itself was filed on 21.12.2000 after three years 10 months.

7. Learned Counsel for the Opposite party submits that there is no illegality in the impugned order dated 4.10.2005 taking cognizance and summoning the accused person to face trial, as well as the subsequent order dated 17.4.2007, rejecting the application of the petitioner for recall of the aforesaid order. He raised various points including one of maintainability of this revision application and stated that quashing application under Section 482 Cr.P.C. would have been an appropriate remedy. According to him, the alleged act of petitioner making a report against him to the Home Ministry and leaking the same in the Newspaper would not fall under the purview of discharge of official duty, and as such no prior sanction was required for prosecution. In support of his contention, he relied upon decisions of this Court in the case of Jagannath Thakur v. State of Bihar 2004 (3) P.L.J.R. 718, in the case of Sewakaram Sobhani v. Chief Editor, Weekly Blitz 1981 SC 1514, in the case of John Thomas v. Dr. K. Jagadeesan : 2001 CriLJ3322 and in the case of P.K. Pradhan v. State of Sikkim : 2001 CriLJ3505 . He stated that at the stage of cognizance, court cannot look into documents apart from those on record. The order taking cognizance is different from order issuing summons.

8. As the point of maintainability has been raised by learned Counsel for the Opposite party, I will take up this issue first. Learned Counsel for the Opposite party submits that no application under Section 397 and 401 Cr.P.C. is maintainable against the order taking cognizance and issuance of summons and the remedy for the petitioner was to file a quashing application under Section 482 Cr.P.C.

9. On the other hand learned Counsel for the petitioner submits that law does not bar filing of a revision application against order taking cognizance and

consequential order issuing summons. He submits that courts have held that one can prefer revision application against order taking cognizance and issuing summons as the latter is not fully an interlocutory order.

10. Section 397 Cr.P.C. provides that the High Court or any Sessions Judge may call for and examine the records of any proceeding within its local jurisdiction for satisfying itself to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and under Section 401 Cr.P.C. can exercise any of the powers which is conferred on a court of appeal by Sections 386, 389, 390 and 391 of Cr.P.C. In some of the cases, the Apex Court has held that order taking cognizance and the consequent order summoning the accused person to face trial, is not strictly speaking an interlocutory order and as such the revision application is maintainable. In the case of *Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors.* : 1998 CriLJ1 , the Apex Court observed that the nomenclature of format is not relevant if the court otherwise possess power unless there is a special procedure prescribed, mandatory in nature. Again in the case of *Sewakram Sobhani v. Chief Editor Weekly Press and Ors.* 1981 SC 1514 observed in paragraph 25 as follows:

The omission in the prayer portion of a petition of a part of the claim, particularly in a criminal case, is not fatal. The High Court in his revisional jurisdiction can always grant suitable relief justified by law as well as facts and circumstances of a particular case.

11. Further more in case of *Rajendra Kumar Sitaram Pandey and Anr. v. Uttam and Anr.* : 1999 CriLJ1620 once again the issue whether order of Magistrate issuing process is purely an Interlocutory order and whether revision under Section 397 read with Section 401 Cr.P.C. is mandatory or not came for consideration. The Apex Court after considering the findings arrived at in case of *Amar Nath v. State of Haryana* (1997) 4 SCC 137; in the case of *Madhu Limaye v. State of Maharashtra* : 1978 CriLJ165 ; and in the case of *V.C. Shukla v. State* 1980 Supp SCC 92, observed in para-6 as follows:

This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under

Sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under Sub-section (2) of Section 397 of the Code.

12. In view of the above discussions, I find that law does not prohibit entertaining revision application against order taking cognizance and the consequent order summoning the accused to face trial. Thus I hold that revision application is maintainable.

13. Now as I have held that this revision application is maintainable, I proceed to examine the issues raised by learned Counsel for the parties including validity of prosecution of public servant without obtaining prior sanction as envisaged under Section 197 Cr.P.C as formulated in para 6. This necessitates to examine the object and scope of Section 197 Cr.P.C. first.

14. The object and scope of Section 197 Cr.P.C. has fallen for scrutiny of the court time and number. The section provides protection to the honest and responsible public servant from vexatious criminal proceeding and harassment. The object of the provision is that no public servant should be prosecuted for act committed by him reasonably in discharge of his official duty or purported to be in discharge of official duty, unless sanction has been obtained from the competent authority. The Policy of legislature is to afford adequate protection to public servant to ensure that they are not prosecuted for anything done in official discharge of duty and its prohibition against taking of cognizance.

15. The Apex Court in the case of P.K. Pradhan (Supra) after discussing various decisions on this point starting from the case of Hori Ram Singh (Dr) v. Emperor 1939 F.C. 43, in the case of H.H.B. Gill v. R. reported in 1948 Privy Council 128; in the case of S.R. Munipalli v. State of Bombay reported in 1955 SC 287; in the case of Amrik Singh v. State of Pepsu reported in 1955 SC 309; in the case of Baijnath Gupta v. State of M.P. reported in : 1966 CriLJ179 ; in the case of Matajog Dobey v. S.C. Bhari reported in 1956 SC 44 (Constitution Bench); in the

case of S.K. Bikamchand Jain v. Pandey Ajay Bhushan : 1998 CriLJ1242 ; in the case of Abdul Wahab Ansari v. State of Bihar reported : 2000 CriLJ4631 and K. Satwant Singh v. State of Punjab reported in 1960 SC 26 (Constitution Bench) observed as follows:

15. Thus, from a conspectus of the aforesaid decision, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceeding will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.

16. The view expressed by the Apex Court in the case of P.K. Pradhan was also adopted in the case of Rakesh Kumar Mishra v. State of Bihar 2006 (2) P.L.J.R. 16 SC. In the aforesaid case the Apex Court observed that Section 197 aims at providing protection from vexatious criminal proceeding. The protection of the provision would also be applicable to Government and public servant who have

retired. It would also appear from the aforesaid observations of Hon'ble Supreme Court that question of sanction can be raised at any stage after taking of cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of the trial and after conviction as well.

17. As to what stage this question is to be decided would depend upon the facts of the case. In cases where the materials on record are available and the court feels satisfied to decide the question on the basis of material at the time of taking cognizance, it can be decided at that stage. If materials are not sufficient and the question cannot be decided without taking further evidence, then the question is to be decided at the time of trial. Furthermore no exhaustive norms or universal rule can be laid down to determine whether there is a reasonable connection between the act done and official duty. One safe and sure test would be to consider whether the omission or neglect on the part of the public servant to commit the act complained of, would have made him answerable for a charge of dereliction of his official duty.

18. In the aforesaid back drop of scope and object of Section 197 Cr.P.C., I take up the first issue whether the report sent by the petitioner in his capacity as IG, CISF to the Home Ministry, which also contained the antecedents of the complainant, and its alleged leakage in the press is an act committed in official discharge of duty.

19. It would appear from the complaint petition that the petitioner at the relevant time was posted as I.G., CISF Incharge of security of Barauni Industrial unit. The complainant also admits in his complaint petition that the petitioner had sent a general report to the Home Ministry. It is common knowledge that on receipt of such reports, the same is discussed and sent to various agencies for necessary information and use in interest of safety of industrial units. The petitioner being IG, CISF was under obligation of duty to report all such aspects, which concerns the safety, and security of industrial units. Such report to the Home Ministry by no stretch of imagination could be said to be not one under official discharge of duty. The report of the petitioner to the Home Ministry was an act performed fully in discharge of his official duty. The stand of the petitioner is that it was a routine

report to the Central Government concerning the security of the industrial unit and incidentally it also contained reports regarding the antecedents of the persons including Opposite Party No. 2 and a few others whose activities were considered detrimental to the interest of its security. On the contrary, the petitioner would have been failing in his duty and responsibility imposed upon him, if he would not have sent one such report to his controlling authority. The report sent by the petitioner was a general report, which contained various aspects concerning the security of the industrial unit as well as reports regarding anti social elements creating hindrance in the way. So far as leakage in the press is concerned, there is no credible evidence on record to show that the petitioner has leaked the same. As has been admitted in the complaint petition itself the report was sent to the Home Ministry. In the Home Ministry the report is discussed with various agencies under its routine business affair. In such situation the press could have obtained it from anyone concerned, as the documents no more remain secret. Neither the complainant nor the two witnesses examined in an enquiry under Section 202 Cr.P.C. stated that it would appear from the excerpts of newspaper that the same was leaked by the petitioner. It is well settled that a Magistrate must carefully scrutinize the evidence in order to ascertain whether prima facie case is made out for taking cognizance and summoning the accused persons to face trial. This Court at this juncture finds it expedient to refer to paragraph 28 of the decision of the Apex Court in the case of Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors. : 1998 CriLJ1 equivalent to A.I.R. 1998 SC 120 which is being reproduced here for sake of convenience.

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 has 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 complainant 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.

20. In the case of Matajog Dobey v. H.C. Bhari 1956 SC 44 the complainant had alleged that the official authorized in pursuance of warrant issued by the Income Tax Investigation Commission forcibly broke open the entrance door and when some resistance was put, the said Officer tied a rope around him and assaulted him causing injury which led to filing of the complaint against him. Nonetheless the Apex court held that such a complaint cannot be entertained without sanction of competent authority as provided under Section 197 Cr.P.C. as there was reasonable connection between the act complained of and the official discharge of duty.

21. In the aforesaid case the Constitution Bench observed that where a power is conferred or duty is imposed by a statute or otherwise and there is nothing said expressly inhibiting the exercise of power or the performance of the duty by any limitation or restriction, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution.

22. In the case of Suresh Kumar Bhikamchand Jain v. Pandey Ajay Bhusan 1998 SC 1524 the appellant filed a criminal case against Pandey Ajay Bhusan, alleging that while removing encroachment the respondent Pandey Ajay Bhusan who was Collector and District Magistrate of Jalgaon along with others in course of anti encroachment drive brutally assaulted him. He alleged that one of the accused caught his neck and threatened him with revolver and the respondent Pandey Ajay Bhusan kicked and abused him. The Magistrate took cognizance of offence and summoned the accused persons including Pandey Ajay Bhusan to face trial. Three of the four accused persons including Pandey Ajay Bhusan were summoned to face trial. Against the order taking cognizance and issuance of summons respondents 1 to 3 moved the High Court under Article 226 of the Constitution and the matter was remitted back to the trial court for reconsideration. On remittance of

the matter, the trial court re-affirmed its earlier order taking cognizance and summoning the accused persons to face trial. A revision application was filed before the High Court by respondents 1 to 3 which was allowed and the one filed by the informant of that case against discharge of respondent No. 4 was dismissed. The informant challenged the order of the High Court in the Apex Court in S.L.P. The Hon'ble Apex Court upheld the plea of sanction taken by the respondents and dismissed the appeal of the appellant. The Apex Court observed that Section 197 of Cr.P.C. is a prohibition imposed by statute from taking cognizance and as such the court will not be justified in taking cognizance of offence without such sanction on a finding that the acts complained of are in excess of discharge of official duty by the government servant.

23. In the case of Abdul Wahab Ansari v. State of Bihar : 2000 CriLJ4631 and in the case of Rakesh Kumar Mishra v. State of Bihar and Ors. 2006 (2) P.L.J.R.16 (SC) the Apex Court upheld the plea of sanction at the stage of cognizance itself.

24. Learned Counsel for the Opposite party contended that the petitioner in its report described him as habitual criminal, extortionist, and oil thief, which the former leaked to the press also. He further submits that the claim of the petitioner can be decided at the time of the trial. In this respect he relied upon a decision in the case of Jagannath Thakur v. State of Bihar 2004 (3) P.L.J.R. 718, in the case of S. Sobhani v. Chief Editor 1981 SC 1514; John Thomas v. Dr. K. Jagadeesan : 2001 CriLJ3322 ; P.K. Pradhan v. State of Sikkim : 2001 CriLJ3505 and Raj Kishore Rai v. Kameshwar Pandey : 2002 CriLJ3780 .

25. So far as reliance on the first three cases are concerned, namely Jagannath Thakur v. State of Bihar 2004 (3) P.L.J.R. 718, in the case of S. Sobhani v. Chief Editor 1981 SC 1514; John Thomas v. Dr. K. Jagadeesan : 2001 CriLJ3322 are concerned, the same is misplaced as the application of Section 197 Cr.P.C. was not an issue in aforesaid cases, as accused involved were not public servant.

26. The case laws relied upon by learned Counsel for the Opposite party in the case of Jagannath Thakur (Supra), Sewakaram Sobhani (Supra) and John Thomas (Supra) would not be applicable in the facts of this case as the appellants of those cases were not the public servants and have not raised the plea of

sanction. In all the aforesaid cases the accused persons of the case had taken the plea of protection either under Section 499 read with Exception-1 or under Section 499 read with exception 9 of the Penal Code which the court held can be proved one way or the other by adducing evidence at the stage of trial.

27. In the case of Jagannath Thakur a bench of this Court was considering a news item published on behalf of the Teachers Association in which the allegation was made that the lawyer was teaching commerce without qualification. One of the main grounds of the petitioner was that the news item were published in good faith and as such the same did amount to defamation under Section 499 read with explanation 1 and 9 which states that no imputation will amount to defamation if the same is done in good faith and in public interest. The learned Judge relying upon decision reported in : 1981 CriLJ894 observed that whether a news item published is in good faith or in public interest under 1st exception and 9th exception are all issues of fact which is to be decided at the stage of trial.

28. The issue of Section 197 Cr.P.C. was not involved like the above two cases in the case of P. Thomas, : 2001 CriLJ3322 which related to defamatory allegation made by one John Thomas against the private hospitals. In the aforesaid case the Apex Court observed that if an article is per se derogatory or defamatory, it would only relieve the complainant of burden to establish such publication has lowered his estimation in the public view.

29. The case reported in : 2002 CriLJ3780 (Raj Kishore Rai v. Kameshwar Pandey) relied upon by Opposite party is one which involved plea of sanction, concerning a public servant but it was in respect of different facts. In the aforesaid case a private individual had made complaint against Raj Kishore Rai, a police officer that the latter threatened to implicate him and his family members in a false case of Arms Act, unless and until they pay illegal gratification to him. The fact of aforesaid case has no application in the instant case as it does not involve any moral turpitude or any threat given by the petitioner to implicate complainant in a false case.

30. For similar reasons the facts of the case of P.K. Pradhan (Supra) relied upon by learned Counsel for the Opposite party has no bearing in the instant case. In

the aforesaid case, the allegation was that the petitioner who was the then Secretary of Rural Development Department in connivance with the then Chief Minister of Sikkim, conferred contract at low rate causing pecuniary advantage to themselves and loss to the State. In such circumstances, the Apex Court did not interfere with the order of the High Court dismissing the revision against the order taking cognizance and summoning the accused persons to face trial. The Apex Court observed that the appellant, who was the then Secretary, Rural Development Department has to establish by evidence that he did not abuse his official position as public servant, to confer gain on himself which can be decided at the stage of the trial.

31. The facts of the instant case is very different with the case of P.K. Pradhan (Supra) as there is no allegation that the petitioner misappropriated any government money or conferred any gain to himself.

32. In view of the aforesaid discussions, this Court finds that the report sent by the petitioner to the Home Ministry containing the allegations against the complainant, Opposite Party No. 2, ipso facto on the face of it was an act in discharge of performance of official duty. No credible evidence has been brought on record to even prima facie show that the petitioner leaked the contents of the report to the press. Even assuming the petitioner has leaked the same to the press, nevertheless it would be only in excess of discharge of his official duty bearing reasonable connectivity between the act complained of and discharge of official duty. In view of aforesaid facts the petitioner being a Government/public servant then could have been prosecuted only after having obtained prior sanction as provided under Section 197 Cr.P.C. On this ground alone the impugned order taking cognizance and summoning the petitioner to face trial is bad in law for want of sanction.

33. Learned Counsel for the petitioner submits that the instant prosecution is full of falsehood and out and out a malicious prosecution and has been lodged to wreak vengeance on account of personal bias. He further submits that the Opposite party No. 2 became annoyed on account of the fact that the petitioner has sent a report to the Home Ministry, Government of India making some general allegations

against him also.

34. It is also an admitted position that the petitioner did not bear any personal grudge against the Opposite party No. 2. It was his ardent duty being I.G., C.I.S.F. to bring it to the notice of the Central Government the credentials of such elements whose activities and misdeeds are matter of grave concern for industrial security. Any such report so received is discussed by various departments of Government and may have got subsequently leaked to the press. It was further submitted that such fact annoyed Opposite party No. 2, and as retaliation and in order to cow down such officials who dare to send such reports, the instant malicious prosecution has been filed.

35. However, learned Counsel for Opposite party No. 2 submits that he did not file the instant case to wreak vengeance against the petitioner but he has a right to file a complaint if any one tries to defame.

36. Before I go into the merit of the rival contentions made by learned Counsel for the parties, it would be necessary to advert to some of the decisions of Apex Court relating to malicious and vexatious prosecution. In the case of State of Haryana v. Bhajan Lal reported in 1992 SC 604, the Hon'ble Apex Court has observed vide paragraph 108 of the judgment that a criminal proceeding can be quashed, if it is manifestly attended with malafide and/or where the proceeding is maliciously instituted with ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

37. In the case of Chandra Pal Singh and Ors. v. Maharaj Singh and Anr. : 1982 CriLJ1731 the Hon'ble Apex Court observed in paragraph 1 at page 467 as under:

A frustrated landlord after having met his Waterloo in the hierarchy of civil courts has further enmeshed the tenant in a frivolous prosecution which prima facie appears to be an abuse of process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.

38. The case of the petitioner would be some what similar in ratio as in aforesaid case. It would appear from the materials on record as well as the evidence of the

two PWs examined by the complainant that the Opposite party No. 2 has been to jail quite a number of times including offences like Arms Act etc. It would be relevant to quote last paragraph of deposition of P.W.1:

vHkh vfHk;ksxh tsy esa gS gfFk;kj ds dsl esa tsy esa gS

P.W.2 also stated in last paragraph of his deposition as follows:

ifjoknh dbZ dsl es tsy x;s gS

In his order dated 10.5.2002 recorded that Opposite party No. 2 was in jail when he was produced for examination on Solemn Affirmation which is also quoted here for easy reference:

ifjoknh y[ku flag dks eaMy dkjk ls izLrqr fd;k x;k

39. On perusal of the aforesaid materials it would appear that the Opposite party No. 2 was in jail on the following occasions:

- i) He was in jail when the alleged report was published in the newspapers on 9.2.1997 and 14.2.1997.
- ii) On coming out of jail the Opposite party filed the complaint on 21.12.2000
- iii) On 10.5.2000 when he was produced for examination on Solemn Affirmation he was in jail.
- iv) P.W.2 in his deposition on 22.5.2004 admitted that the complainant has gone in jail in many cases.

40. In the background of the aforesaid admitted facts that the Opposite party No. 2 figured as an accused in quite a number of criminal cases, the petitioner was within his right and obligation to send a report to the Home Ministry also making his comments regarding conduct of Opposite party No. 2. The necessary inference follows that in order to wreak vengeance, Opposite Party No. 2 has filed the instant case to tame a dutiful and conscientious officer, who dares to write about activities of persons who are involved in a number of cases and considers

themselves to be untouchables. This Court is tempted to quote the following verses from Manusmriti, Vol. VIII 12 & 14

/keksZ fo}Lro/kesZ.k lHkka ;=ksifr'Brs A

'kY;a pkL; u d`arfUr fo}Lr= lHkln% AA

;= /keksZ gk/kesZ.k lR;a ;=ku`rsu p A

gU;rs izz{kek.kkuka grkLr= lHkln% AA

The aforesaid verses convey that if justice is pierced by injustice, and the members of the court do not remove that dart, there is lurking danger that all get pierced, and where justice is destroyed by injustice, or truth by falsehood; while people are looking on, there remains an apprehension that all would be doomed.

It would not out of context to recall famous speech of British Parliamentarian Edmund Burke during the impeachment proceeding against Warren Hastings, the Ex-Governor General of India, the relevant excerpts of which are quoted herein below..We call this nation, we call the world to witness, that we have made no compromise with crime; that we have not feared any odium whatsoever, in the long warfare which we have carried on with the crimes, with the vices, with the exorbitant wealth, with the enormous and overpowering influence of corruption.

41. In view of the facts noted in the foregoing paragraphs, this Court holds that the instant proceeding is a malicious and vexatious proceeding, and has been instituted with an ulterior motive for wreaking vengeance on the accused petitioner with a view to spite him due to personal grudge, as the latter had dared to unfold his sagging credentials and the truth before the Central Government. On this ground too, the impugned order taking cognizance and summoning the petitioner to face trial and the consequential order dated 17.4.2007 rejecting the application of the petitioner for recalling the impugned order dated 4.10.2005 are fit to be quashed.

42. As the petitioner succeeds in this revision application on aforesaid two grounds, this Court does not propose to examine the other ground Nos. (c) & (d)

mentioned in paragraph 6 of this judgment.

43. Having considered the facts and circumstances of the case, this Court finds that the report sent by the petitioner to the Home Ministry, Government of India, which also contained allegations against the Opposite party No. 2 was in discharge of his official duty, and as such the instant prosecution and the order taking cognizance and issuance of summons without obtaining prior sanction under Section 197 Cr.P.C., stands vitiated, and is accordingly fit to be quashed. This Court further holds that the instant proceeding has been manifestly attended with malafide for wreaking vengeance on the petitioner as he had sent a report against the complainant to the Home Ministry. On this ground also the Revision application succeeds.

In the result, this revision application is allowed and the criminal prosecution arising out of Complaint Case 1578C/2000 as well as order taking cognizance and summoning the petitioner to face trial are quashed.

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