

MALLESHWARAM WEST
BENGALURU – 560 055.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1 (PHYSICAL HEARING);
SRI K.J.KAMATH, ADVOCATE FOR R2 (VIDEO CONFERENCING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.23647/2016 FOR AN OFFENCE P/U/S.211, 500, 499 OF IPC (P.C.R.NO.15167/2015 PENDING ON THE FILE OF THE VII ACMM, BENGALURU) AGAINST THE PETITIONERS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.03.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.23647 of 2016 pending before the VII Additional Chief Metropolitan Magistrate, Bangalore arising out of P.C.R.No.15167 of 2015 registered for offences punishable under Sections 211, 500 and 499 of the IPC.

2. Heard Sri Vishnumurthy, learned counsel appearing for the petitioners, Smt. K.P.Yashoda, learned High Court Government Pleader appearing for respondent No.1 and Sri K.J. Kamath, learned counsel appearing for respondent No.2.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The petitioners and the complainant/2nd respondent are residents of the same apartment complex "Brigade Gateway". A complaint is registered by the 2nd respondent invoking Section 200 of the Cr.P.C. against the petitioners alleging that registration of a complaint on an alleged false incident has tarnished the image of the complainant in the eyes and minds of the residents of the apartment complex. The story commences by the narration of the complainant that the petitioners and the complainant were good friends and families had been acquainted to each other. It is his case that every now and then, after a few months of acquaintance, the petitioners used to pick up quarrel and enter into a squabble with the complainant. On a particular day - 25-09-2015, it was alleged that the complainant was driving his car in the parking lot at about 6.30 a.m. At that point in time, the complainant is alleged to have tried to outrage the modesty of the 1st petitioner and has hurled filthy abuses

against her. The petitioners register a complaint on the said incident, upon which, the complainant was summoned to the Police Station and made to sit there for the whole day and again was asked to come on 29-09-2015 after which, the complaint was closed with a non-cognizable report.

4. A similar complaint was lodged by the petitioners before the President of Brigade Gateway Residents Welfare Association, a registered body which has about 1255 members or apartments as members of the Association. The complainant was summoned by the office bearers of the Association and in front of office bearers and other members of the Association the allegations made in the complaint so filed before the President was read out. It is the case of the complainant that he refuted the charges and established innocence. Later the CCTV footage was noticed and the complainant was held to be innocent. It is the case of the complainant that by then his image in the eyes of the members of the Association of the apartment complex had been tarnished

and it was established that it was a false case that was attempted to be foisted against the complainant.

5. Narrating the entire incident, the complainant registers a private complaint invoking Section 200 of the Cr.P.C. The learned Magistrate on 06-06-2016 directed investigation under Section 156(3) of the Cr.P.C. to be conducted by the jurisdictional Police and a report to be submitted. The Police, after investigation, filed a charge sheet in the matter for offences punishable under Sections 211, 499, 500 r/w Section 34 of the IPC. It is at that juncture, the petitioners have knocked the doors of this Court in the subject petition.

6. The learned counsel appearing for the petitioners submits that the complainant had registered the private complaint invoking Section 200 of the Cr.P.C. The learned Magistrate could not have directed investigation by the Police in the matter of defamation as there can be no involvement of the

Police and would further submit that there is nothing that is defamatory in the complaint that was lodged before the Police or the President of the Association and under Section 199 of the Cr.P.C. the complainant cannot be claimed to be an aggrieved person.

7. On the other hand, the learned counsel appearing for the 2nd respondent would vehemently refute the submissions and contends that the petitioners had foisted a false case against the complainant and no such incident had ever happened in the parking lot of the apartment complex. The allegations did require an investigation as Sections 211 and 34 of the IPC were also part of the FIR that was registered or the charge sheet that is filed by the Police after investigation and it is a matter of trial that the petitioners have to come out clean, as they have admittedly tarnished the image of the complainant in the eyes of the residents of the apartment complex who are members of the Association.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-narrated facts, as to what triggered registration of a private complaint by the complainant against the petitioners are not in dispute. What is required to be noticed is the act of the learned Magistrate, in a complaint registered for offences punishable under Sections 211, 499 and 500 of the IPC, in directing investigation to be conducted by the jurisdictional Police under Section 156(3) of the Cr.P.C. This, in my considered view, would be the threshold bar for consideration of any of the submissions on merits of the matter. The instant case concerns defamation under Section 499 of the IPC which becomes punishable under Section 500 of the IPC. Therefore, there cannot be any controversy about how the learned Magistrate should take cognizance of the offence. The cognizance shall be taken only on a complaint and not on a report filed by the Police.

10. In the case at hand, when the complaint came to be registered, the learned Magistrate fell in error in directing investigation to be conducted by the Police under Section 156(3) of the Cr.P.C. and thereafter takes cognizance of the offences on filing of the report by the Police.

11. Section 211 of the IPC is also added along with Sections 499 and 500 of the IPC. Even if it is a crime punishable under Sections 499 and 500 of the IPC which are offences that are non-cognizable, the Magistrate will not get jurisdiction to refer the matter for investigation under Section 156(3) of the Cr.P.C. as Section 211 of the IPC even otherwise is an offshoot of Sections 499 and 500 of the IPC. The Apex Court in the case of **SUBRAMANIAN SWAMY v. UNION OF INDIA**¹ has held as follows:

“207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The

¹ (2016) 7 SCC 221

offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in *Rajindra Nath Mahato v. T. Ganguly* [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha* [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In *Pepsi Foods Ltd., v. Special Judicial Magistrate* [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.”

(Emphasis supplied)

The Apex Court, in the aforesaid judgment, holds that where the complaint made by the complainant before the learned Magistrate involves offence punishable under Section 500 of the IPC, the learned Magistrate cannot exercise powers under Section 156(3) of the Cr.P.C. so as to direct Police to register a

crime and then investigate into the offence, in view of the specific bar contained in Section 199 of the Cr.P.C. This would become applicable even in cases where offences are alleged of other provisions of law along with Section 500 of the IPC.

12. It is germane to notice the judgment of a learned single Judge of the High Court of Kerala considering the very issue in the case of **SURESH v. SUB-INSPECTOR OF POLICE**² wherein it has been held as follows:-

“4. It will be pertinent to refer to the provisions contained in Section 199 of the Cr.P.C. which reads as follows:-

*“199. **Prosecution for defamation.**—(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:*

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian

² **2019 (4) KLT 106**

Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been

committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

In this case we are not really concerned much with the applicability of sub-sections (3), (4) and (5) of Section 199, as nobody has a case that the alleged defamation has been made as against anyone of the public dignitaries mentioned therein, more particularly in sub-section (2) thereof. Sub-section (1) of Section 199 of the Cr.P.C. clearly and categorically mandates that no court shall take cognizance of an offence punishable under chapter XXI of the IPC., except upon a complaint made by some person aggrieved by the offence. In this case, we are also not much concerned with the applicability of the proviso to sub-section (1) of Section 199 as nobody has got a case that the complainant concerned is below the age of 19 or comes within any of the categories mentioned in that proviso. Chapter XXI of the IPC is captioned with the heading “OF DEFAMATION” and the said Chapter XXI contains Sections 499, 500, 501 and 502 of the IPC. In the instant case it is beyond any dispute that the offence alleged is as per Section 499 (criminal defamation), which is punishable as per Section 500 (punishment for defamation) of the IPC and hence it is beyond the pale of any controversy that the sole offence alleged in the instant case comes under Chapter XXI of the IPC and therefore there cannot be any dispute about the applicability of sub-section (1) of Section 199 of the IPC which deals with the offences mentioned in Chapter XXI of the IPC. The legislature has specifically mandated as per Section 199(1) of the Cr.P.C. that no court shall take cognizance of an offence punishable under Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the said offence. Therefore, the only manner on the basis of which, cognizance could be taken by the competent criminal court in respect of an offence alleged as per Section 500 of the IPC comes under Chapter XXI of the IPC is that the aggrieved complainant who has locus standi has to file a private criminal complaint as envisaged in Section 190(1)(a) of the Cr.P.C. and thereafter it is for the criminal trial Court concerned to take appropriate decision in the matter of taking cognizance and then to proceed thereafter in accordance

with law. If on the other hand, the learned Magistrate before whom the petition/complaint is filed, does not treat it as a complaint under Sections 190 and 200 of the Cr.P.C. and then decides to direct the Police to register crime and then to investigate the offence as per Section 500 of the IPC in purported exercise of the powers conferred under Section 155(2) of the Cr.P.C., then the Police will have to register the crime and after conducting such investigation, if it is found that there is substance in the allegations, it is for the Police to file appropriate final report/charge sheet in the case in terms of Section 173 of the Cr.P.C. **Thereafter, the criminal trial court will be barred from taking cognizance in respect of an offence as per Section 500 of the IPC by following the latter course for the simple reason that the legislature permitted the said court to take cognizance in respect of an offence under Chapter XXI of the IPC only on the basis of a complaint made by the person aggrieved of the said offence and not on the basis of a final report/charge sheet or Police report given by the Police authority concerned. Since the very taking of the cognizance in such a case is barred by virtue of the specific mandatory provision contained in Section 199(1) of the Cr.P.C. it is only to be held that the learned Magistrate has no jurisdiction under Section 155(2) to direct the Police to register a crime and conduct investigation in respect of a petition involving allegation in relation to Section 500 of the IPC. There could be cases, where the petition/complaint given by the complainant concerned would be making allegations, not only in respect of offence as per Section 500 of the IPC which is a non cognizable offence but in respect of certain other cognizable offences as well. The Apex Court has held in the case of Subramanian Swamy v. UOI & Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221] has held, more particularly in paragraph 207 thereof that in such situation, the learned Magistrate cannot even exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime as far as the investigation of an offence as per Section 500 of the IPC. Para 207 of the judgment of the Apex Court in Subramanian Swamy v. UOI &**

Ors. [MANU/SC/0621/2016: (2016) 7 SCC 221], P.350-351 reads as follows:

“207. Another aspect required to be addressed pertains to issue of summons. Section 199 Cr.P.C. envisages filing of a complaint in Court. In case of criminal defamation neither can any FIR be filed nor can any direction be issued under Section 156(3) Cr.P.C. The offence has its own gravity and hence, the responsibility of the Magistrate is more. In a way, it is immense at the time of issue of process. Issue of process, as has been held in *Rajindra Nath Mahato v. T.Ganguly* [MANU/SC/0167/1971: (1972) 1 SCC 450], is a matter of judicial determination and before issuing a process, the Magistrate has to examine the complainant. In *Punjab National Bank v. Surendra Prasad Sinha* [MANU/SC/0345/1992: (1993) SCC (Cri) 149] it has been held that judicial process should not be an instrument of oppression or needless harassment. The Court, though in a different context, has observed that there lies responsibility and duty on the Magistrate to find whether the accused concerned should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded, then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance. In *Pepsi Foods Ltd., v. Special Judicial Magistrate* [MANU/SC/1090/1998: (1998) 5 SCC 749], a Two Judge Bench has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.”

5. Therefore, the Apex Court has clearly held that even in cases where the petitions/complaints made by the complainant before the learned Magistrate are in respect of allegations involving, not only offence under Section 500 of the IPC which is a non-cognizable offence, but also includes other cognizable offences, the learned Magistrate cannot exercise the powers under Section 156(3) of the Cr.P.C. so as to direct the Police to register a crime and then to investigate into the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. So the embargo under Section 199 of the Cr.P.C. would also bar the jurisdiction of the learned Magistrate under Section 156(3) of the Cr.P.C. to order the Police to register a crime and to investigate offence as per Section 500 of the IPC in a case where the allegations are, not only in respect of offences as per Section 500 of the IPC, which is a non-cognizable offence, but also in respect of other offences which are cognizable offences, etc. it automatically flows therefrom that where the allegations are solely in respect of the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the jurisdiction under Section 155 (2) of the Cr.P.C. is not available to the learned Magistrate to direct the Police to register a crime and investigate the offence as per Section 500 of the IPC in view of the specific bar contained in Section 199 of the Cr.P.C. Thus, in view of the abovesaid legal position settled by the Apex Court in para 207 of the Subramanian Swamy's case supra, the embargo under Section 199 of the Cr.P.C. would also bar the learned Magistrate from taking resort to the provisions contained in Section 156(3) of the Cr.P.C. to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC in a case where the allegations involve, not only in respect of offence as per Section 500 of the IPC but also other offences which are cognizable offences. Needless to say, in respect of such offences, which are cognizable offences, for which there is no other statutory prohibition, the learned Magistrate can certainly exercise the power so as to direct the Police to register and to investigate into such aforementioned offences. Hence, it automatically flows therefrom that where the allegations of a complainant like the 3rd respondent which involves solely the offence as per Section 500 of the IPC which is under Chapter XXI of the IPC, then the statutory bar under Section 199 (1) of the

Cr.P.C. would also prohibit the learned Magistrate from taking resort to the provisions contained in Section 155(2) of the Cr.P.C. so as to direct the Police to register a crime and to investigate the offence as per Section 500 of the IPC. This crucial aspect of the matter is all the more amplified by the legislature in engrafting the provision contained in the sub-section (6) of Section 199 of the Cr.P.C., wherein it is stipulated that nothing in Section 199 shall affect the right of the person against whom an offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint. Therefore, by the specific provision in Section 199(6) of the Cr.P.C. the legislature has made it clear that for offences under Chapter XXI of the IPC, the only remedy of the complainant, who is aggrieved of the said offences, is to file a private criminal complaint as understood in Sections 190 and 200 of the IPC and then for the competent criminal court concerned to take appropriate decision in the matter of taking cognizance and then to proceed with the matter in accordance with law.

6. Accordingly, it is held that the impugned decision taken by the learned Magistrate as referred to in Anx.I(7), whereby the learned Magistrate has directed the Police to register and to investigate the offence as per Section 500 of the IPC in this case is illegal and ultra vires. Consequently, it is only to be held that further impugned action on the part of the 1st respondent SHO in registering Anx.I FIR in Crime No.900/2018 of Vadakkekara Police Station, for offence as per Section 500 of the IPC, wherein the petitioner has been arrayed as the sole accused therein, is also illegal and ultra vires. Accordingly, the abovesaid impugned proceedings in Anx.I will stand set aside. However, it is made clear that nothing in this order will in any manner preclude the 3rd respondent in filing an appropriate private criminal complaint in respect of the abovesaid offence and then to proceed with the matter in accordance with law. It is made clear that this Court has only held that the learned Magistrate has no jurisdiction to take resort to the provision contained in Section 155(2)

of the Cr.P.C. so as to direct the Police to register a crime and then to investigate the offence as per Section 500 of the IPC, etc.”

(Emphasis supplied)

In the light of the judgment of the Apex court and that of the learned single Judge of the High Court of Kerala (*supra*) interpreting Sections 199, 499 and 500 of the IPC, the order of the learned Magistrate directing investigation is rendered unsustainable and all proceedings thereto would be a nullity in law. Therefore, the proceedings are necessarily to be obliterated and the matter remitted back to the learned Magistrate to take up such proceedings bearing in mind the observations made in the course of the order.

13. For the aforesaid reasons, I pass the following:

ORDER

- (i) The Criminal Petition is allowed in part.
- (ii) The impugned proceedings in C.C.No.23647 of 2016 pending on the file of VII Additional Chief Metropolitan Magistrate, Bangalore, from the stage of direction of the learned Magistrate directing

investigation under Section 156(3) Cr.P.C. stands quashed.

- (iii) The learned Magistrate is directed to take up further proceedings in the case from the stage of registration of the complaint and all appropriate action thereon, in accordance with law.
- (iv) All contentions on merit of the matter of both the parties shall remain open.

**Sd/-
JUDGE**

bkp
CT:MJ