IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 152 of 2020

Rahul Gandhi, aged about 49 years, s/o late Rajiv Gandhi, r/o 12, Tuglak Lane, P.O. and P.S. –Parliament Street, District- New Delhi (Delhi)

….. Petitioner

-- Versus --

1.The State of Jharkhand

2.Pradip Modi, s/o late Prabhu Dayal Modi, R/o Flat No.601, Amaltash, Modi Compound, Behind Arya Hotel, P.O. and P.S.-Lalpur Town, District-Ranchi ..... Opposite Parties

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Kaushik Sarkhel, Advocate
For the State :- Mr. Saket Kumar, Advocate
For the O.P.No.2 :- Mr. Anil Kumar Sinha, Sr. Advocate
Mr. Sarvendra Kumar, Advocate

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*12/**05.07.2022*** Heard Mr. Kaushik Sarkhel, the learned counsel appearing on behalf of the petitioner, Mr. Anil Kumar Sinha, the learned Senior counsel appearing on behalf of the O.P.No.2 and Mr. Saket Kumar, the learned counsel appearing for the respondent State.

This petition has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 07.06.2019 passed in connection with Complaint Case No.1993 of 2019 whereby cognizance under section 500 of the I.P.C has been taken and pending in the court of learned Judicial Magistrate, 1st Class, Ranchi.

The complaint case was filed by the O.P.No.2 alleging therein that:

> "The complainant is a practicing advocate in Hon'ble Jharkhand High Court and belongs to illustrious Modi family of Ranchi;
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> That the great grandfather of the complainant Seth Bhimraj Modi migrated to the town of Ranchi from Mandawa in Rajasthan in the year 1868 and established a business empire in the field of textile, banking, money lending etc. His younger brother, Bhuramal Modi also joined him in Ranchi and they established firm "Bhimraj Bhuramal". Today in Ranchi there are more than 80 families of both

brothers besides in other parts of India and abroad. Others families belonging to different branches of Modi clan migrated to Ranchi more than 100 years ago from Rajasthan. There is sizeable population of persons having Modi surname in Ranchi;

That late Bansidhar Modi, grandfather of the complainant carried forward the business established by his father with help of his younger brothers namely Nagarmal, Shiv Narain and Panna Lal Modi and took it to greater height. Modi family has very high and impeccable reputation and integrity in the society. They also run a number of charitable institutions in the city of Ranchi since several decades;

That the accused Rahul Gandhi is the National President of Indian National Congress Party having its office at 24, Akbar Road, New Delhi. He is also a member of Lok Sabha;

That during freedom movement in early 1920s, Nagarmal Modi and Shivnarain Modi were active member of Congress party and leaders like Mahatma Gandhi, Jawaharlal Nehru, Rajendra Prasad and others were honoured guests in Modi House. Shivnarain Modi permitted the congress party to build its Ranchi office at Shharadhanand Road on the land belonging to him which is known as Congress Bhawan from where Congress party function in Ranchi;

That the accused being President of Indian National Congress is involved in electioneering for 2019 Parliament Election to be held during months of April and May, 2019;

That on Saturday 02.03.2019, Rahul Gandhi was speaker in Parivartan Ulgulan Rally organized by his party. During his address in the rally accused uttered following words:

''अब चार साल से अच्छे दिन आयेंगे का नारा बदल कर चौकीदार चोर हो गया। एक चौकीदार ने सारे चौकीदारों की बदनाम कर दिया, अब चौकीदार भी नारा बदलने को कह रहे है। मैं स्पष्ट कर देता हूँ कि देश का चौकीदार चोर है। आपने नीरव मोदी, ललित मोदी के बारे में सुना है। नीरव मोदी को नरेन्द्र भाई कहते हैं। आखिर सारे मोदी चोर क्यों हैं।''

That the above speech of Rahul Gandhi in Ranchi rally is available in you-tube.com http://you tu.be/SH46YBy3ohY. The total duration of speech is 26.41 minutes and the offensive partition quoted above is from 16.16 minutes to 17.15 minutes;

That all local news paper of Ranchi published the offensive portion of speech of Rahul Gandhi in their morning edition on 03.03.2019. Prabhat Khabar published offensive portion in box in front page deleting word 'Chor' and instead printed ..... in its place Another prominent paper Hindustan highlighted offensive portion on front page in box in its 03.03.2019 edition;

That the complainant started receiving phone calls from his family members since evening of 02.03.2019 when the utterance of the accused became viral. The complainant in order to satisfy himself minutely heard the entire speech on you tube and also read offensive portion of speech in newspaper on 03.03.2019 where the accused said ''आखिर सारे मोदी चोर क्यों है।''

That the complainant and other members of Modi clan felt insulted, defamed and humiliated by such derogatory and defamatory remarks of the accused for entire Modi clan of the country;

That the complainant is a practicing advocate, hence member of his family and Modi clan wished that he should take up the cause of Modi clan who felt hurt and anguished by such utterances by the accused in public meeting at Ranchi especially when our fore fathers were active congress workers during freedom movement and had donated land to congress party to build its office on Shhradhanand Road;

That the complainant sent a legal notice to the accused on 05.03.2019 under speed post calling upon him to express regret by issuing a press statement, else face criminal and civil proceeding claiming damages of Rs.20 crores;

That the copy of notice was also off loaded in the web-site of congress party. Since no response was received the complainant re-sent the notice on 25.03.2019

by speed post. But till date no response received from the accused;

That the accused is in habit of making such reckless and false statements in his public meeting, television interviews, press conference etc. The accused instead of expressing regret added salt to injury when he uttered more derogatory remarks against persons having Modi surname/title in public rally held in the town or Kolar in Karnatka on 13.04.2019 where he uttered as under:

> *"I have a question? Why do all thieves have Modi in their names, whether it is Nirav Modi, Lalit Modi, or Narendra Modi? I don't know how many more such Modi will come out."*

That the entire speech of Rahul Gandhi at Kolar Rally on 13.04.2019 is also available in You tube htt://Youtu.be/voqMuW40Gs and speech is of duration of 31.02 minutes and offensive portion is between 12.58 minutes to 13.25 minutes. The complainant has heard it which confirms the above utterance. Times of India, Bangalore edition carried report of Kolar Rally in its 14.04.2019 edition highlighting the offensive utterances;

That repeated imputations by the accused in rally after rally against persons having Modi surname/title that all Modi are thieves is derogatory and defamatory and has lowered the reputation of Modi clan in public eyes and has caused immense hurt and anguish to person having Modi surname;

That the speech of the accused in Ranchi and Kolar rally making sweeping remarks that all Modis are thieves is defamation as defined under section 499 I.P.C for which accused Rahul Gandhi is liable to be punished by imposing maximum imprisonment and exemplary fine;

That complaint is being filed bonafide and in interest of justice"

Mr. Sarkhel, the learned counsel appearing on behalf of the petitioner took the Court to the various paragraphs of the complaint and submits that in terms of Explanation-2 of section 499 of I.P.C that only a person who has been aggrieved can maintain a complaint under Explanation-2 of section 499 I.P.C. He further submits that ingredients of

section 499 read with Explanation-2 of the I.P.C. is not made out so far the petitioner is concerned. By way of advancing his argument, he submits that a mandatory provision of section 202 Cr.P.C has not been reflected in the impugned order. To buttress his such argument, he relied in the case of *"Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another"* reported in *(2017) 3 SCC 528.* Paragraph nos.21, 22 and 23 of the said judgment are quoted hereinbelow:

> *"**21.** We have considered the respective submissions of the counsel for the parties. In these proceedings, we are not concerned with the issue as to whether impugned publications make out a case for offence under the aforesaid provisions of IPC? Since the learned Magistrate has issued the process qua four editors as well, apart from A-1 and A-2, we proceed with the assumption that prima facie case is made out against the said editors. The question is as to whether the learned Magistrate adopted correct procedure while issuing notice to A-1 and A-2 as well.*
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> ***22.** Basic facts which need to be recapitulated for deciding this issue are that A-1 is the Managing Director of Sakal newspapers whereas A-2 is the Chairman of the Company. Further, insofar as declaration under Section 7 of the Press Act is concerned, name of the other accused persons are mentioned except these two accused persons. Therefore, we have to examine the matter keeping in view non-existence of such a presumption against these two accused persons. It is also an admitted fact that both the accused persons are not residents of Kolhapur and are outside his jurisdiction. Having regard to these facts, we proceed to examine the matter in the light of the provisions of Section 202 CrPC as well as Section 7 of the Press Act.*
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> ***23.** Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction". There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment."*

Relying on this judgment, he submits that the Hon'ble Supreme Court considering section 202 Cr.P.C has interfered and quashed the proceeding. On the point of Explanation-2 of section 499 of the I.P.C, he relied in the case of *"G. Narasimhan, G. Kasturi and K. Gopalan v. T.V. Chokkappa and Analogous cases"* reported in *(1972) 2 SCC 680.* Paragraph nos.10, 11, 12, 15 and 16 of the said judgment are quoted hereinbelow:

> *"**10.** The Magistrate, on the basis of the complaint and the evidence he recorded, decided to issue process and to proceed with the trial. The appellants in all these appeals thereupon approached the High Court under Section 561-A of the Code of Criminal Procedure for quashing the said proceedings. The appellants' main contention before the High Court was that the respondent was not an aggrieved party within the meaning of Section 198 of the Code, that he had filed the complaint in his capacity as the chairman of the reception committee of the conference and not in his individual capacity, that in the absence of any reference to him in the said news item he had no cause for complaint, and that the conference being an undefined and an amorphous body, the respondent as a member or part of such a body could not lodge the complaint.*
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> ***11.** A learned Single Judge of the High Court, who heard the said applications, rejected the said contention in the following words:*
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> *"The Dravida Kazhagam is an identifiable group. The complainant is a member of this Kazhagam. He was the Chairman of the Reception Committee in the conference. He is active member of the Dravida Kazhagam. He was one of those who piloted and sponsored the resolution. Certainly he is a person aggrieved within the meaning of Section 198 of the Criminal Procedure Code. The complaint by him is competent."*
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> ***12.** The statement in this para that the respondent piloted and sponsored the resolution in question was factually incorrect, as the respondent's evidence itself showed that the resolution was moved not by him, but by the President of the conference, who read it out and as no one opposed, it was taken to have been approved by all. The only thing which the respondent claimed to have done as the chairman of the reception committee was to give shape to the draft resolution by abridging it. The respondent may have been interested in the resolution and its being passed, but the resolution certainly was neither moved nor piloted by him. Indeed, if any one could be said to have piloted it, it was the President of the conference. Furthermore, the resolution was of the conference and the only contribution of the respondent to it was his having given shape to the original draft."*
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> ***15.** Prima facie, therefore, if Section 198 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation*

against him individually. Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation (2) is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing in weighs against mankind in general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite e.g. men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. [see Kenny's Outlines of Criminal Law (19th Edn.) 235]. If a well-defined class is defamed, every particular of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

16. *In this connection, counsel for the appellants leaned heavily on Knupffer v. London Express Newspaper Ltd.[2] The passage printed and published by the respondents and which was the basis of the action there read as follows:*

"The quislings on whom Hitler flatters himself he can build a pro-German movement within the Soviet Union are an emigre group called Mlado Russ or Young Russia. They are a minute body professing a pure Fascist ideology who have long sought a suitable Fuehrer — I know with what success."

The appellant, a Russian resident in London, brought the action alleging that the aforesaid words had been falsely and maliciously printed and published of him by the respondents. The evidence was that the Young Russia party had a total membership of 2000, that the headquarters of the party were first in Paris but in 1940 were shifted to America. The evidence, however, showed that the appellant had joined the party in 1928, that in 1935 he acted as the representative of the party and as the head of the branch in England, which had 24 members. The appellant had examined witnesses, all of whom had said that when they read the said article their minds went up to the appellant. The House of Lords rejected the action, Lord Simon saying that it was an essential element of the cause of action in a libel action that the words complained of should be published of the plaintiff, that where he was not named, the test

> *would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact would not arise if they could not in law be regarded as capable of referring to him, and that that was not so as the imputations were in respect of the party which was in Paris and America. Lord Porter agreed with the dismissal of the action but based his decision on the ground that the body defamed had a membership of 2000, which was considerable, a fact vital in considering whether the words in question referred in fact to the appellant. The principle laid down there was that there can be no civil action for libel if it relates to a class of persons who are too numerous and unascertainable to join as plaintiffs. A single one of them could maintain such an action only if the words complained of were published "of the plaintiff", that is to say, if the words were capable of a conclusion that he was the person referred to. [See Gatley on Libel and Slander (6th Edn.) 288] Mr Anthony, however, was right in submitting that the test whether the members of a class defamed are numerous or not would not be apt in a criminal prosecution where technically speaking it is not by the persons injured but by the state that criminal proceedings are carried on and a complaint can lie in a case of libel against a class of persons provided always that such a class is not indeterminate or indefinite but a definite one. [Kenny's Outlines of Criminal Law (19th Edn.) p. 235]. It is true that where there is an express statutory provision, as in Section 499, Explanation (2), the rules of the Common Law of England cannot be applied. But there is no difference in principle between the rule laid down in Explanation (2) to Section 499 and the law applied in such cases in England. When, therefore, Explanation (2) to Section 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body.*

By way of relying on this judgment, he submits that the petitioner is not an aggrieved person in terms of section 199 of Cr.P.C. He submits that defamatory imputation against a collection of persons will fall only if the person is identifiable. He submits that since whether the word are derogatory of act are directed at any individual or a readily identifiable group of people and if that will apply, then only a petition can be maintained. He further relied in the case of "*Sahib Singh Mehra v. State of U.P"* reported in *AIR 1965 SC 1451* and relied on paragraph nos.7 and 9 which are quoted hereinbelow:

> *"7.Before dealing with the contentions raised for the appellant, we may refer to the provisions of law which enable a Public Prosecutor to Me a complaint for an offence under S. 500 I.P.C. committed against a public servant. Section 198 Cr. P.C. provides inter alia that no Court shall take cognizance of an offence falling under Chapter XXI (which contains ss. 499 and*

500 I.P.C.) except upon complaint made by some person aggrieved by such offence. Section 198B, however, is an exception to the provisions of S. 198 and provides that notwithstanding anything contained in the Code, when any offence falling under Chapter XXI of the Indian Penal Code other than the offence of defamation by spoken words is alleged to have been committed against any public servant, employed in connection with the affairs 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 accused being committed to it for trial, upon a complaint in writing made by the Public Prosecutor. It is thus that a Public Prosecutor can file a complaint in writing in the Court of Session directly with respect to an offence under S. 500 I.P.C. committed against a public servant in respect of his conduct in the discharge of his public functions. Sub-s. (3) of S. 198B provides that no complaint under sub-s. (1) shall be made by the Public Prosecutor except with the previous sanction of the Government concerned for the filing of a complaint under S. 500 I.P.C. The sanction referred to above, in this case, and conveyed by the Home Secretary to the Inspector-General of Police, was a sanction for making a complaint under S. 500 I.P.C. against the appellant with respect to the article under the heading 'Ulta Chor Kotwal Ko Dante', in the issue of 'Kaliyug' dated September 12, 1960, containing defamatory remarks against the Assistant Public Prosecutor, R. K. Sharma, of Aligarh, and other prosecuting staff of the Government in respect of their conduct in the discharge of public functions. The sanction was therefore with respect to defamation of two persons (i) R. K. Sharma, Assistant Public prosecutor, Aligarh; and (ii) the other police prosecuting staff of Government of Uttar Pradesh, which would be the entire prosecuting staff in the State. There was thus nothing wrong in the form of the sanction.

9.The next question to determine is whether it is essential for the purpose of an offence under S. 500 I.P.C. that the person defamed must be an individual and that the prosecuting staff at Aligarh or of the State of Uttar Pradesh could not be said to be a 'person' which could be defamed. Section 499 I.P.C. defines 'defamation' and provides inter alia that whoever 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 cases covered by the exceptions to the Section, to, defame that person. Explanation 2 provides that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. It is clear therefore that there could be defamation of an individual person and also of a collection of persons as such. The contention for the appellant then reduces itself to the question whether the prosecuting staff at Aligarh can be considered to be such a collection of persons as is contemplated by Explanation 2. The language of Explanation 2 is general and any collection of persons would be covered by it. of course, that collection of persons must be identifiable in the sense that one could, with certainty, say that this group of particular people has been defamed, as distinguished from the rest of the community. The prosecuting staff of Aligarh or, as a matter of fact, the prosecuting staff in the State of Uttar Pradesh, is

certainly such an identifiable group or collection of persons. There is nothing indefinite about it. This group consists of all members of the prosecuting staff in the service of the Government of Uttar Pradesh. Within this general group of Public Prosecutors of U.P. there is again an identifiable group of prosecuting staff, consisting of Public Prosecutors and Assistant Public Prosecutors, at Aligarh. This group of persons would be covered by Explanation 2 and could therefore be the subject of defamation."

By way of relying on this judgment, he submits that Explanation-2 provides that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such, if the person is identifiable. He further relied in the case of *"Balasaheb Keshav Thackeray v. State of Maharashtra & Ors."* reported in *MANU/MH/0730/2002* and relied on paragraph nos.9 and 13 of the said judgment which are quoted hereinbelow:

"9. Respondent No. 2 claims a right to file a complaint for the said defamation on the ground that he is a Congressman and that the leaders of the Congress Party have been defamed. Two questions are, therefore required to be considered and they are; whether defamation of the said two leaders can be considered as the defamation of the Congressmen? The second question is whether on account of the alleged defamatory statements, respondent No. 2 can be regarded as "some person aggrieved" within the ambit of Section 199(1) of Criminal Procedure Code? In other words, whether respondent No. 2 has locus-standi to file a complaint for the alleged defamation of the two leaders whom he respects? Section 199(1) deals with prosecution for defamation and states:

"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."

13. This is, however not so when an association or collection of persons is identified. In Sahib Singhv. State of U.P., an article was published in a newspaper under the heading; "Ulta Chor Kotwal ko Date", which means that; "a thief reprimands a police officer". The said article was in connection with the public

prosecutors and assistant public prosecutors of Aligarh. It was held that within the general group of public prosecutors of U.P. there is an identifiable group of prosecuting staff consisting of public prosecutors and assistant public prosecutors at Aligarh and that the said group of persons was covered by Explanation IT to Section 499 and could therefore be subject of defamation. In John Thomas v. Dr. K. Jagdishan, III(2001) CCR 52 (SC) a renowned hospital inChennai was caricatured in a newspaper as the abettor of human kidneys for trafficking purpose. The Director of the hospital complained of defamation but the publisher of the newspaper contended that the libel was not against the Director personally but against the hospital only. The trial court upheld the contention of the publisher but the High Court did not approve the action of the Magistrate and directed the trial to proceed. The Supreme Court confirmed the decision of theHigh Court observing that it cannot be disputed that a publication containing defamatory imputations as against a company would escape from the purview of the offence of defamation. It was further held that if a company is described as engaging itself in nefarious activity its impact would certainly fall on every director of the company and hence he can legitimately feel the pinch of it. In the instant case, it cannot be said that the Congressmen as a class is an identifiable body. Therefore, even assuming that the alleged statements of the petitioner are defamatory of the Congressmen, respondent No. 2 is not entitled to file a complaint for the same. For the aforesaid reasons, I feel that respondent No. 2 is not the person aggrieved within the meaning of the term as given in Section 199(1) of Criminal Procedure Code. Secondly he is not entitled to file a complaint for defamation against the petitioner for the alleged defamation of Smt. Soniya Gandhi and Shri Sitaram Kesari.

Lastly, he relied in the case of "*Kalyan Bandyopadhyay v. Mridul De"* reported in *MANU/WB/0927/2015.* Paragraph nos.8, 12 and 13 of the said judgment are quoted hereinbelow:

8. In"Krishnaswami v. C.H. Kanaran" reported in LAWS (KER)-1970-9-3 TLKER-1970-0-133, which was also in relation to a complaint of defamation of the same political party, i.e., the Communist Party of India (Marxist), the High Court of Kerala had held-

"If a well-defined class is defamed, each and every member of that class can file a complaint. So, it follows that the defamatory words must reflect or refer to some ascertained and ascertainable person and that person must be the complainant. Where the words reflect on each and every member of certain number of class, each and all can sue. But, this principle depends upon the determination of the number of persons of the class. A large body of men, the numerical strength of

which is not known, nor could it be computed with any amount of precision, it cannot be said that each and every member of that group of persons constitution, such as a political party, each member of that party can be said to be defamed if the political group, such as the Marxist Communist Party is imputed with any libelous imputation.

On a review of the above decisions, it would be his difficulty, in the circumstances of the present case, to say that the complainant Sri C.H.Kanaran has been defamed on account of the present publication. It is sure that pws. 2 to 4 have deposed that when they read the news item they understood it that it referred to Sri C.H.Kanaran. That is because pws. 2 to 4 knew the complainant as a member of the Marxist Communist party and not because he was a person referred to in Ext. P1(b). If an indefinite and indeterminate body as the Marxist Community Party or Marxists or leftists as a collection of persons as such are defamed, the fact that the collection of persons as such being an indeterminate and indefinite collection of body, it could not be said that each and every member of that body could maintain an action under S.500 IPC., unless the complainant was referred to as a person who had been defamed under the imputation. In the relevant imputation, apart from the fact that the Secretary of the Marxists community party had been defamed, the consequence of which will be considered by me at a later stage, it could be said on the evidence on record that there had been no defamation of the complainant as a member of a large body of the Maxists or leftists belonging to the Marxist Community Party, either of India as a whole, or much less of the Kerala State. Therefore, Sri C.H.Kanaran is not competent to file a complaint as a member of the Marxist Communist party on the basis that the party or the Marxists had been defamed as he was not able to point out that he was the person against whom the imputation was levelled in Ext.P1 news item(Emphasis added).

On a consideration of the above decision, I am of the opinion that would not be possible to say whether the imputation is alleged against Sri C.K.Kanaran or Sri P. Sundarayya. When there was another persons of the description of the person in the imputation, it would not be possible to say who the person was referred in the news item referred to above. The evidence showed that Sri P. Sundarayya was as much involved as Sri Kanaran in the activities of the Marxists party in Kerala. On a consideration of the evidence on record, I am of the opinion that the case of the complainant would not improve even if the proceeding is sent back to the trial court for continuation of the trial. Assuming that the allegation in Ext. P1(b) is against the Marxists or leftists of Kerala, even then I am of the opinion that the complainant, Sri Kanaran cannot be pointed out as one among the large body of Marxists or Leftists or Kerala to have been defamed on account of the instant publication. It was not also possible for him to sow conclusively that he was the person referred to as the General Secretary, when it was conceded by all the witnesses in the case that there was another person, who has satisfied the description of a General Secretary of the Marxist Communist Party of India, who had been defamed, it would not be worthwhile for remanding the case to

the trial Magistrate to frame charge against the revision petitioner. I find, therefore, that no case against the 1st respondent, printer and publisher of the Indian Express was made out so as to frame charges under S.500 and 501 IPC."

12. As pointed above, the alleged defamatory statements do not relate to the Congress party or Congressmen as a class but they relates to two leaders of the said party. According to respondent no.2 the defamation of the said leaders is the defamation of all the congressmen and that he being one of the Congressmen, is entitled to file the complainant. Assuming for a moment that the alleged statements attributed to the petitioner are defamatory of the congressmen as a class, still in view of the following decisions, it cannot be said that the complainant is entitled to file the complaint. In M.P.Narayana Pillai v. M/P. Chacko, MANU/KE/0208/1986:1985 Cri.L.J.2002 the facts were that; an article consisting some derogatory statements pertaining to the Syrian Christian community as a whole was published. The statements were to the effect that the Syrian Christian girls working abroad are engaged in prostitution for livelihood. That Syrian Christian ladies are being sent to nunneries on account of the financial incapacity of their parents to give them away in marriage, and that Mother Theresa who is considered to be a living Saint of Christian community is doing missionary work for publicity alone. It was held that under section 499 explanation II imputations against an association or collection of persons can be defamatory only if such persons are definite and determinable body. Only if there is a definite association or collection of persons capable of being identified it could be said that the imputation against it affect all of them and any member of the class can say that the imputation is against him also personally so as to entitle him to file a complaint for defamation. It was held that the Syrian Christian Community is an unascertainable body of persons, and therefore, no member of that body could say that he was individually defamed on account of imputations. In the said case reference is made to the decision in Krishnaswami v. C.H.Kanaran, 1971 Ker LT 145 wherein it was held that the Marxist Community Party as a collection of persons as such was an unascertainable body. Similarly in Rai Kapoor v. Narendra Desai (1974) 15 Guj LR 125 there was imputation made against the Bhangi community in general. It was held that the imputation would not amount to defamation because they were not directed against the particular group or members of that community which could be identified. It was observed;

"There was no imputation against the complainant as an individual. It he felt that as a member of the Bhangi community, he was defamed, that would not entitle him to maintain a prosecution for defamation unless the imputation was against him personally."

13. Regarding the alleged defamation of the political party, this Court, in relying on the citations referred above, it in respectful agreement with the decision of the Kerala High Court that the Communist Party of India (Marxist) is not a determinable, definite or identifiable body or association of such nature that each and every

member of the same stands to get individually defamed when an insinuation is made against the party as a whole. The complainant therefore cannot be held to be defamed individually, and consequently is not an 'aggrieved person' in the given case. On this count also therefore the complainant filed in the court of Ld. Chief Metropolitan Magistrate would untenable."

He further relied in the case of *"S. Khushboo v. Kanniammal & Anr."* reported in *(2010) 5 SCC 600* and relied on the paragraph nos.34, 35, 38, 39 and 44 of the said judgment which are quoted hereinbelow:

*"**34.** It is our considered view that there is no prima facie case of defamation in the present case. This will become self-evident if we draw attention to the key ingredients of the offence contemplated by Section 499 IPC, which 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."

(emphasis supplied)

The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499 further states that "It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such."

***35.** With regard to the complaints in question, there is*

neither any intent on the part of the appellant to cause harm to the reputation of the complainants nor can we discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. As mentioned earlier, the appellant's statement published in India Today (in September 2005) is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a "company or an association or collection of persons". It is difficult to fathom how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if we refer to the remarks published in Dhina Thanthi (dated 24-9-2005) which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if we consider these remarks in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. That imputation can only be found in the complaints that were filed by the various respondents. It is a clear case of the complainants reading in too much into the appellant's remarks.

38. *In M.S. Jayaraj v. Commr. of Excise this Court observed as under:*

"The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."

39. *We can also approvingly refer to an earlier decision of this Court in G. Narasimhan v. T.V. Chokkappa. In that case a controversy had arisen after The Hindu, a leading newspaper had published a report about a resolution passed by Dravida Kazhagham, a political party, in its conference held on 23-1-1971 to 24-1-1971. Among other issues, the resolution also included the following words:*

"It should not be made an offence for a person's wife to desire another man."

The Hindu, in its report, gave publicity to this resolution by using the following words:

"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under the Penal Code, 1860."

44. *We are of the view that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, we are therefore inclined to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an*

> *investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused."*

He puts reliance on this judgment and submits that as the complainant is not having any specific legal injury as the petitioner's remarks were not directed at any individual or a readily identifiable group of people as such complaint is not maintainable. By way of relying on this judgment, Mr. Sarkhel, the learned counsel appearing on behalf of the petitioner elaborated his argument by way of submitting that Explanation-2 of section 499 I.P.C the words "It may amount to defamation to make an imputation concerning a company or an association or collection of persons" is required to be identified and in the complaint the names of the persons disclosed cannot be said to be aggrieved person and the complaint filed by the O.P.No.2 cannot be maintained. On these grounds, he submits that if the ingredients are not there, this Court sitting under section 482 Cr.P.C is empowered to quash the entire criminal proceeding.

Mr. Anil Kumar Sinha, the learned Senior counsel appearing on behalf of the O.P.No.2 took the Court to the solemn affirmation of the O.P.No.2 and by way of relying on the solemn affirmation, he submits that there are ingredients of section 499 I.P.C. He further submits that the statement with regard to particular community having the title 'Modi' is made at Ranchi and the O.P.No.2 is a resident of Ranchi and he is an aggrieved person. He refers to section 199 of the Cr.P.C and by way of referring the said section, he submits that this section fairly says such

person who is aggrieved can file a complaint. He further submits that these are all facts which can be looked into by the trial court in the trial and for coming to the conclusion that no case against the petitioner is made out, this Court may not roam into to come to that conclusion. He further submits that in identical situation with regard to statement outraging the religious feeling of Marwari community was made which was subject matter in the complaint before the court of Pune and Nasik which travelled up to the Hon'ble Supreme Court and the Hon'ble Supreme Court looking into the allegations about the Marwari community held that these are the facts which can be proved in the trial. He submits that was in the case of *"Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi & Ors."* reported in *1964(4) Crimes 27 (SC)*. *Paragraph nos. 9 and 12 are quoted hereinbelow:*

> *"9.The next question is: whether the learned Judge was right in holding that the complaint discloses offence punishable under Section 500 IPC? Section 499 defines 'defamation' thus:*
>
> *"Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any persons 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 excepted, to defame that person".*
>
> *Explanation 2 to the said section envisages that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*
>
> *12. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this state to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned senior counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute anoffence punishable under Section 500. It is the settled legal position*

> *that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this state it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500, IPC.*

He further submits that so far the judgment relied by the learned counsel appearing on behalf of the petitioner in *"Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another"(supra)* is concerned, there was no enquiry made and only on the solemn affirmation cognizance has been taken and that is why the Hon'ble Supreme Court has quashed the proceeding. He submits that in the case in hand, it appears from the solemn affirmation that one witness has been examined and thereafter the learned court has taken cognizance. He submits that the order taking cognizance is very elaborate and the entire facts which are hazy at this stage can be proved in the trial. On the point of section 499 IPC, firstly he relied in the case of *"Subramanian Swamy v. Union of India, Ministry of Law and Others"* reported in *(2016) 7 SCC 221* and relied on paragraph nos.149, 175, 178, 197 and 198 of the said judgment which are quoted hereinbelow:

> *"**149.** The analysis therein would show that tendency to create public disorder is not evincible in the language employed in Section 66-A. Section 66-A dealt with punishment for certain obscene messages through communication service, etc. A new offence had been created and the boundary of the forbidding area was not clearly marked as has been held in Kedar Nath Singh. The Court also opined that the expression used in Section 66-A having not been defined and further the provision having not used the expression that definitions in IPC will apply to the Information Technology Act, 2000, it was vague.*
>
> ***175.** Explanation 2 deals with imputation concerning a company or an association or collection of persons as such. Explanation 3 says that an imputation in the form of an*

alternative or expressed ironically may amount to defamation. Section 11 IPC defines "person" to mean a company or an association or collection of persons as such or body of persons, whether incorporated or not. The inclusive nature of the definition indicates that juridical persons can come within its ambit. The submission advanced on behalf of the petitioners is that collection of persons or, for that matter, association, is absolutely vague.

178. *The aforesaid enunciation of law clearly lays stress on determinate and definite body. It also lays accent on identifiable body and identity of the collection of persons. It also significantly states about the test of precision so that the collection of persons have a distinction. Thus, it is fallacious to contend that it is totally vague and can, by its inclusiveness, cover an indefinite multitude. The Court has to understand the concept and appositely apply the same. There is no ambiguity. Be it noted that a three-Judge Bench, though in a different context, in Aneeta Hada v. Godfather Travels & Tours (P) Ltd. has ruled that a company has its own reputation. Be that as it may, it cannot be said that the persons covered under the Explanation are gloriously vague.*

197. *Now, we shall advert to Section 199 CrPC, which provides for prosecution for defamation. Sub-section (1) of the said section stipulates that no court shall take cognizance of an offence punishable under Chapter XXI of the Penal Code, 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. Sub-section (2) states that when any offence is alleged against a person who 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. Sub-section (3) states that 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. Sub-section (4) mandates that no complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction 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 or any other public servant employed in connection with the affairs of the State and of the Central Government, in any other case. Sub-section (5) bars the Court of Session from taking 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. Sub-section (6) states that nothing in this section shall affect the right of the person against whom the offence is alleged to have been co.mmitted, 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.

198. *The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In John Thomas v. K. Jagadeesan while dealing with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In S. Khushboo, while dealing with "person aggrieved", a three-Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on M.S. Jayaraj v. Commr. of Excise and G. Narasimhan and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words "some person aggrieved" are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a "person aggrieved" is too specious a submission to be accepted."*

By way of relying on the said judgment he submits that constitutional validity of section 499 I.P.C. was the subject before the Hon'ble Supreme Court and analyzing all the judgments, the Hon'ble

Supreme Court held that this section is valid. He relied in the case of *"M.N. Damani v. S.K. Sinha and Others"* reported in *AIR 2001 SC 2037.* Paragraph nos.7, 8, 9, 10 and 11 of the said judgment are quoted hereinbelow:

> "**7.** *We have considered the rival submissions. The High Court relying on para 7 of the judgment in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709] exercising jurisdiction under Section 482 quashed the proceedings. The learned Judge did not bestow his attention to the facts of that case and the discussions made in paras 6 and 8 of the said judgment. In that case the complaint was filed for offences punishable under Sections 406 and 407 read with Sections 34 and 120-B of the Penal Code. That was a case where the property was trust property and one of the trustees was a member of the family. The criminal proceedings were quashed by the High Court in respect of two persons but they were allowed to be continued against the rest. In para 6 of the same judgment it is clearly stated that the Court considered relevant documents including the trust deed as also the correspondence following the creation of the tenancy and further took into consideration the natural relationship between the settlor and the son and his wife and the fallout. Para 8 of the judgment reads: (SCC pp. 695-96)*
>
> *"8. Mr Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued."*
>
> *Thus, the said judgment was on the facts of that case, having regard to various factors including the nature of offences, relationship between the parties, the trust deed and correspondence following the creation of tenancy. The High Court has read para 7 in isolation. If para 7 is read carefully two aspects are to be satisfied: (1) whether the*

uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue. On a plain reading of the order of the Magistrate issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the appellant, it appears to us that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. The learned Judge has failed to apply the tests indicated in para 7 of the judgment on which he relied. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. The Magistrate had convicted the respondents for the offences under Section 138 of the Negotiable Instruments Act and the appeal filed by the respondents was also dismissed by the learned Sessions Judge. Assuming that the imputations made could be covered by Exception 9 of Section 499 IPC, several questions still remain to be examined — whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. The decisions in Manjaya v. Sesha Shetti [ILR (1888) 11 Mad 477] , Sayed Ally v. King Emperor [AIR 1925 Rang 360] and Anthoni Udayar v. Velusami Thevar [AIR 1948 Mad 469 : 49 Cri LJ 724 : (1948) 1 MLJ 420] cited by the learned counsel for the respondents are the cases considered "after conviction" having regard to the facts of those cases and the evidence placed on record. The decision in Baboo Gunnesh Dutt Singh v. Mugneeram Chowdry [(1872) 11 WR 283 SC] arose out of a suit for damages for defamation. These decisions, in our view, are of no help to the respondents in examining whether the High Court was justified and right in law in quashing the criminal proceedings, that too exercising its jurisdiction under Section 482 CrPC.

8. *Para 6 of the judgment in Sewakram case [(1981) 3 SCC 208 : 1981 SCC (Cri) 698] reads: (SCC pp. 214-15)*

"6. The order recorded by the High Court quashing the prosecution under Section 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under Section 251 of the Code. The requirements of Section 251 are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or

demands to be tried. The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under Section 500 of the Code unless he pleads one of the exceptions to Section 499 of the Code.

***

It is for the respondent to plead that he was protected under Ninth Exception to Section 499 of the Penal Code. The burden, such as it is, to prove that his case would come within that exception is on him. The ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or of any other person or for the public good."

Again, in para 18 of the judgment dealing with the aspect of good faith in relation to the 9th Exception of Section 499, it is stated that several questions arise for consideration if the 9th Exception is to be applied to the facts of the case. Questions may arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence and that stage for deciding these questions had not arrived at the stage of issuing process. It is stated: (SCC p. 219)

"Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on."

9. *Para 13 of the judgment in Shatrughna Prasad Sinha case [(1996) 6 SCC 263 : 1996 SCC (Cri) 1310] reads: (SCC pp. 266-67)*

"13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or

not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

10. *Having regard to the facts of the instant case and in the light of the decisions in Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz [(1981) 3 SCC 208 : 1981 SCC (Cri) 698] and Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi [(1996) 6 SCC 263 : 1996 SCC (Cri) 1310] we have no hesitation in holding that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 CrPC.*

11. *Since the question of limitation was not raised before the High Court by the respondents and further whether the offence is a continuing one or not and whether the date of the commission of offence could be taken as the one mentioned in the complaint are not the matters to be examined here at this stage. In these circumstances we have to reverse the impugned order of the High Court and restore that of the Magistrate.*

By way of relying on the said judgment, Mr. Sinha, the learned Senior counsel appearing for the O.P.No.2 submits that in this case again it was held that what are the prima facie materials and the facts which are hazy that can be the subject matter of trial and the High Court is not required to exercise its power under section 482 Cr.P.C. On this point also he relied in the case of *"Mohd. Abdulla Khan v. Prakash K."* reported in *(2018) 1 SCC 615* and relied on the paragraph nos.9, 10, 11, 14, 15, 17 and 20 which are quoted hereinbelow:

*"**9.** Section 499 IPC defines the offence of defamation. It*

contains 10 Exceptions and 4 Explanations. The relevant portion reads:

*"**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 excepted, to defame that person."*

***10.** An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;*

(i) Such imputation must be made either

(a) With intention, or

(b) Knowledge, or

(c) Having a reason to believe

that such an imputation will harm the reputation of the person against whom the imputation is made.

(ii) Imputation could be, by

(a) Words, either spoken or written, or

(b) By making signs, or

(c) Visible representations

(iii) Imputation could be either made or published.

The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal — 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal — 'X' publishes the imputation.

The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made.

***11.** Committing any act which constitutes defamation under Section 499 IPC is punishable offence under Section 500 IPC. Printing or engraving any defamatory material is altogether a different offence under Section 501 IPC. Offering for sale or selling any such printed or engraved defamatory material is yet another distinct offence under Section 502 IPC.*

***14.** In the context of the facts of the present case, first of all, it must be established that the matter printed and offered for sale is defamatory within the meaning of the expression under Section 499 IPC. If so proved, the next step would be to examine the question whether the accused committed the acts which constitute the offence of which he is charged with the requisite intention or knowledge, etc. to make his acts culpable.*

***15.** Answer to the question depends upon the facts. If the respondent is the person who either made or published the defamatory imputation, he would be liable for punishment*

under Section 500 IPC. If he is the person who "printed" the matter within the meaning of the expression, under Section 501 IPC. Similarly, to constitute an offence under Section 502 IPC, it must be established that the respondent is not only the owner of the newspaper but also sold or offered the newspaper for sale.

16. *We must make it clear that for the acts of printing or selling or offering to sell need not only be the physical acts but include the legal right to sell i.e. to transfer the title in the goods, the newspaper. Those activities, if carried on by people, who are employed either directly or indirectly by the owner of the newspaper, perhaps render all of them i.e. the owner, the printer, or the person selling or offering for sale liable for the offences under Sections 501 or 502 IPC, (as the case may be) if the other elements indicated in those sections are satisfied.*

17. *Whether the content of the appellant's complaint constitutes an offence punishable under any one or all or some of the abovementioned sections was not examined by the High Court for quashing the complaint against the respondent. So we need not trouble ourselves to deal with that question. We presume for the purpose of this appeal that the content of the appellant's complaint does disclose the facts necessary to establish the commission of one or all of the offences mentioned above. Whether there is sufficient evidence to establish the guilt of the respondent for any one of the abovementioned three offences is a matter that can be examined only after recording evidence at the time of trial. That can never be a subject-matter of a proceeding under Section 482 CrPC.*

20. *K.M. Mathew was the "Chief Editor" of a daily called Malayalam Manorama. When he was sought to be prosecuted for the offence of defamation, he approached the High Court under Section 482 CrPC praying that the prosecution be quashed on the ground that Section 7 of the Press and Registration of Books Act, 1867 only permits the prosecution of the Editor but not the Chief Editor. The High Court rejected the submission."*

He further relied in the case of *"Google India Private Limited v. Visaka Industries"* reported in *(2020) 4 SCC 162.* By way of relying on this judgment, Mr. Sinha, the learned Senior counsel submits that cognizance has already been taken and prima facie materials have been disclosed. The complainant is residing at Ranchi and the statement has been made at Ranchi and the petitioner is an aggrieved person.

Mr. Sinha, the learned Senior counsel appearing for the O.P.No.2 distinguishes the judgment in the case of *"S. Khushboo v. Kanniammal & Anr."(supra)* which has been vehemently relied by

Mr. Sarkhel, the learned counsel for the petitioner on the ground that in that case one of the associate with the political party has filed the case and most of the complaints are filed associated with the political party and in that scenario it has been held by the Hon'ble Supreme Court that legal injury caused were not directed at any individual or readily identifiable group of people. He submits that O.P.No.2 is directly aggrieved party in the case in hand and at this stage the Court may not interfere.

In the light of the above submissions of the learned counsels appearing on behalf of the parties, the Court has gone through the materials on record. To answer the argument of the learned counsels appearing on behalf of the parties, the Court is required to find out the Explanation-2 of Section 499 I.P.C. Explanation-2 of section 499 I.P.C makes it clear that defamation takes place when it makes an imputation concerning a company or an association or collection of persons as such. O.P.No.2 is of the same community whose name has been taken along with other persons by the petitioner and whether the community is identifiable, definite and determined body can be proved by way of leading evidence in the trial. In the case in hand, the particular group of community is the local resident of Ranchi and it is an admitted fact that the statement was made at Ranchi and whether the 'Modi community' is the collection of persons within the meaning of Explanation-2 of section 499 I.P.C or not, this is the subject matter of trial. It has to be found out as to whether the particular class has been defamed or not. In his solemn affirmation the complainant has alleged specific injury and in the case of defamation, the person aggrieved is to be treated as equal to the expression 'person injured'. The word 'injury' is defined under section 44 of the I.P.C and denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. The object of section 199

Cr.P.C. appears to limit the right of the complainant/person who suffered injury. Ordinarily, the person aggrieved directly can maintain the complaint under section 199 Cr.P.C. It is settled law that an aggrieved person has suffered the injury or not can be determined by the offence and specific circumstances to be led in the trial. The Court has given its anxious and careful consideration to the submission of the learned counsel appearing on behalf of the petitioner and particularly with regard to the judgments relied by him and finds that the case of "*Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another"(supra)* relied by the learned counsel for the petitioner the enquiry was not made. In that situation, the Court has quashed the proceeding. In the case in hand, on the solemn affirmation one enquiry witness was examined and thereafter the court passed the order. In the case of "G. Narasimhan, G. Kasturi and K. Gopalan v. T.V. Chokkappa and Analogous cases"(supra), it has been held that such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. In the case in hand, the allegation with regard to the entire community of Modis and this aspect of the matter has been considered by the Hon'ble Supreme Court in the case of *"Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi & Ors."(supra)* in which it has been held that the allegation is against the Marwari community, all Marwari community are affected. Moreover, the O.P.No.2 is a practicing advocate of Jharkhand High Court and the speech was made at Ranchi. Thus, the Modi community of Ranchi is also affected. In the case of *"S. Khushboo v. Kanniammal & Anr."(supra),* relied by the learned counsel appearing on behalf of the petitioner, the complainants were associated with the political party and in such situation, the Hon'ble Supreme Court has held that no specific legal injury caused to any of the complainants. In the

case in hand, the readily identifiable group of people the allegations have been made. Thus, those judgments are not helping the petitioner. In the case of *"Sahib Singh Mehra v. State of U.P"(supra),* particularly the Public Prosecutors were defamed and in such a situation, the Hon'ble Supreme Court has held that such group of persons are covered by Explanation-2 of section 499 I.P.C and that could be the subject matter of defamation. Thus, this judgment is on the other footing and is not helping the petitioner. In the case of *"Balasaheb Keshav Thackeray v. State of Maharashtra & Ors."(supra),* since the allegation made against the utterance alleged to have been made by the petitioner of that case against Sonia Gandhi and in such situation, the Hon'ble Supreme Court has held that the petitioner was not liable and identical was the situation in the case of *"Kalyan Bandyopadhyay v. Mridul De"(supra),* as the Chief Minister of West Bengal has not moved however, some workers of his party has moved and that is why the Hon'ble Supreme Court has interfered. In the case of *"Business Standard Pvt. Ltd. and Ors. v. Lohitaksha Shukla and Ors."*, relied by the learned counsel appearing for the petitioner, the Hon'ble Supreme Court found that the complaint is not part of identifiable class or definite association or collection of persons and that is why it has interfered. In the case in hand, the entire Modi community have been defamed by the alleged utterance of this petitioner. Thus, this judgment is not helping the petitioner.

Applying the aforesaid principles as to whether the case in hand satisfies the test of Explanation-2 of section 499 I.P.C. The particular community is spread over India as well as abroad and the statement was made at Ranchi and as to whether the person can be singled out individually to say that he has also been defamed and the community, association in terms of Explanation-2 of section 499 I.P.C are made out or not are the subject matter of trial. The Court has perused

the cognizance order dated 07.06.2019 and finds that the learned court has applied his judicial mind and after disclosing the prima facie materials took the cognizance and identical was the situation in the case of *"Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi & Ors."(supra)* where the entire Marwari community was defamed and the Hon'ble Supreme Court has said that the facts are to be proved in the trial and prima facie all the Marwari community has been defamed in view of the statement. The 'right of reputation', as per the judicial interpretation is the dimension of right of life and also comes in the ambit of Article-21 of the Constitution of India.

In view of the above facts, reasons and the analysis, the Court comes to the conclusion that all the contentions are required to be proved in the trial and this Court is not required to roam into and come to the conclusion at this stage as to whether Explanation-2 of section 499 I.P.C has been proved or not.

Accordingly, Cr.M.P.No.152 of 2020 is dismissed.

(Sanjay Kumar Dwivedi, J.)

SI/;