Before Mahesh Grover, J.

HARBHAJAN SINGH @ BHAJJI—*Petitioner*

versus

ARVIND THAKUR AND ANOTHER—*Respondents*

Crl. M. No. 14887/M of 2009

1st September, 2009

Indian Penal Code, 1860—Ss. 298 & 120-B—Code of Criminal Procedure, 1973—S. 482—Allegation of hurting religious sentiments on a T.V. programme—Summoning of petitioner for commission of offences punishable u/ss 298 & 120-B I.P.C.—Petitioner issuing an apology—Power of High Court u/s 482 Cr. P.C.—Exercise of—To prevent abuse of process of law or to secure ends of justice—Act of petitioner seemed to be a caricature of a situation or a parody or a spoof and it ought to have been treated and accepted in manner in which it was sought to be presented and not by attributing any criminality to it—No deliberate intention of wounding religious sentiments of any person and in any eventuality petitioner merely acted in a programme which might have been scripted by some one else—Ingredients of Section 298 I.P.C. not satisfied in complaint & same is a frivolous one and the Magistrate ought not to have summoned petitioner and others on such baseless allegations.

Held, that a pluralistic society contemplates an all inclusive growth of thought and which includes its progressive evolution, whether intellectual, social, political or religious. Such a process, which is never static and always in a state of flux, necessarily invites continuous dissection and dissemination. It may grow progressively and degeneratively and may be described appropriately by its perceiver. But, this too is a part of intellectual dissemination. Such dynamics of thought necessarily, but have to take into account the sensitivities of all the components of the society, but not hyper-sensitivities because if this permitted, it is likely to actuate a degenerative process only and the otherwise smooth dynamics of thought is likely to acquire a turbulent hue. There has, thus, to be an acute tolerance of thought and a harmonious

blend of mutual respect and honour. Article 19(1)(a) of the Constitution of India is a clear manifestation of freedom of thought and expression and it underlines the essence of a progressive society whose principles are based on pluralism and which values evolution of intelligent thought as a medium of growth. The act which has been attributed to the petitioner herein, can, at best be seemed to be a caricature of a situation or a parody or a spoof and it ought to have been treated and accepted in the manner in which it was sought to be presented and not by attributing any criminality to it.

(Paras 27 & 28)

Further held, that if the act of the petitioner is to be seen, then it cannot be said that he had acted with any deliberate intention of wounding the religious sentiments of any person and in any eventuality, he was merely acting in a programme which might have been scripted by some one else, who does not find any mention in the complaint. A bare reading of the complaint, therefore, does not show that the ingredients of Section 298 of the I.P.C. are satisfied. The complaint filed by the respondents is a frivolous one and the Magistrate ought not to have summoned the petitioners and others on such baseless allegations.

(Paras 31 & 33)

Akshay Bhan, Advocate, *for the petitioner.*

Saurabh Kaushik, Advocate, *for the respondents.*

MAHESH GROVER, J.

(1) This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for quashing of criminal complaint dated 10th October, 2008 (Annexure P-1) and all consequential proceedings arising therefrom.

(2) The complainants-respondents had filed complaint, Annexure P-1, against the petitioner and two others alleging that the accused persons had hurt their religious sentiments and thereby committed offences punishable under Sections 298 and 120-B of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.').

(3) The action of the petitioner and others which had invited the allegation of hurting the religious sentiments of the respondents was the act of the petitioner and Mona Singh-accused No. 2 in the complaint on a television programme where he apparently dressed as Ravana is cohorting with Mona Singh, who was dressed as sita and he was seen to be mouthing the following words :—

> "Oh my love Jabse Tujko Dekha etc. Oh my love Jabse Tujko Dekha etc."

(4) The said sequence was aired on accused No. 3 Colour Television channel in the programme titled as "Ek Khiladi Ek Hasina". It was further alleged that the complainants received a telephonic call from some of their acqauintances informing them about the programme being aired which they then saw and that their religious sentiments were hurt. The complainants profess Hindu religion.

(5) Pursuant to the complaint, Judicial Magistrate Ist Class, Chandigarh (hereinafter described 'the Magistrate') recorded the preliminary evidence of the respondents and also saw the episode on the compact disc which was displayed before her. Thereafter, the Magistrate decided to summon the petitioner and accused Nos. 2 and 3 for the alleged commission of the offiences punishable under Sections 298 and 120-B of the I.P.C. *vide* her order dated 5th February, 2009.

(6) This has resulted in the filing of the present petition and on 7th June, 2009, this Court, after noticing the averments made therein, as also the contents of Annexure P-6, issued notice of motion to the respondents and stayed further proceedings pursuant to the complaint.

(7) Reply on behalf of both the respondents was filed. It has been averred that the Magistrate has passed the summoning order after appreciating the evidence on record and watching the compact disc of the programme.

(8) Learned counsel for the petitioner has contended that no offences under Sections 298 and 120-B of the I.P.C. have been made out against the petitioner from a bare reading of the complaint and even otherwise, he had no intention of hurting the religious sentiments of any one and consequently had also issued an apology which was accepted by the respondents. He has referred to the news items which appeared in the Times of India dated 20th October, 2008, a copy whereof is on record as Annexure P-6.

(9) On the other hand, Shri Arvind Kashyap, Advocate for the respondents did not appear and one Shri Saurabh Kaushik, Advocate put in appearance on his behalf, but did not address any arguments on behalf of the respondents.

(10) I have thoughtfully considered the rival contentions and have gone through the whole file.

(11) The power of this Court under Section 482 of the Cr.P.C. can be exercised in order to prevent the abuse of the process of law or to secure the ends justice. Section 482 of the Cr.P.C. is extracted hereunder :—

> "482. Saving of inherent power of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

(12) In **Madhu Limaye** *versus* **State of Maharashtra, (1)** their Lordships considered the question as to whether the High Court can exercise its inherent power under Section 482 of the Cr.P.C. to quash an interlocutory order. The provisions of Section 397(2) of the Cr.P.C which barred a revision against an interlocutory order, were also considered. It was held that the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of cases finally. In the circumstances of the case before them, the following principles were laid down by their Lordships for exercise of the inherent power of the High Court :—

1. That the power is not to be resorted to if there is a specific provisions in the Code for the redress of the grievance of the aggrieved party;
2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

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(1) AIR 1978 S.C. 47

(13) In **Madhavrao Jiwaji Rao and another** *versus* **Sambhajirao Chandrojirao Angre and others, (2)** their Lordships in paragraph 8 of the judgment observed as under :—

> "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 a 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."

(14) The Apex Court in **State of Haryana** *versus* **Bhajan Lal (3)** while explaining the powers of the High Court under Section 482 of the Cr.P.C., laid down certain parameters, principles and guidelines, which are as follows :—

> "In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

(2) AIR 1988 S.C. 709
(3) 1992 Suppl. (1) S.C.C. 336

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entriety do not *prima facie* constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-congizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the griegance of the aggrieved party.

7. Where a criminal proceeding is mainfestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

(15) In **M.N. Damani** *versus* **S.K. Sinha and Another** *(supra)*, on which reliance was placed by the respondent, their Lordships of the Apex Court, while taking note of the judgment in **Madhavrao Jiwaji Rao Schindia's case** *(supra)*, observed as under :—

"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**....." (emphasis supplied)

(16) In **B.S. Joshi and others** *versus* **State of Haryana and another (4)** their Lordships of the Supreme Court carved out an exception for the purpose of securing the ends of justice in the facts and circumstances of a criminal case having its origin in a matrimonial dispute which has been compromised. It was observed as under in paragraph 12 of the majority judgment :—

"It is in these circumstances that while exercising its powers under Section 482 of the Code, the Court has in given cases quashed

(4) 2003 (2) R.C.R. (Crl.) 888 (S.C.)

the criminal proceedings where it felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. These decisions would necessarily involve an appraisal of the facts and circumstances of each case and this Court cannot while interpreting the statutory provisions take upon itself the onerous responsibility of extending the powers of compounding of offences to cases other than those listed in Section 320(1) and (2) of the Code. While it is true that it should be the endeavour of every one to bring into operation the conciliation process with a view to pursue consensual justice, yet for achieving this object the scope of Section 320 of the Code will have to be enlarged. Such an enlargement though desirable being in the domain of legislative enactment would fall out of the purview of statutory interpretation at the level of the High Court. This Court in this case does not have any material available before it to assess the utility of widening the scope of compromise in the criminal justice system as the possibility of the same being misused by the persons having at their command greater money and muscle power cannot be ruled out. It is because of this that we feel obliged not to extend in general terms the ambit of interest of justice as indiscriminate and uncontrolled reliance thereon may end in the abuse of the process of law which is one of the goals, which the enactor of Section 482 of the Code, seek to achieve. The balance in each case will have to be struck to ensure that complete justice is done between the parties and for achieving this, each individual case will have to be scrutinized to find out whether it atteracts any of the provisions incorporated in Section 482 of the Code to impel the Court to grant relief to a party either in the exercise of the aforesaid power or under Article 226 of the Constitution. Therefore, we would not like to launch an exercise for determining the scope of judicial intervention as provided under Section 482 of the Code in view of the terms "abuse of the process of law" and "in the interest of justice", as it would not be proper for us to provide a straightjacket formula for channelizing judicial responses to the facts and the circumstances of a given case. It would be more appropriate

that the interpretation of these terms is left open to the response of an Hon'ble Judge to the facts and circumstances of a given case, as and when this Court is called upon to itervene in any matter for preventing the abuse of the process of law and advancing the ends of justice."

(17) As noticed above, in **B.S. Joshi's case** *(supra)*, the Apex Court clearly enunciated the principle that an F.I.R. can be quashed even where the offence was non-compundable in cases where the parties have arrived at a compromise and settled at their disputes notwithstanding the bar under Section 320 of the Cr. P.C.

(18) In **State through Special Cell, New Delhi** *versus* **Navjot Sandhu alias Afshan Guru and others, (5)** while affirming the view expressed in **State of Karnataka** *versus* **L. Muniswamy and others, (6) Madhu Limaye's case** *(supra)* and **Bhajan Lal's case** *(supra)*, their Lordships of the Supreme Court observed as under :—

"It is settled that the High Court can exercise its powers of judicial review in criminal mattes. In State of Haryana versus Bhajan Lal this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or lying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of

(5) 2003 (2) R.C.R. (Crl.) 860 (SC)
(6) AIR 1977 S.C. 1489

superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administrative of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to."

(19) **In R. Kalyani** *versus* **Janak C. Mehta, (7)** their Lordships of the Apex Court held in paragraphs 15 and 16 of the judgment as under :—

"15. Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegation contained therein, even if given face value and taken to be correct in their entirety, disclosed on cognizance offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the F.I.R. disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a gound to hold that the criminal proceedings should not be allowed to continue.

(7) (2009) 1 S.C.C. 516

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdicition, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Section 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

(20) Recently, in **Mahesh Chaudhary** *versus* **State of Rajasthan and another, (8)** the Supreme Court observed in paragraphs 11 and 14 of the judgment, as under :—

"11. The principle providing for exercise of the power of a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, *inter alia*, in the event the allegations contained in the F.I.R. or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

14. While saying so, we are not unmindful of the limitations of the Court's power under Section 482 of the Code of Criminal Procedure which is primarily for one either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court at that stage would not embark upon appreciation of evidence. The Court shall moreover consider the material on record as a whole. In **Kamaladevi Agarwal** *versus* **State of W.B. [(2002) 1 S.C.C. 555** this Court opined: (S.C.C. pp. 559-60, para 7).

"7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in

(8) (2009) 4 S.C.C. 439

the complaint or the F.I.R., even if taken at their face value and accepted in entirety, do not *prima facie* disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature."

(21) In view of the law laid down in the above mentioned, the power under Section 482 of the Cr. P.C. can definitely be exercised for preventing the abuse of the process of law.

(22) Therefore, I proceed to evaluate the facts of the instant case and consequential summoning order to see as to whether such power need to be exercised or not.

(23) What has been attributed to the petitioner is the sequence which he enacted in a programme titled "Ek Khiladi Ek Hasina" aired on Colours Television channel. He is alleged to have dressed as Ravana while cohorting with accused No. 3 Mona Singh, who dressed as sita and had mouthed the words which have been reproduced hereinabove.

(24) The question now arises as to whether such a sequence can be termed to be hurting the sentiments of the respondents, who profess Hindu religion.

(25) In evaluating a particular action or gesture or written piece or a caricature or cartoon, to see as to whether it hurts the sentiments of some one, it has to be kept in mind that the offensive creation is seen and evaluated in its proper perspective and not understood out of context.

(26) If the facts of this case are to be seen, then what apparently was sought to be projected was a light-hearted entertaining piece of visual. It was meant to create humour and was to be seen as a parody of a mythical situation. Humour, as they say, is serious business. A person, who caricatures any individual or a situation has the intellect to extricate humour from an

otherwise grim situation. It is due to his intellect and creativity that he sees the flip side of an otherwise remorseful state of affairs. Similarly, a spoof also is a mainfestation of a creative mind and is to be accorded similar reception by the observer. They only care that is required to be taken is that it should not result in vulgarity so as to shock the sensitivities of an average viewer. It is not expected that the sensitivity of every individual be accounted for, but it is the view of the society at large which is to be the determining factor because the gauge on which such a thought can be tested varies from zero to infinity and hence, the parameters for such assessment have to take into account the gentle friction that plays out when thoughts philosophies or caricatured truths, evolve; the only care being that such friction should be contained within the subcutaneous levels and not allowed to erupt violently or virulently.

(27) A pluralistic society contemplates an all inclusive growth of thought and which includes its progressive evolution, whether intellectual, social, political or religous. Such a process, which is never static and always in a state of flux, necessarily invites continuous dissection and dissemination. It may grow progressively and degeneratively and may be described appropriately by its perceiver. But, this too is a part of intellectual dissemination. Such dynamics of thought necessarily, but have to take into account the sensitivities of all the components of the society, but not hyper-sensitivities because if this is permitted, it is likely to actuate a degenerative process only and the otherwise smooth dynamics of thought is likely to acquire a turbulent hue. There has, thus, to be an acute tolerance of thought and a harmonious blend of mutual respect and honour. Article 19 (1)(a) of the Constitution of India is a clear manifestation of freedom of thought and expression and it underlines the essence of a progressive society whose principles are based on pluralism and which values evolution of intelligent thought as a medium of growth.

(28) The act which has been attributed to the petitioner herein can, at best, be seemed to be a caricature of a situation or a parody or a spoof and it ought to have been treated and accepted in the manner in which it was sought to be presented and not by attributing any criminality to it.

(29) The provisions of Section 298 of the I.P.C. for which the petitioner and others have been summoned to stand trial are as follows :—

> "298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

(30) For the offence to be constituted under Section 298 of the I.P.C., the 'intention' is the paramount factor. It is not every act which hurts the sentiments of someone that shall invite culpability under the section, but only the act which is 'intended' to hurt and wound the religious sentiments of a person.

(31) If the act of the petitioner is to be seen, then it cannot be said that he had acted with any deliberate intention of wounding the religious sentiments of any person and in any eventuality, he was merely acting in a programme which might have been scripted by some one else, who does not find any mention in the complaint. A bare reading of the complaint, therefore, does not show that the ingredients of Section 298 of the I.P.C. are satisfied.

(32) A Magistrate, who issues process of summoning, is cast with a serious duty to examine the complaint in its earnestness and then decide whether an offence has been made out or not. He cannot lightly set the criminal process in motion which is again a serious affair and subject an individual to the criminal process. An onerous duty is cast upon the Court to scrupulously examine the contents of the complaint and then record its satisfaction. It should essentially be able to distinguish between the genuine complaint and the one which is masked to extract undue mileage in terms of publicity or sensationalism.

(33) In my opinion, the complaint filed by the respondents is a frivolous one and the Magistrate ought not to have summoned the petitioners and others on such baseless allegations.

(34) The seriousness of the respondents can be visualised from the fact that within a fortnight of the telecast of the programme, they had apparently accepted the apology of the petitioner and also the fact that their counsel did not even appear to contest the petition when the matter was taken up for hearing.

(35) On the basis of the above discussion, the petition is accepted the complaint, Annexure P-1, summoning order, Annexure P-5 and all consequential proceedings arising therefrom are quashed and the respondents are burdened with costs of Rs. 10,000 for filing a frivolous complaint. The amount of costs shall be deposited before the Magistrate within a period of two months and the same shall go to the Lawyers' Welfare Fund of the High Court.

R.N.R.

Before Augustine George Masih, J.

BALWINDER SINGH—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

Crl. M. No. 22267/M of 2009

18th December, 2009

Code of Criminal Procedure, 1973—S. 311—F.I.R. against respondents for causing death to petitioner registered—Charges u/ss 307/34 I.P.C. framed—Police inadvertently failing to submit statements of eye witness/injured recorded u/s 161 Cr. P.C. with police report—Petitioner seeking to place said statements on record—Trial Court rejecting application u/s 311 Cr. P.C.—Power of Court u/s 311 Cr. P.C.—Exercise of—Discretionary—Function of Criminal Court is transmission of criminal justice and no party can be allowed to take undue benefit or to count on errors committed by others leading to justice being deprived to a party, which deserves a chance to rectify a mistake, which is not of an irreparable nature—Order of trial Court quashed while allowing application u/s 311 Cr. P.C.