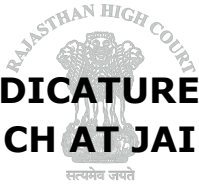




**HIGH Court OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 1537/2005
CNR: RJHC020210432005 | URN: CRLMP / 2860U / 2005

1. M/s Rajasthan Patrika Pvt Ltd, Itrana Road, Industrial Area, Alwar, Dist. Alwar
2. Gulab Kothari, Editor, Rajasthan Patrika Pvt. Ltd, Kesargarh, Jaipur
3. Milap Kothari, Advisor, Rajasthan Patrika Pvt. Ltd, Kesargarh, Jaipur (Deleted)

-----Petitioners

Versus

1. The State of Rajasthan, through PP
2. Kailash Chand son of Ganesh Lal adopted son of Kanhaiyaa Lal, resident of Laxmangarh, Tehsil Laxmangarh, Dist. Alwar

-----Respondents

For Petitioner	:	Mr. V.R. Bajwa, Senior Advocate with Ms. Savita Nathawat, Mr. Mahesh Vijay and Mr. Manish K. Sharma
For Respondent	:	Mr. Vijay Singh Yadav, PP
For Complainant	:	Mr. Ram Babu Sharma

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN
Order

REPORTABLE
01/10/2026

1. The instant criminal miscellaneous petition has been preferred under Section 482 of CrPC by the petitioners aggrieved from order dated 11th November 2005 in Criminal Revision No.86/2004 passed by learned Additional Sessions Judge, Lakshmangarh, District Alwar, whereby the revisional Court has affirmed the order of cognizance dated 7th April 2004 in criminal complaint case No. 7/2003 passed by learned Additional Chief Judicial Magistrate, Lakshmangarh, District Alwar, wherein an order of cognizance has been passed against ten accused, including present petitioners under Sections 500, 501 and 502 of IPC.
2. During pendency of miscellaneous petition, petitioner No.3- Milap Kothari has expired, thus his name has been deleted on 1st



September 2021. Now we are considering this petition on behalf of petitioners No.1 and 2.

3. Learned Senior Advocate appearing on behalf of the petitioners would submitted that non-petitioner No. 2 has filed a criminal complaint on 21st August 2003 against ten persons alleging inter alia that he is a lawyer and practicing at Laxmangarh and the accused, who were annoyed and having animosity due to his success in advocacy, has distributed pamphlets and organised a demonstration with intent to injure his reputation. He also submitted that on basis of distribution of pamphlet and said incident, the complaint has been filed wherein clearly mentioned that the pamphlets were distributed by other accused persons and same was printed at Surya Printers but present petitioners have no role in said incident of demonstration and distribution of pamphlets. He further submitted that making allegation in para No. 9 of complaint that the accused Nos.1 to 4 with intent to circulate the details mentioned in the pamphlets have published a news article with intention to injure and cause damage the reputation of complainant. He submitted that in the entire complaint nowhere it has been mentioned that how these petitioners have played any role in publication and distribution of pamphlets, as the petitioners have nothing to do with any of the acts committed by other accused and also with the Surya printing press, which published the pamphlets. He also submitted that in the entire complaint nowhere any kind of specific role and involvement of these petitioners were mentioned and further, after registration of complaint in the statements under Section 200 and 202 of CrPC nowhere it has been mentioned that any of the



petitioners have any role in printing, drafting or intentional publication in the news article. He also referred the statement of complainant recorded under Section 200 of CrPC and submitted that as per complainant, a loudspeaker was engaged by other accused in distribution of the pamphlets. He also submitted that there were sloganeering by some of the individuals and people have also gathered wherein speeches were made, but none of them have any proximity with petitioners. He also submitted that the evidence of complainant clearly suggest that it was a local incident which has actually occurred and explained by complainant and his witnesses, but have nothing to do with present petitioners.

4. Learned Senior Advocate would further submitted that the local correspondent who were not on regular role of petitioner No.1 has sent a news article and the newspaper has published the same without any interpolation in the news. He also submitted that the complainant has alleged that there was a conspiracy but there is no evidence about meeting of minds between the petitioners and other accused who have acted against the complainant. He further referred the publication dated 7th April 2004 in another newspaper Dainik Bhaskar and submitted that on basis of said news article, the news published in newspaper owned by the petitioner No.1 cannot be termed as false or malicious campaign published with intent to defame the complainant. He also submitted that the complainant has failed to mention the essential ingredient of the offence either in his complaint or in his evidence, and once the ingredients are not available then the order passed by the trial Court is contrary to the records. He also submitted that neither of the petitioner belong to local area Laxmangarh or District Alwar



nor other accused No. 5 to 10 have any connection with these petitioners. He also referred the news article and submitted that even accused No. 5 Subhash Tiwari was a private correspondent and he is working in capacity of independent correspondent. He also submitted that neither is there evidence of conspiracy nor of abetment, therefore, the petitioners cannot held responsible for any of the act as mentioned in the complaint filed by the complainant.

5. Learned Senior Advocate has further referred the order of cognizance dated 7th April 2004 passed by the trial Court and submitted that the cognizance has been taken on the basis of publication of pamphlets, announcement on loudspeakers (Public address system), which were made to injure and cause harm to the reputation of the complainant. He also submitted that how the news article has damaged the reputation of complainant was neither discussed by the trial Court nor same is basis of order of cognizance. He also submitted that in the entire cognizance order the facts were mentioned in the complainant and the evidence of the complainant has been referred but there is no reason to demonstrate how an offence is made out. He further referred the order and submitted that the pamphlets and the news articles are two different aspects but same were mixed together and on basis of said conclusion, a conclusion was drawn that these petitioners have conspired to malign and defame the complainant. He also submitted that the order passed without considering legal position indicate that it was a non-application of mind. He also referred the order of revisional Court and submitted that revisional Court, without considering the legality of the order passed by the trial



Court has dismissed the criminal revision in summary manner, which is again a non-application of mind. He also submitted that neither in the order of trial Court nor in the revisional Court the ingredients of defamation were discussed and there is not a whisper to demonstrate that the petitioners have committed an offence of defamation, therefore, the order of cognizance and also order of revisional Court are contrary to settled proposition of law and deserves to be quashed.

6. Learned Senior Advocate has further referred judgment in case of **Rajaram Sharma versus The State of Uttar Pradesh and Anr.: 2024 LiveLaw (SC) 41** and submitted that under Section 482 of CrPC it is incumbent upon this Hon'ble Court to consider question whether the allegations would constitute an offence alleged against the petitioners. He also placed reliance upon judgment in case of **Sachin Garg versus State of UP and Anr. : 2024 INSC 72** and submitted that it is duty of the Magistrate to record satisfaction, and without recording satisfaction a process cannot be issued as issuance of process is a serious issue. He has further placed reliance upon judgments in case of **Jawaharlal Darda and Ors. Vs. Manoharrao Ganpatrao Kapsikar and Ors.:MANU/SC/0251/1998**, **Prabhu Chawla and Ors. versus A.U. Sheriff :MANU/KA/0078/1994**, **Sanjay Upadhya Vs. Anand Dubey : 2024 INSC 66**, and **M/s Iveco Magirus Brandschutztechnik GMBH Vs. Nirmal Kishore Bhartiay and Anr. 2023 LiveLaw (SC) 860**, and submitted that unless the evidence constitute an offence, the petitioners cannot be held responsible for committing any offence.



7. Aforesaid contentions were opposed by learned counsel appearing on behalf of non-petitioner/complainant and learned Public Prosecutor.

8. Learned counsel appearing on behalf of the complainant submitted that in para Nos. 10, 12 and 13 of complaint the specific allegations were made against these petitioners, and same are sufficient to constitute an offence and take cognizance, by the trial court. He also submitted that para No. 3 of the cognizance order described the evidence with role and involvement of these petitioners in publication of news article, which resulted into harm to reputation of complainant in the eye of society. He also submitted that if any news article is published in any newspaper, then it is obligatory upon the publisher and editor to verify the news article before publication and if they have published a false and malicious article with intention to defame anyone, then they are responsible for committing an offence of defamation. He also submitted that the complainant has filed a complaint mentioning specific role of these petitioners, and after recording the evidence the trial Court has taken cognizance, which is in accordance with legal provisions. He further submitted that one of the lady about whom the complainant was named and defamed has not given any statement against the complainant, and there is no material to show that the complainant was ever blamed or criticized by said female Sukhwanti and the publication of pamphlet and subsequent news in daily newspaper Rajasthan Patrika amounts to defamation. He also submitted that the news article has been published without confirmation, as the entire news article is itself defamatory, which has impacted and affected the legal practice of the complainant





and it has injured the reputation of complainant, who is a practicing lawyer. He also submitted that at the stage of cognizance, the Court has required to see only a prima facie case, and when a prima facie case is available, then the trial Court is required to take cognizance.

9. Learned counsel for the complainant has further placed reliance upon judgment in case of **Chilakamarthi Venkateshwarlu and Anr. Vs. State of Andhara Pradesh and Anr: Criminal Appeal No. 1082 of 2019**, and submitted that under Section 482 of CrPC it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the accused and for limited purpose the Court can evaluate materials and documents and it cannot appreciate the evidence. He also referred same judgment published in news portal "LiveLaw".

10. Learned counsel for the complainant has further placed reliance upon judgment in case of **Gambhirsinh R. Dekare Vs. Falgunbhai Chimanbhai Patel and Anr.: 2013, CrI. L.J. 1757 (SC)**, and submitted that the editor is responsible for contents of newspaper in view of Press and Registration of Books Act, 1867, as every matter is within control of editor and he is responsible person. He referred judgment in case of **Bhushan Kumar and Anr. Vs. State (NCT of Delhi) & Anr. :2012 CrI.L.J. 2286 (SC)**, and submitted that under Section 190 a Magistrate has to be satisfied whether there exists a sufficient ground for proceeding, and not, whether there is sufficient ground for conviction. He also placed reliance upon judgment in case of **Nupur Talwar versus**



CBI: AIR 2012 SC 1921, and submitted that for issuance of process under Section 204 of CrPC the trial Court is required to be satisfied from the material on record, and it has nothing to do with the defence of any person as same is not subject matter to be considered by the trial Court or the revisional Court at the stage of cognizance.

11. Heard learned Senior Advocate appearing on behalf of petitioners, learned counsel for the complainant and learned Public Prosecutor. Perused the material placed on record along with judgments as referred by learned counsel for the parties.

12. The brief facts of the case are that non-petitioner No.2-complainant has filed a criminal complaint on 21st August 2003 against ten persons alleging certain acts about to organization of a campaign, distribution of pamphlet and further sloganeering by public address system (loud speaker) and further publication in daily newspaper "Rajasthan Patrika", resulted in defamation to the complainant. The complainant has also annexed a news article published in another newspaper "Dainik Bhaskar" to show that a demonstration organized by Kisan Sabha was a malicious campaign. The statement of complainant was recorded under Section 200 of CrPC whereas statement of other witnesses Om Prakash, Laxminarayan, Virendra were also recorded under Section 202 of CrPC. Total 23 documents were submitted by the complainant, and on the basis of said material, the trial Court has taken cognizance against all ten accused named in complaint under Sections 500, 501 and 502 of IPC. The present petitioners have filed a criminal revision, which was decided by learned Additional Sessions Judge, Laxmangarh on 11th November 2005



and same was dismissed. Now the current criminal misc. petition is filed under Section 482 of CrPC.

13. The present petitioner No.1 is a newspaper company, whereas petitioner No.2 is an Editor-in-Chief of the newspaper "Rajasthan Patrika".

14. Article 19(1)(a) of the Constitution of India confers a right to freedom of speech and expression to all citizens, whereas Article 19(2) allows the State to make laws that impose reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.

15. In case of **Subramanian Swamy versus Union of India, Ministry of Law and Ors. reported in (2016) 7 SCC 221**, Hon'ble Supreme Court has held that "freedom of speech and expression is a highly treasured value under the Constitution". It was further held that notwithstanding the expansive, and sweeping ambit of freedom of speech, as all rights, right to freedom of speech and expression is not absolute and is subject to imposition of reasonable restrictions. The reputation of a person is an integral part of life, guaranteed under Article 21 of the Constitution of India, as reputation of anyone cannot be allowed to be crucified at the altar of the other's right of free speech. While considering constitutional validity of Sections 499 and 500 of IPC, has differentiated a defamatory attack from criticism, dissent by speaker by speaking for tolerance for criticism, dissent and discordance but professed no tolerance to defamatory attack.



16. In case of **Arnab Ranjan Goswami versus Union of India and Ors. : (2020) 14 SCC 51**, Hon'ble Supreme Court has observed that in the interest of ensuring the fair administration of criminal justice, the order which we intend to pass should present a balance between the governing principles to ensure that the criminal process does not assume the character of a vexatious exercise by the institution of multifarious complaints. There is a need for the law to protect journalistic freedom within the ambit of Article 19(1)(a) of the Constitution of India.

17. In case of **Vinod Dua versus Union of India and Ors. reported in AIR 2021 SC 3239**, while considering Section 88 of IPC observed that before a medical professional is prosecuted for negligence in criminal law, some threshold requirements ought to be satisfied, otherwise an unwarranted prosecution may not only result in great prejudice to concerned medical professional, but would not still a sense of confidence in medical professional for discharging their duties.

18. In case of **Vinod Dua versus Union of India and Ors.** (supra), Hon'ble Supreme Court has observed as under:-

"45. The other offending provision referred to in the FIR is Section 501 of the IPC which is printing or engraving a matter which is defamatory to any person. As a matter of fact, the cognizance with respect to an offence punishable under Chapter XXI of the IPC (Section 501 of the IPC is part of said Chapter) can be taken by a Court only upon a complaint made by the person aggrieved. Without going into such technicalities, in our view, there is nothing defamatory in the statements made by the petitioner. Further, the statements of the petitioner would be covered by the second and third exceptions to Section 499 of the IPC. In some of the cases decided by this Court, for



example, in *Jawaharlal Darda and Others vs. Manoharrao Ganpatrao Kapsikar and Another*, (1998) 4 SCC 112, *Rajendra Kumar Sitaram Pande and Others vs. Uttam and Another*, (1999) 3 SCC 134, *Vivek Goenka and Others vs. Y.R. Patil*, (2000) 9 SCC 87 and *S. Khushboo vs. Kanniammal and Another*, (2010) 5 SCC 600 relying on exceptions to Section 499 of the IPC, the criminal proceeding initiated against the accused were quashed. Thus, the instant proceedings, in so far as Section 501 IPC is concerned, also deserve to be quashed."

19. In case of **Muhammad Abdulla Khan versus Prakash K. reported in 2017 INSC 1168**, while considering an appeal in a matter relating to cognizance of offense punishable under Sections 500, 501 and 502 of IPC, has referred judgment in case of **K.M. Mathew Vs. K.A. Abraham: (2002) 6 SCC 670** and Sections 499 of IPC and observed as under about the essential ingredient for offense as under:

11. 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.

12. 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.

20. Further held that in the context of the fact of the case in hand, it must be established that the matter printed and offered for sale is defamatory within the meaning of expression under Section 499 of IPC. If so proved, the next step would be to examine the question whether the accused committed the act which constitute an offense of which he is charged with the requisite intention or knowledge etc. to make his act culpable. 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 of IPC.

21. In case of **Sachin Dua versus Union of India and Ors.** (supra), after considering several judgments including **M/s Neeharika Infrastructure Pvt. Ltd. versus State of Maharashtra and others reported in (2021) 19 SCC 401, State of Haryana and others versus Bhajan Lal and others reported in 1992 SCC (Criminal) 426 and R.P. Kapoor versus State of Punjab: AIR 1960 SC 862**, Hon'ble Supreme Court has



observed that at the stage of issuing summons, the Magistrate only needs to be satisfied with a prima facie case for taking cognizance. The duty of the Magistrate is also to be satisfied whether there is a sufficient ground for proceedings, as has been held in case of **Jagdish Ram versus State of Rajasthan and another reported in (2004) 4 SCC 432**. While referring the judgment in case of **M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. : reported in (1998) 5 SCC 749**, Hon'ble Supreme Court has observed that the Magistrate's order issuing summons records the background of the case in a rather longest details but reflects his satisfaction in cryptic manner. At the stage of issue of summons, detailed reasoning is not necessary.

22. In case of **Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd. and others etc. : Criminal Appeal No. 1047-1048/2021 dated 27.09.2021**, Hon'ble Supreme Court has observed that issuance of summons of process by any Court is a serious matter and unless there are specific allegations and the role attributed to each accused has been explained the Magistrate ought not to issue the process.

23. In case of **Rajaram Sharma versus The State of Uttar Pradesh and Anr.** (supra), it was held that it is incumbent upon the High Court to consider the question under Section 482 of CrPC whether the allegation would constitute offense against the present accused.

24. In case of **Jawaharlal Darda and Ors. Vs. Manoharrao Ganpatrao Kapsikar and Ors.**, (supra), after considering the Sections 499, 500, 501 and 502 of IPC regarding news item published in newspaper, has observed that if the accused bona



fidely believing the true version and published in good faith, then it cannot be said that the accused intend to harm the reputation of the complainant.

25. In case of **Prabhu Chawla and Ors. versus A.U. Sheriff** (supra), it was observed that the Court shall not order issuance of process in routine manner for any offense in absence of positive averment against the persons.

26. In case of **Sanjay Upadhy Vs. Anand Dubey** (supra), while considering fundamental rights of freedom of speech and expression enshrined under Article 19(1)(a) of the Constitution of India, it was referred the observation that the publication in question did not warrant prosecution of the accused appellant for the offense punishable under Section 500 of IPC. Hon'ble Supreme Court has expressed the view that news article in question was published in good faith in exercise of fundamental right of freedom of speech and expression.

27. In case of **M/s Iveco Magirus Brandschutztechnik GMBH Vs. Nirmal Kishore Bhartiay and Anr.** (supra), it was held that the Magistrate can dismiss the defamation complaint by applying the exceptions under Section 499 of IPC, even before issuing summons to accused.

28. At the stage of issue of process in a complaint of defamation, the Magistrate has to form opinion based on allegation made in the complaint and other material as to whether sufficient ground for proceeding exists, as distinguished from sufficient ground for conviction. The issue of process under Section 204 read with Section 200 of CrPC does not ipso facto stand vitiated for non consideration of exceptions to Section 499 of IPC unless it is





convincingly demonstrated before the High Court that even on basis of complaint and materials, the Magistrate had before him and without there being nothing more, the facts alleged do not prima facie make out the offense of defamation.

29. In case of **Gambhirsinh R. Dekare Vs. Falgunbhai Chimanbhai Patel and Anr.** (supra), it was observed that the newspaper content is within control of editor and he has to be held responsible for news published in newspaper. After considering Sections 1, 5 and 7 of the Press and Registration of Books Act, 1867, it was observed that the presumption is a rebuttable presumption and it would be deemed a sufficient evidence unless the contrary is proved. It was also observed that the allegation of the complainant was that as per instruction of accused, the news was published and the publication was within their knowledge, therefore, truthfulness or otherwise cannot be gone into at the stage of cognizance.

30. In case of **Bhushan Kumar and Anr. Vs. State (NCT of Delhi) & Anr.** (supra), it was held that under Section 190 of CrPC only application of judicial mind to the averment in complaint that constitute offense has to be seen and a petition to quash summoning order is maintainable under Section 482 of CrPC.

31. In case of **Nupur Talwar versus CBI** (supra) while considering Section 204 CrPC it was observed that the order issuing process need not be reasoned and absence of reasons does not vitiate order.

32. In case of **Chilakamarthi Venkateshwarlu and Anr. Vs. State of Andhara Pradesh and Anr** (supra), while considering the provision under Section 482 of CrPC, it was observed that in



exercise of jurisdiction under Section 482 of CrPC, it is not permissible for the Court to act as it were a trial Court and the Court is only to be prima facie satisfied about existence of sufficient ground for proceedings against the accused and for limited purpose can evaluate material and documents on record.

33. Instant case is relating to present petitioner is confined to defamation by publication of a news article and after the publication of news article, a complaint has been filed by the complainant.

34. Section 499 of IPC defines defamation and the essential ingredient to constitute an offense has been referred by us, which clearly indicate that when a person making some imputation concerning any other person either with intention or knowledge or having a reason to believe by words either spoken or written or making signs or visible representation or made or published then it is a defamation. In order to constitute an offense, there has to be essential elements which includes intention or knowledge or having reason to believe on part of the accused.

35. In the instant case, a complaint has been filed by complainant against ten persons including both the petitioners. The petitioners No.1 is a company, but no specific reference is made in the complaint about the management of the company. Otherwise also, a company which owns the newspaper does not itself liable for defamation as in order to establish the role and involvement of a company, it is necessary to establish that the Board of Directors or the management of the company was having intention or knowledge or reason to believe about the news article, which was published to harm the reputation of other person.



36. In the entire complaint from Para No.1 to 8 nothing has been mentioned against the petitioners, but in Para No.9 it has been mentioned that the pamphlet which was distributed in an assembly was published in newspaper by accused No.1 to 4 (including present petitioners) in their daily newspaper Rajasthan Patrika, "Alwar edition". It was held that said news article was published without any basis and it has been published by the correspondent because the complainant is a counsel for opposite party. In Para No.10 nothing has been mentioned against the petitioners. In Para No.11 name of "Rajasthan Patrika" has been mentioned but with reference that Sukhvanti has not made any allegation complainant. In Para No.12 nothing has been mentioned against the petitioners but in Para No.13 it was mentioned that the pamphlets were distributed with announcement on loudspeaker across the market and news article has been published. The Para No.14 mentioned a fact that the incident is of Laxmangarh and newspaper was published and sold in Laxmangarh.

37. A bare reading of complaint from Para No.1 to 14 clearly indicate that neither specific role of present petitioners were mentioned nor any statement about their involvement in conspiracy with other accused No.5 to 10 was made. It means no specific attribution about the role of these petitioners were mentioned by complainant in his entire complaint.

38. Pursuant to said complaint the statement of complainant were recorded under Section 200 of CrPC wherein he mentioned the name of Subhash Tiwari as journalist and agent of Rajasthan Patrika but he has not mentioned any role of these petitioners in deliberate or malicious publication of the news article. In the entire



evidence, not a single word about conspiracy between present petitioners and Subhash Tiwari. The complainant has mentioned a fact that the Rajasthan Patrika came to know from publication in "Dainik Bhaskar" that the agitations and display of anger in demonstration was a conspiracy of opposite party to the litigation. In the statement, a fact was mentioned that editor, distributor, publisher and journalist were aware that the news and agitation was a conspiracy. There is not a single word by name against these petitioners in the entire evidence of complainant. The supporting evidence of Om Prakash Kuteta only stated about distribution of pamphlets and announcement from loudspeakers. Identical evidence was given by Lakshmi Narayan. The third witness Virendra Kumar has read the pamphlet printed from Surya Printers, which does not belong to these petitioners, and he also mentioned about a news article published in Rajasthan Patrika and he stated that it was published by Subhash Tiwari. The statements of these three witnesses recorded under Section 202 of CrPC do not indicate involvement of any of the petitioners.

39. The trial Court after considering the complaint and statement has observed that the pamphlet and newspaper was published by editor and advisor who are accused No. 2 and 3 (Gulab Kothari and Milap Kothari). The trial Court has observed that the accused No.4 Vijay Bhandari was publisher and Subhash Tiwari was local correspondent whereas pamphlet was published by accused No.6 Surya Printers, whose proprietor was the accused No.7 Prem Kumar. The trial Court has also observed that accused No.9 Abhay Singh and accused No.10 are President and Secretary of Kisan Sabha. The trial Court without recording evidence of Sukhvanti has



observed that the complainant has not committed any cheating with Sukhvanti and the pamphlet has been published and a news was published to defame complainant. The trial Court has further drawn a conclusion that the pamphlet was published and announcement was made from local loudspeaker, by accused persons, and Ultimately, the order of cognizance was passed under Sections 500, 501, 502 of CrPC.

40. The observation by the trial Court clearly reflect that only on basis of statement of complainant, the order of cognizance was passed, and in the entire cognizance order nowhere it has been mentioned that how it injured and harm to the reputation of complainant. Nowhere it has been mentioned that these petitioners have conspired either with Sukhvanti or accused Nos.9 and 10 at the time of publication of news article. Similarly, there is no evidence about connect in between the petitioners and publication of pamphlet and distribution of pamphlet with announcement by the loudspeaker. There is no evidence to show that these petitioners ever visited and gathered at Laxmangarh and participated in distribution or announcement process.

41. These petitioners have filed a criminal revision before learned Additional Sessions Judge and by a cryptic order dated 11.11.2005 the criminal revision was dismissed, which indicate that even the legality of the order impugned was not tested by learned Revisional Court as it was beyond the scope under Section 397 of CrPC to examine the legality of the order. It clearly indicate that the order passed by the revisional Court is clearly non-application of mind.



42. In the instant case, not a single whisper has been made against three petitioners in the entire complaint except the fact that petitioner No.2 is an editor of newspaper. There is nothing on record about petitioner No.1, in particular, the management and day-to-day affairs of newspaper, so as to demonstrate the role of petitioner No.1 in order to constitute an offence under Sections 500, 501 and 502 of IPC. There is nothing on record to show that these petitioners have ever conspired with any or all of the other accused Nos.5 to 10 in publication or demonstration in any manner.

43. The law of defamation under Section 499 of IPC provides following exceptions:-

- (i) Any statement made about someone, if it is true and for the public good does not amount to defamation;
- (ii) Any statement made about the conduct of a public servant in the discharge of their duties are exempted from defamation, provided they are in good faith;
- (iii) The conduct of an individual who voluntarily participated in public affairs or controversies; as fair criticism is permissible.
- (iv) Publishing a true and accurate report of judicial proceedings is not a defamatory statement;
- (v) Any statement regarding the merits of a case, a judgment or the conduct of a witness, if made in good faith, are protected;
- (vi) Any fair criticism of any literary, artistic, or other public performance does not constitute an offence of defamation;
- (vii) Any authority to censure its subordinate for misconduct or inefficiency, but within scope of their professional relation and in good faith is not defamation;



(viii) Any accusation in good faith to an authorized person is not a defamatory statement;

(ix) A imputation made to protect one's own interest or the interest of others, if done in good faith, is also exempted from the offence of defamation.

(x) Any statement made to make aware the public against potential harm are not defamatory, provided they are made in good faith.

44. The exceptions for the defamation are provided to ensure that the statement must serve a public purpose and be made with honest intention in good faith. A public servant is accountable for their official action and their work and performance is subject to scrutiny by public and media. The purpose of exemption is to ensure fair criticism of the persons involved in public life and ensure transparency or foster trust and accountability in the system. Any analysis or constructive criticism in responsible manner also does not fall in the act of defamation. Any advice, good or bad, but in good faith about anyone, including any consumer product, also falls in above exemption and it does not constitute an offence.

45. Having considered the legal position, I am of the considered view that neither in the entire complaint nor in any evidence, any whisper of allegation is made against any of the petitioners, which was made with intention to cause harm to the reputation of complainant. In case of **M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.** (supra) Hon'ble Supreme Court has considered Section 204 of CrPC and held that without being



satisfied about the availability of ingredients to constitute an offence, a process cannot be issued in routine manner.

46. Here in this case, the entire order of the trial Court indicate that the trial Court has connected these petitioners with publication of pamphlet, demonstration by Kisan Sabha, and further speeches or announcement on loudspeakers (public address system) though there is nothing on record to show that these petitioners have any meeting of mind with any other persons, arrayed as an accused No.5 to 10. Thus, the issuance of process by the trial Court is just an abuse to the extent that the trial Court without taking note of any justification or narration about the role of these petitioners has passed an order of cognizance, against petitioners.

47. In case of **Pradeep Kumar Kesarwani versus the State of Uttar Pradesh another reported in 2025 SCC OnLine SC 1947**, Hon'ble Supreme Court has observed that it is duty of the Court in case where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly perverse or frivolous, vexatious or instituted with an ulterior motive for wreaking vengeance was delineated, is required to be quashed. It was held that summoning any person on the basis of frivolous or vexatious complaint is something very serious and it would tarnish the image of the person against whom false, frivolous and vexatious allegations are levelled.

48. In case of **Sujoy Ghosh vs The State of Jharkhand reported in 2026 INSC 267**, Hon'ble Supreme Court, while considering the scope of Section 482 of CrPC and Article 226 of the Constitution of India, has observed that the Court need not restrict





itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Summoning of accused in a criminal case is a serious matter and criminal law cannot set into motion as a matter of course.

49. Having considered the entire material as referred hereinabove, the summoning process initiated by the learned trial Court is just an abuse of process of law and without any evidence or assigning the role and involvement of the petitioners, an order of cognizance and summoning order has been passed against the petitioners, which is contrary to settled law, therefore, in absence of essential ingredient to constitute an offence of defamation, a cognizance order cannot be passed by the trial Court, particularly when it relates to fundamental right of freedom of speech and expression, as it undermines the freedom of press in a democracy like ours. Thus, we have no option except to quash the proceedings instituted at behest of complainant respondent No.2.

50. In view of discussion made hereinabove, criminal miscellaneous petition under Section 482 of CrPC is hereby allowed and the order dated 7th April 2004 in complaint case No.7/2003 and order dated 11th November 2005 in Criminal Revision No.86/2004 are hereby set aside and the proceedings pending against the petitioners is hereby quashed.

51. Miscellaneous application, if any, also stands disposed.

(ASHOK KUMAR JAIN),J