2025 INSC 502

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 2033 OF 2025**
**(@ SPECIAL LEAVE PETITION (CRIMINAL) NO. 9942 OF 2024)**

SHAHED KAMAL & ORS. APPELLANT(s)

VERSUS

M/s A. SURTI DEVELOPERS
PVT. LTD. & ANR. RESPONDENT(s)

**J U D G M E N T**

**K.V. Viswanathan, J.**

**1.** Leave granted.

**2.** Homebuyers and developers have not always been the best of friends. Instances are innumerable where the two have been at daggers drawn. This case presents one such instance. Not satisfied with the services provided by the respondent-developer and when, according to them, repeated entreaties did not elicit a response, the appellant-home buyers decided to resort to a unique form of protest. They erected a

board/banner visible to the public at large setting out in English and Hindi languages the following statements. The English version is as follows:-

**"WE PROTEST AGAINST THE BUILDER**

**"A SURTI DEVELOPERS PVT. LTD."**

**FOR**

- NOT FORMING THE SOCIETY EVEN AFTER 18 MONTHS BROKEN PODIUM
- NOT GIVING SOCIETY ACCOUNTS
- NOT CO-OPERATING WITH THE RESIDENTS SHABBY GARDEN
- NOT ATTENDING TO BUILDERS' DEFECTS
- NOT SORTING WATER ISSUE IGNORING GRIEVANCES
- POOR LIFT MAINTENANCE
- LEAKAGE PROBLEM NON-CO-OPERATION
- PLUMBING ISSUES
- DIRTY/BOUNCY APPROACH ROAD

WE PROTEST FOR OUR RIGHTS"

**3.** The respondent-developer hit back and threatened to sue them for defamation unless an apology was tendered. When the appellants refused, a criminal complaint was filed for offences punishable under Section 500 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'). The Metropolitan Magistrate Court, Borivali, Mumbai, on 04.10.2016, after perusal of the complaint and the verification statement of the complainant, issued summons against the appellants for offences punishable under Section 500 read with Section 34 of the

IPC. A challenge in revision having failed, the appellants approached the High Court by way of a Writ Petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking to quash the complaint as well as the summons issued. The High Court having turned down their plea, the appellants are before us.

**4.** The short question before us is whether the complaint filed by the respondent makes out a case for offences punishable under Section 500 read with Section 34 of the IPC against the appellants?

**5.** Principally, the grievance in the complaint of the respondent was that the appellants individually and in connivance with each other to spread disharmony erected/fixed two banners/boards in Hindi and English visible to the general public at large on 10.08.2015. The contents of the banner have been set out hereinabove. According to the complaint, the appellants have started a calculated campaign to defame the complainant's image and reputation, and the appellants are making false propaganda and spreading rumours. The complaint alleges that the banners have adversely affected and damaged the reputation of the

complainant and have been put up with full knowledge that they are false and frivolous. The complaint alleges that the banners have been put up in the manner as to be visible to the public with the deliberate intention to defame the complainant. The complainant further alleges that it informed the Mumbai Municipal Corporation about the erection of the two banners and that ultimately the banners were removed on 29.02.2016 under the supervision of the appellants 1, 2 & 7 and other residents. The complaint alleges that the motive of the appellants was to lower the reputation of the complainant in the eye of the public at large and caused mental agony and injury to the reputation of the complainant.

**6.** The High Court has refused to interfere with the summons issued by holding that prima facie the imputation has propensity to cause a dent in the reputation of the complainant. The High Court, even after correctly noticing the legal position that the Court at the stage of issue of summon is not in any manner precluded from considering whether any of the exceptions to Section 499 were attracted, on facts, held without any reasons that in the present case they were questions of fact.

Holding so, the High Court rejected the plea of the appellants and relegated them to face trial.

**7.** We have heard learned Counsel for the parties and perused the records. Learned Counsel for the appellants submits that the complaint has been filed to exert pressure on the appellants in order not to object to the illegal construction of the second building on the same plot by utilizing the additional FSI; that the additional FSI became available after the completion of the building in which the appellants are occupying and as such the additional building could not have been constructed; that the civil dispute is being given a criminal colour; that the defective and unfulfilled works listed out in the banner were breach of contractual obligations and the same are pending adjudication in suit no. 610 of 2019 pending before the High Court.

**8.** Learned Counsel for the appellants contends that the banner only highlights the factual grievances of defective and unfulfilled works left unattended by the respondent and the hardships being suffered by all the 128 flat owners collectively; that there is not a single word or statement in the banner, which can be termed as defamatory; that the

appellants have the fundamental right of freedom of speech and expression and the contents of the banner do not constitute defamation as defined in Section 499 IPC read with the exceptions; that the complainant has suppressed the material facts; that several letters have been written by the ad-hoc committee of flat purchasers regarding the grievances and some of the letters have been admittedly received by the respondent and that these letters have been suppressed by the complainant while approaching the Criminal Court.

**9.** The learned Senior Counsel for the respondent has reiterated the averments in the complaint set out hereinabove. The learned Senior Counsel contended that no civil or consumer proceedings have ever been initiated by the appellants or any other flat purchasers as regards the alleged deficiencies and that suit no. 610 of 2019 has been instituted much later and that too primarily with regard to the alleged claim over the FSI as increased by the notification dated 18.11.2015; that in the suit the learned Single Judge, by order dated 25.11.2020, and the Division Bench, by order dated 17.03.2022, have found that the appellants and the flat purchasers do not have the right over the increased FSI and that the provisions of the Maharashtra Ownership of

Flats Act, 1963 (MOFA) are not applicable to the land in question; that the land is owned by the Mumbai Metropolitan Region Development Authority (MMRDA) and covered by the MMRDA Act and that the complainant was under no obligation to register a society or convey title under the provisions of the MOFA. It is further contended that in the revision application, the appellants did not raise any contention about their case being covered under any of the exceptions to Section 499 IPC and it was only in the writ petition that Exception 1 and 3 to Section 499 were invoked, which has been rightly rebuffed by the High Court. According to the learned Senior Counsel for the respondent, the ingredients of Section 499 are clearly attracted and the appellants have been rightly summoned to answer the charge for offences under Section 500 read with Section 34.

**ANALYSIS AND REASONS:-**

**10.** Section 499 of the IPC along with the 9th Exception is extracted hereinbelow:-

> **"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.

***Ninth Exception*.- Imputation made in good faith by person for protection of his or other's interests.-** It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good."

**11.** As the Section indicates to constitute the offence of defamation there should be imputation concerning any person with intent to harm or knowing or having reason to believe that such imputation will harm, the reputation of such person. This is subject to exceptions and the 9th

exception which has been considered by the High Court provides that it will not be defamation to make an imputation on the character of another provided that the imputation is made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

**12.** P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition defines "*imputation" to mean "the act or an instance of imputing something, especially fault or crime, to a person: an accusation or charge (an imputation of negligence)*".

**SCOPE OF THE ENQUIRY: -**

**13.** Before we proceed further, it is appropriate to notice the recent pronouncement of this Court in ***Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya and Anr., (2024) 2 SCC 86*** wherein this Court, while examining the question whether the exceptions to Section 499 could be considered at the stage of issue of process under Section 204 CrPC and equally for the High Court examining a petition to quash under Section 482, had the following to say:-

**"60.** What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of Sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. **If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.**

**62.** In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether "sufficient ground for proceeding" exists as distinguished from "sufficient ground for conviction", which has to be left for determination at the trial and not at the stage when process is issued. **Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499 IPC is attracted, there is no bar either.** After all, what is "excepted" cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. **However, we hasten to reiterate that it is not the law that the Magistrate is in any manner**

**precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation**. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499 IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.

**63.** Adverting to the aspect of exercise of jurisdiction by the High Courts under Section 482 CrPC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by Section 482 CrPC; such powers are always available to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone the High Courts exist. However, the tests laid down for quashing an FIR or criminal proceedings arising from a police report by the High Courts in exercise of jurisdiction under Section 482 CrPC not being substantially different from the tests laid down for quashing of a process issued under Section 204 read with Section 200, **the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that**

> **proceedings, if allowed to continue, would amount to an abuse of the legal process.** This too, would be impermissible, if the justice of a given case does not overwhelmingly so demand."

The High Court has also noticed this judgment which holds that if the materials disclosed in the complaint and the documents annexed disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial. It has been further held that what is "excepted" cannot amount to defamation on the very terms of the provision and that the Magistrate is not in any manner precluded from considering if at all any of the Exceptions is attracted in a given case. It has been further held that if the Magistrate on examination notices that there is a complete defence made out under any one of the Exceptions, the Magistrate would be justified in dismissing the complaint. Equally, the High Court examining the case under Section 482, if it finds on a reading of the complaint, the substance of the statements on oath of the complainant and the witness and the documents produced by the complainant that no offence is made out and if the High Court is of the opinion that proceedings if allowed to

continue would be an abuse of legal process, the High Court is empowered to interfere.

**14.** It is in this background that we have set out to examine the case at hand after keeping in mind the main part of the definition and the exceptions to Section 499. Before we take a closer look at the contents of the banner carrying the imputation, certain peculiar facts obtaining in the case at hand needs to be noticed.

**RELATIONSHIP BETWEEN THE PARTIES:-**

**15.** The appellants and the respondent have a business relationship in the sense that the appellants are allottees of residential flats in the building developed by the respondent under a registered builder-buyer agreement with reciprocal obligations provided therein. It is not disputed that in the building there are about 128 allottees and the building itself has ground + stilt+ podium + 22 floors. The banner was put on 10th of August, 2015 i.e. approximately a year and six months after the flat purchasers were put in possession. The grievance raised in the banner is with regard to A) not forming the society even after 18 months B) not giving society accounts C) not co-operating with the

residents D) not attending to builders' defects E) not sorting water issue F) poor lift maintenance G) leakage problem H) plumbing issues I) dirty/bouncy approach road, there is also a grievance with regard to broken podium, shabby garden, ignoring grievances and non-cooperation. There is a caption "we protest for our rights".

**LANGUAGE EMPLOYED IN THE PUBLICATION: -**

**16.** At the very outset, what strikes us is that there is no foul or intemperate language employed against the respondent. There is no reference to any expression like "fraud, cheating, misappropriation etc." In mild and temperate language, certain issues, which the appellants perceived as their grievances have been aired. It is the appellants' case that these issues have been raised in the form of letters before though the respondent has denied receipt of all of the letters attributed. Be that as it may, we are not deciding the issue based on the letters. Equally, the appellants have a case that the respondent itself has written letters promising to address grievances and it is only when it failed to do so that they resorted to the protest by erecting the banner. The appellants have a case that these letters have been suppressed. We

are, for the moment, keeping these letters aside and deciding the issue based on the averments in the complaint. Further admittedly, there is a civil suit though filed much later in 2018 raising the issue of accounts, non-formation of society and highlighting the deficiencies and seeking reimbursement.

**SCOPE OF THE EXCEPTION: -**

**17.** In a business relationship like that of a builder and homebuyer, certain allowances in the use of phraseology in communication should be provided as long as the deployment of the phraseology in question is based on good faith. Whether it is based on good faith or not, in a case like the present, will be decided on a careful reading of the impugned publication. The 9th exception to Section 499 engrafts the principle of qualified privilege. It has been held by this Court in ***Chaman Lal v. State of Punjab, (1970) 1 SCC 590***, that under the 9th Exception to Section 499 if the imputation is made in good faith for the protection of the person making it or for another person or for the public good it is not defamation. It has also been held that the interest of the

person has to be real and legitimate when communication is made in protection of the interest of the person making it.

**18.** Further in ***Harbhajan Singh vs. State of Punjab and Another, 1965 SCC OnLine SC 118,*** this Court has held that in considering the question as to whether the person acted in good faith in publishing his impugned statement, the inquiry is as to whether the person acted with due care and attention. It was further held that:-

> **"21.** Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each case — what is the nature of the imputation made : under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception. Unfortunately, the learned Judge has rejected the plea of the appellant that he acted in good faith, at least partly because he was persuaded to take the view that the evidence led by him did not tend to show that the allegations contained in his impugned statement were true. This naturally has to some extent, vitiated the validity of his finding."

**CONTRAST WITH THE FIRST EXCEPTION: -**

**19.** Almost 9 decades ago, Justice Pandrang Row, speaking for the Madras High Court in ***Kuruppanna Goundan vs. Kuppuswami Mudaliar, 1935 MWN 365,*** dealing with exception 9 to Section 499 held that the truth of the imputations need not be proved by an accused person claiming the privilege of the 9th exception. All that is required is the imputation is made in good faith for the protection of the interest of the person making it or of any other person. The contrast with the 1st exception would show how while truth is an essential ingredient of first exception, it is not so of the 9th exception

**20.** In ***Municipal Board Konch vs. Ganesh Prasad Chaturvedi, 1951 SCC OnLine All 117***, the Municipal Board brought a complaint against Ganesh Prasad, the respondent therein, complaining of criminal defamation for issuing certain leaflets which defamed the Board. The High Court, while upholding the dismissal of the complaint, had the following to say:-

> **"6.** Having regard to the provisions of Section 499 read with Explanation 2 and the definition of the word 'person' in Section 11 of the Penal Code, 1860 it cannot (... sic) said that a complaint for defamation is not maintainable at all by a

corporation. But certainly the scope of such a complaint by a corporation is not the same as that by individuals. The municipal board *per se* has hardly a reputation. If the management is good it will be said that the Board is being run efficiently. But if the management is bad there is bound to be accusation of inefficiency and nepotism etc. If a person makes any imputation so as to cause any special injury to the property of the board then the board can maintain a complaint under Section 500. But where the minority party in the board attacks the majority party for inefficiency then such an attack does not amount to defamation.

**7.** Now Section 499 requires *inter alia* an intention on the part of the accused to harm the reputation of the complainant or the knowledge that the imputation made by him will harm such reputation. Learned Sessions Judge has arrived at the finding that there was no such intention because the holds that the criticisms by Ganesh Prasad were not wrong. Impliedly the learned Sessions Judge means that these criticisms were intended to tune up the administration. In the absence of such intention the complaint is not maintainable.

**8.** For the sound working of democracy it is necessary that criticisms of the administration of the municipal boards, within reasonable limits should (…sic) allowed."

Though the case considered exception 1 to Section 499, the observations do have a bearing as far as the present case is concerned.

## HAVE THE APPELLANTS EXCEEDED THE PRIVILEGE?

**21.** In ***Valmiki Faleiro v. Mrs. Lauriana Fernandes and Others, etc. 2005 SCC OnLine Bom 1584***, the accused published a notice in a newspaper informing the public that the complainant is not the owner

of a certain property and the real owners are the accused. The notice also warned the public to refrain them from purchasing plots from the complainant. While quashing the complaint, the High Court found the following:-

> **"23.** The essence of offence of defamation is the harm caused to the reputation of a person. Character is what a person actually is and reputation, is what neighbours, and others say he is. In other words, reputation is a composite hearsay and which is the opinion of the community against a person. Everyone is entitled to have a very high estimate of himself but reputation is the estimation in which a person is held by others. The commission of offence of defamation or publishing any imputations concerning any person must be "intending to harm or knowing or having reason to believe that, such imputation will harm, the reputation of such person, (emphasis supplied.). The notice, in question on the face of it does not contain any such imputation which could be said to harm the reputation of the complainant. On the other hand, a bare reading of the said notice shows that it has been published by accused Nos. 1 and 2 with a view to protect the right to the property which they believe they have a right. A person reading the said notice may at first flush be a little amused that the said accused are claiming a set of villages rather than think that it is published with a view to defame the complainant. All that the said accused have conveyed by the said notice is that the property/properties do not belong to the complainant but belong to them and that anyone dealing with the complainant will be doing so at their own risk. The contention that the said notice is per se defamatory and that it attributes dishonest intention that the complainant lacks business character and propriety appears to be a figment of the complainant's imagination. Such a conclusion cannot be

> culled out by a normal prudent person from a reading of the said notice which apparently was published by the said accused Nos. 1 and 2 to protect a right which they believe they have to the property and with a view to warn others that in case they enter into any transaction of sale with the complainant they would be doing so at their own risk and consequences. A reading of the notice, on the face of it, does not show that it was published with intention or knowledge to harm the reputation of the complainant. In my view, the learned Sessions Judge was right in exercising his discretion to quash and set aside the Order issuing process against the aforesaid accused."

**22.** Language is the vehicle through which thoughts are conveyed. Had the appellants exceeded their privilege in erecting the banner? We do not think so. As set out earlier, all that the banner depicts is what they thought were their grievances against the respondent with whom they had a business relationship. The banner sets out that one of the issues was "ignoring grievances" implying thereby that there have been running issues between the two – something which is bound to occur in a builder-buyer relationship. The careful choice of the words, the conscious avoidance of intemperate, rude or abusive language and the peaceful manner of protest, all point to the fact that to protect their legitimate interests and the interest of the other homeowners and without any malice and in good faith the erection of the banner was done. One of the tests to decide whether the case falls within the 9th

exception is the choice of words employed in the impugned publication.

**23.** An interesting case in point on this issue is ***Queen-Empress*** vs. ***E.M. Slater***, (1891) ILR 15 Bom 351. A sum of money was promised to be paid as a condition precedent for a mortgaged vessel to be allowed to sail. The money was not paid as promised. The accused therein one Mr. Slater, the agent of the Bank, wrote to the Complainant for the money and also sent for him five or six times. However, the Complainant did not respond. Thereupon, Mr. Slater wrote to the Complainant's partner as follows:- "*Haji Jusub Pirbhoy (i.e. the Complainant) has misappropriated the Rs. 5,000/- which were to have been paid to the Bank for allowing the "Tanjore*" to go to Jeddah, and is keeping out of the way." Immediately after receipt of the letter, the Complainant tendered the money to the Bank's Solicitors and Mr. Slater withdrew the statement made earlier. The Complainant filed a complaint against Mr. Slater for defamation. Applying the 9th exception and acquitting Mr. Slater, the Division Bench of the High Court of Judicature at Bombay held: -

"**In the present case, the letter was written in the conduct of the applicant's own affairs, in a matter in which not only he was interested, but in which the person to whom the letter was sent was also interested. And the question would then remain whether the publication was fairly made.** In such a case, we can see no unfairness in the applicant stating exactly what he believed to be the case. He believed that the complainant was purposely keeping out of his way, in order to avoid payment of the money, the punctual payment of which was the condition on which the "Tanjore" had been allowed to leave Bombay. By saying that he was keeping out of the way, he did not, we think, mean to imply that the complainant had absconded. He simply meant that he had not come to his office to pay the money; that he was avoiding him; and that the money had not been appropriated to the only purpose to which it could be lawfully appropriated. If that money was not paid by the complainant, then Baladina would be liable, as his partner, to pay it. It was clearly necessary that Baladina should know all the circumstances as they presented themselves to the applicant's mind, in order that he might either put pressure on the complainant, or himself at once discharge the liability resting on the partners in respect of the money they held in trust. **In such a case, any milder language than was actually used might have failed to convey the writer's meaning,** and perhaps the best indication of the necessity for the language actually used is found in the fact that, immediately after the letter was sent, a tender of Rs.3,000 was made by the complainant…

In *Tuson* vs. *Evans*, 12 A. & E., at P.736, it was said: "Some remark from the defendant on the refusal to pay the rent was perfectly justifiable, because his entire silence might have been construed into an acquiescence in that refusal, and so might have prejudiced his case upon any future claim; and the defendant would, therefore, have been privileged in denying the truth of the plaintiff's statement. But, upon consideration, we are of opinion that the learned Judge was quite right in considering the language actually used as not justified by the

occasion. **Any one, in the transaction of business with another, has a right to use language *bona fide*, which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly, or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives or conduct of a party with whom he is dealing, do not fall within that rule.** It was enough for the defendant's interest, in the present case, to deny the truth of the plaintiff's assertion: to characterize that assertion as an attempt to defraud, and as a mean and dishonest, was wholly unnecessary. This case, therefore, was properly left to the jury: and there will be no rule."

Thereafter, the Court held:

"In the present case, as we have already said, it would scarcely have been possible for the applicant to say less than he did if he wished to convey in precise terms his real impressions regarding the complainant's conduct to a person who was entitled to full information on the subject. In Denman v. Bigg,1 Camp., PP. 260, 270, it was held that a creditor of the plaintiff might comment on the plaintiff's mode of conducting his business to the man who was surety to the creditor for the plaintiff's trade debts. Lord Ellenborough said: "I am inclined to think that this was a privileged communication. Had the defendant gone to any other man and uttered these words of the plaintiff, they certainly would have been actionable. But Leigh, to whom they were addressed, was guarantee for the plaintiff; and the defendant had promised to acquaint him when any arrears were due. **He therefore had a right to state to Leigh what he really thought of the plaintiff's conduct in their mutual dealings; and even if the representations which he made were intemperate and unfounded, still if he really believed them at the time to be true, he cannot be said to have acted**

> **maliciously, and with an intent to defame the plaintiff. To be sure, he could not lawfully, under colour and pretence of a confidential communication, destroy the plaintiff's character and injure his credit; but it must have the most dangerous effects, if the communications of business are to be beset with actions of slander.** In this case the defendant seems to have been betrayed by passion into some unwarrantable expressions. I will, therefore, not non-suit the plaintiff; and it will be for the jury to say, whether these expressions were used with a malicious intention of degrading the plaintiff, or, with good faith, to communicate facts to the surety, which he was interested to know." **These remarks have a distinct application to the present case. We think that the communication made by the applicant to Báládina was privileged, under exception 9 to section 499 of the Indian Penal Code. And that in all the circumstances of the case the applicant cannot be justly convicted of having exceeded his privilege. We reverse the conviction and sentence, and direct that the fine be refunded."**

**24.** What is significant, therefore, that in a given case, the language employed could be a clear pointer to decide whether the accused in the case has exceeded his privilege. We have already found that the appellants could not have said anything less in the poster/banner as they believed that this was rightful and legitimate to highlight their grievances, which they contend were ignored earlier.

**25.** As was rightly observed in ***E.M. Slater (supra)*** quoting ***Denman*** vs. ***Bigg***, it will have the most dangerous effects, if the communications

of business are to be beset with actions for defamation, without the necessary ingredients having been made out. Sanctioning such prosecutions will, as was rightly observed in ***S. Khushboo*** vs. ***Kanniammal and Another***, (2010) 5 SCC 600 (para 47) tantamount to using the law in the manner as to create a chilling effect on free speech.

**26.** Similarly, in ***Ramachandra Venkataramanan*** vs. ***Shapoorji Pallonji & Company Ltd. and Another***, (2019) SCC OnLine Bom 524 the Court, while quashing the proceedings for criminal defamation, rightly observed that a lot would depend on the choice of words in the impugned publication to decide whether it constitutes offence of defamation or not. The judgment also highlights how the words used in public are to be read in the context. Para 48 of the judgment, which make useful reading is extracted hereinbelow:-

> "48. **Coming to the press note, the allegedly offending words stated in it are 'motivated', 'baseless' and 'smear campaign'. Smear means damaging the reputation by false accusation. These words are required to be read in the entire context.** The petitioner has made this statement with the reference to earlier disputes. As mentioned in the beginning, the matter carries a baggage of accusations, denials, claims and disclaimer. **Both the parties are from the business world. Though they initially worked together, today, they are at loggerheads.** Their disputes are discussed publicly by the

media and the people. When two persons are fighting, they are bound to make some allegations against each other. If these allegations are abusive, they create an impression of hatred, contempt and ridicule against the person who is attacked. I am of the view that these words do not constitute defamation. **One has to be careful in choosing the words while expressing his feelings. To express and speak is an invaluable fundamental right of an individual guaranteed under Articles 19 and 21 of the Constitution of India to all the citizens which is the soul of democracy. The law of defamation is one of legally acceptable reasonable restrictions in the Indian legal system. To oppose, deny, reject, defend, etc. are the ways of expression. It manifests emotional status and thinking process. However, it should not lead to harm, damage, which is a rider to the freedom of expression. Thus, one can disclaim, refuse, deny, reject certain charges or allegations made against him or her publicly with restrained words. Ultimately, it is a choice of words which may constitute the offence of defamation.**

**VOICING DISSENT & DISAGREEMENT WITHIN PERMISSIBLE LIMITS: -**

**27.** This Court, in ***Subramanian Swamy*** vs. ***Union of India, Ministry of Law and Others***, (2016) 7 SCC 221, while upholding the validity of the provisions providing for criminal defamation, made certain pertinent observations about the importance of freedom of speech and the need to respect voices of dissent or disagreement. This Court highlighted how dissonant and discordant expressions are to be treated as viewpoints with objectivity while at the same time cautioning that

the right to freedom of speech is not absolute and is subject to reasonable restrictions under Article 19(2), which expressly contemplates that a law providing for punishment for defamation would constitute a reasonable restriction on the right to free speech. Para 120 of the said judgment is extracted hereinbelow:-

> **"120. Be that as it may, the aforesaid authorities clearly lay down that freedom of speech and expression is a highly treasured value under the Constitution and voice of dissent or disagreement has to be respected and regarded and not to be scuttled as unpalatable criticism. Emphasis has been laid on the fact that dissonant and discordant expressions are to be treated as viewpoints with objectivity and such expression of views and ideas being necessary for growth of democracy are to be zealously protected. Notwithstanding, the expansive and sweeping ambit of freedom of speech, as all rights, right to freedom of speech and expression is not absolute. It is subject to imposition of reasonable restrictions."**

**28.** In similar vein, this Court recently in ***Javed Ahmad Hajam*** vs. ***State of Maharashtra and Another***, (2024) 4 SCC 156, observed that the right to dissent in a *legitimate and lawful* manner is an integral part of the rights guaranteed under Article 19(1)(a) and every individual must respect the right of others to dissent. Though said in the context of actions by government in the said judgment, this Court observed that

an opportunity to peacefully protest is an essential part of democracy. Para 14 of the said judgment is extracted hereinbelow:-

> **"14.** The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(*a*). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. **But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line."**

**29.** Earlier, this Court in ***Anita Thakur and Others*** vs. ***Government of Jammu and Kashmir and Others***, (2016) 15 SCC 525 held that holding peaceful demonstration in order to air their grievances and to see that their voices are heard in relevant quarters is the right of the people. This Court held that such a right can be traced to the fundamental rights guaranteed under Article 19(1)(a) & 19(1)(b) (to assemble peacefully and without arms) and 19(1)(c) (to form associations or unions or cooperative societies). This Court recognized the right to raise slogans *al beit* in a peaceful and orderly manner,

without using offensive language. Para 12 of the said judgment is set out hereinbelow:-

> **"12.** We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(*a*), 19(1)(*b*) and 19(1)(*c*) of the Constitution. Article 19(1)(*a*) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(*b*) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(*d*), again, ensures that the petitioners could take out peaceful march. The "right to assemble" is beautifully captured in an eloquent statement that "*an unarmed, peaceful protest procession in the land of "salt satyagraha", fast-unto-death and "do or die" is no jural anathema*". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.
>
> **13.** Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings."

**30.** We find that the manner of the protest resorted to by the appellants was peaceful and orderly and without in any manner using offensive or abusive language. It could not be said that the appellants crossed the Lakshman Rekha and transgressed into the offending zone. Their case wholly falls within the sweep, scope and ambit of exception 9 to Section 499. Their peaceful protest is protected by Article 19(1)(a) (b) and (c) of the Constitution of India. The criminal proceedings levelled against them, if allowed to continue, will be a clear abuse of process.

**31.** Peaceful pamphleteering has been held to be a form of communication protected by the first amendment in the United States of America. It has been held that by such peaceful activities the effort was to influence the conduct of the respondent and such activities ought not to be injuncted (See ***Organization for A Better Austin*** vs. ***Jerome M. Keefe***, (1971) 402 U.S. 415.

**32.** In an interesting judgment of the U.S. District Court for the Eastern District of Wisconsin in ***Concerned Consumers League*** vs. ***O'Neill***, 371 F Supp. 644 (E.D. Wis. 1974), it was held that just as

sellers have access to consumers via advertising, peaceful informational activities by consumer organizations must also be protected.

**33.** This Court, in ***Tata Press Ltd.*** vs. ***Mahanagar Telephone Nigam Ltd.,*** (1995) 5 SCC 139, held that commercial speech was part of freedom of speech guaranteed under Article 19(1)(a), subject to reasonable restrictions under Article 19(2). This Court held that in a democratic economy free flow of commercial information is indispensable.

**34.** A right to protest peacefully without falling foul of the law is a corresponding right, which the consumers ought to possess just as the seller enjoys his right to commercial speech. Any attempt to portray them as criminal offences, when the necessary ingredients are not made out, would be a clear abuse of process and should be nipped in the bud.

**35.** For the reasons stated above, the appeal is allowed. The impugned judgment and order dated 10.06.2024 in CRWP No. 2099/2021 passed by the High Court of Judicature at Bombay is set aside. Consequently, the complaint in CC No. 2042/SS/2016 pending

on the file of the Metropolitan Magistrate Court, Borivali, Mumbai along with the order dated 04.10.2016 issuing summons to the appellants under Section 500 read with Section 34 of the IPC would stand quashed and set aside.

.....J.
[**K. V. VISWANATHAN**]

.....J.
[**N. KOTISWAR SINGH**]

New Delhi;
17th April, 2025.