THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 6th June, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.M.C. No.09 of 2023

Petitioner : Dr. T. M. Thomas Issac

versus

Respondent : Santiago Martin

Petition under Section 482 of the
Code of Criminal Procedure, 1973

Appearance

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Mr. Samso Hang Subba, Ms. Laxmi Khawas and Ms. Neha Gupta, Advocates for the Petitioner.

Mr. Kishore Datta, Senior Advocate with Mr. Ayan Banerjee, Ms. Laxmi Chakraborty and Mr. Dhiman Banerjee, Advocates for the Respondent.

ORDER

Meenakshi Madan Rai, J.

1. Words, denigrating the Respondent and maligning his character were allegedly employed by the Petitioner, when he was the Finance Minister of the concerned State, in his address to the Press, post his participation in the GST Council meeting, held on 19-12-2019. The Respondent was aggrieved by the slanderous statement, which thereby gave rise to a Complaint under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."), in the Court of the Learned Judicial Magistrate, East Sikkim, at Gangtok. The Trial Court, vide the impugned Order dated 02-03-2021, in Private Complaint Case No.09 of 2020 (*Santiago Martin vs. Dr. T. M. Thomas Issac and Others*), after examining the Complainant, his two witnesses and on hearing Learned Counsel for the Complainant found sufficient materials to proceed against the

Petitioner under Sections 499/500/501/502 and 120B of the Indian Penal Code, 1860 (hereinafter, the "IPC"). Cognizance was taken and summons issued to the Petitioner. Aggrieved by the impugned Orders, the Petitioner is before this Court under Section 482 of the Cr.P.C. seeking its quashment.

2. Before considering the merits of the matter, it is imperative to clarify here that, in Private Complaint Case No.09 of 2020 (*supra*), before the Court of the Judicial Magistrate, East Sikkim, at Gangtok, the Respondent herein, as Petitioner, had alleged that the accused persons no.2 to 10 had published the article in the newspaper, which contained the defamatory statement *viz*., **"***Lottery mafia like Santiago Martin will not be allowed to operate in Kerala***"**, attributed to the accused no.1, the Petitioner herein. The Court, vide the Order dated 02-03-2021, took cognizance of the offence under Sections 499/500/501/502 and 120B of the IPC against all the persons arrayed as accused and issued summons vide the impugned Order, dated 03-03-2021.

(i) Aggrieved thereof, the accused persons in Private Complaint Case No.09 of 2020, except the Petitioner herein, who was arrayed as accused no.1, were before this Court as Petitioners No.1 to 8, under Section 482 of the Cr.P.C. in Crl.M.C. No.06 of 2021 (*The Mathrubhumi Printing and Publishing Company Limited and Others* vs. *Santiago Martin and Another*), praying that the impugned Orders dated 02-03-2021 and 03-03-2021 in the aforementioned Private Complaint Case No.09 of 2020, be quashed. The present Petitioner was arrayed as Respondent No.2 in Crl.M.C. No.06 of 2021 (*supra*).

3. Learned Senior Counsel for the Petitioner put forth the contention that, the Petitioner has erroneously been booked for the

offences under Section 499/500/501/502 and 120B of the IPC. The Order of the Magistrate lacks application of judicial mind as vide a subsequent Order, Section 499 of the IPC against the Petitioner, was removed by her *sans* legal provision for such an action. That, the Petitioner did not print or engrave any defamatory matter against the Respondent, hence no charge lies against him under Section 501 of the IPC. Section 502 of the IPC pertains to the sale of printed or engraved substance containing defamatory matter, for which the Petitioner in no way can be held accountable as he had taken no such steps. As he did not conspire with any person, the offence under Section 120B of the IPC is entirely irrelevant. That, the Learned Trial Court could have proceeded against the Petitioner, if at all, only under Section 500 of the IPC.

(i) It was next urged that this Court in Crl.M.C. No.06 of 2021 had concluded that the Petitioner was entitled to the protective cover of Section 197 of Cr.P.C., despite which, the proceedings were initiated in the Magisterial Court, without sanction having been obtained under Section 197 of the Cr.P.C. to prosecute the Petitioner, who as a Government Servant was merely discharging his duties and had communicated to the Press, the decision of the GST Council with no malice. Learned Senior Counsel for the Petitioner invited the attention of this Court to ***State of Orissa through Kumar Raghvendra Singh and Others*** vs. ***Ganesh Chandra Jew***[1], wherein it was held by the Supreme Court that even if the public servant acts in excess of his duties if there exists a reasonable action, the excess would not deprive him of the protection under Section 197 of the Cr.P.C. That, *mala fide* in the proceedings, can be gauged from the

[1] (2004) 8 SCC 40

fact that the Complaint has been lodged in Sikkim, while both the Petitioner and the Respondent are from South India.

(ii) That, this Court had dismissed the Petition under Section 482 of the Cr.P.C. in Crl.M.C. No.06 of 2021 observing that there was no reason to interfere with the impugned Orders of the Magistrate (*supra*). Aggrieved by the Order of this Court, the Petitioners approached the Supreme Court in Special Leave to Appeal (Crl.) No(s).11187/2022 (*P. V. Chandran and Others vs. Santiago Martin and Others*). The matter was amicably settled between the disputing parties, except the Petitioner. The Supreme Court ordered, that, on publication of an apology by the Petitioners/Accused No. 2 to 10, the Private Complaint Case No.09 of 2020, pending before the Court of the Judicial Magistrate (1st Class), East Sikkim, at Gangtok, Sikkim, *qua* accused nos.2 to 10 would stand quashed by the consent of the parties. As the Petitioner was not a party in the said proceedings the matter did not end for him, hence the instant Petition.

(iii) In the next prong of his arguments, it was urged by Learned Senior Counsel that the Magistrate failed to adhere to the provisions of Section 202 of Cr.P.C. as no inquiry was conducted by the Magistrate as mandated by law, although the Petitioner resides beyond the jurisdictional area of the Magistrate. Reliance was placed on ***Aroon Poorie*** vs. ***Jayakumar Hiremath***[2], ***G. C. Manjunath and Others*** vs. ***Seetaram***[3], ***Jagjiwan Lal*** vs. ***Krishen Chand Sharma***[4]. Hence, the Petition under Section 482 of the Cr.P.C. be allowed and the impugned Orders quashed.

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[2] (2017) 7 SCC 767
[3] 2025 SCC OnLine SC 718
[4] 1986 SCC OnLine J&K 29

4. Resisting the stand of the Learned Senior Counsel for the Petitioner, Learned Senior Counsel for the Respondent drew the attention of this Court to the Order in Crl.M.C. No.06 of 2021, it was urged that the Order *inter alia* reflects that as Respondent No.2 therein (Petitioner), endorsed and thereby adopted the arguments put forth by Counsel for the Petitioners.

(i) Consequently, the provisions of Section 482 of the Cr.P.C. had already been invoked by him in the previous proceedings. A second application under Section 482 of the Cr.P.C. by the Petitioner is not maintainable as it is akin to a review of the earlier Order, the provisions invoked being the same and the Petitioner also the same, apart from it being an abuse of the process of Court. That, *res judicata* is a bar on the Court and not on the parties. Reliance was placed on ***S. C. Garg*** vs. ***State of Uttar Pradesh and Another***[5] to buttress his submission. That, the inherent jurisdiction of the High Court cannot be invoked to override the bar of review, provided under Section 362 of the Cr.P.C. as the Court is not empowered to review, its own decision under the purported exercise of inherent power. On this count reliance was placed on ***Simrikhia*** vs. ***Dolley Mukherjee and Chhabi Mukherjee and Another***[6].

(ii) It was next contended that sanction to prosecute, as provided under Section 197 of the Cr.P.C., can be obtained at any stage of the proceedings and in fact sanction is not required if there is no nexus between the discharge of duties and the act complained of, as in the instant matter. Certainly, the official duties of a Minister is not to denigrate a person or his reputation for which the decision

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[5] 2025 SCC OnLine SC 791

[6] (1990) 2 SCC 437

in ***Pukhraj*** vs. ***State of Rajasthan and Another***[7], ***Bakhshish Singh Brar*** vs. ***Gurmej Kaur and Another***[8] and ***Iveco Magirus Brandschutztechnik GMBH*** vs. ***Nirmal Kishore Bharatiya and Another***[9] was relied on.

(iii) It was also urged that the right to free speech has to be balanced with the individual's right to good reputation, this argument was buttressed by the observations in ***Subramanian Swamy*** vs. ***Union of India, Ministry of Law and Others***[10], wherein the Supreme Court has *inter alia* held that one cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of Sections 499 and 500 IPC is not a restriction on free speech that can be characterised as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right.

(iv) That, there has been due compliance of the provisions of Section 202 of the Cr.P.C. before issuance of summons, hence the Petition deserves a dismissal.

5. Learned Counsel for the parties were heard *in extenso*, all documents, perused and arguments considered.

(i) In the first instance, the argument that the instant Petition tantamounts to a revision of the earlier Order in Crl. M. C. No.06 of 2021, in my considered opinion is erroneous for the reason that, the Petitioner herein was arrayed as Respondent No.2 in the said Petition, he was definitely not a Petitioner. No specific submissions were advanced by him as revealed in Paragraph 4 of

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[7] (1973) 2 SCC 701
[8] (1987) 4 SCC 663
[9] (2024) 2 SCC 86
[10] (2016) 7 SCC 221

the said Order, nor was any relief sought by him nor directed at him by the Order. Paragraph 4 of the Order reads as follows;

> **"4.** Learned Counsel for the Respondent No.2 submitted that he had no separate arguments to put forth and that he endorses the arguments put forth by Learned Senior Counsel for the Petitioners.**"**

The Petitioner simply endorsed the arguments put forth by Learned Senior Counsel for the Petitioners as the Respondent No.2. The Order of the Supreme Court stands sentinel to this fact, as the Order in Special Leave to Appeal (Crl.) No(s).11187/2022, clarifies the position as follows;

> **"**.....
> Needless to say that this is the end of the *lis* only insofar as the two parties are concerned i.e. qua accused Nos.2 to 10 in Complaint Case No.9 of 2020 pending before the Judicial Magistrate, First Class, East at Gangtok, Sikkim but specifically excluding accused No.1,
> .....**"**

The arguments pertaining to review and *res judicata* raised by Learned Senior Counsel for the Respondent in the foregoing fact situation therefore cannot be countenanced.

(ii) Conversely, the argument of Learned Senior Counsel for the Petitioner to the effect that in Crl. M. C. No.06 of 2021, this Court had arrived at a finding that the Petitioner was entitled to the protection under Section 197 of the Cr.P.C. is a misinterpretation of the entire Paragraph and no such pronouncement was made by this Court. In Paragraph 11 this Court had observed as follows;

> **"11.** Besides, it goes without saying that Section 196 deals with prosecution for offences against the State and for criminal conspiracy to commit such offence, whether the Respondent No.1 can be covered by the ambit of this provision is another aspect as it has been held in ***Bakhshish Singh Brar*** (*supra*) that the rationale behind Section 196 and Section 197 of the Cr.P.C. is to protect the public servant in the discharge of their duties. On this count so far as Respondent No.2 is concerned, the discussions above in ***Bakhshish Singh Brar*** (*supra*) clarify the position where Prosecution sans sanction has taken place.**"**

(iii) In view of the observation, it is essential to consider what the Supreme Court had held in ***Bakhshish Singh Brar*** (*supra*). The Court was considering a case, in which the Petitioner, in the discharge of his official duties as a police officer, inflicted grievous injuries on the Complainant. Admittedly, no sanction under Section 197 of the Cr.P.C. had been obtained. The question that fell for determination was, whether it was necessary for the Petitioner to conduct himself in such a manner, which would result in such consequences, while investigating and performing his duties as a police officer. The Supreme Court held that, it is necessary to protect a public servant in the discharge of their duties and they must be made immune from being harassed in criminal proceedings and Prosecution, which is the rationale behind Sections 196 and 197 of the Cr.P.C. It is equally important to emphasise that, rights of the citizens should be protected and no excesses should be permitted. That, in the facts and circumstance of each case, protection of public officers and public servants, functioning in discharge of official duties and protection of private citizens, have to be balanced, by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit. Section 196 Cr.P.C. states that no cognizance can be taken and even after cognizance is taken, if facts come to light that the acts complained of were done in the discharge of the official duties, then the trial may have to be stayed, unless sanction is obtained. The Supreme Court further observed that unless cognizance is taken and the facts and circumstances and the nature of the allegations involved in the case are gone into, the question whether the raiding

party exceeded its limits, or power, while acting in the official duties cannot be determined.

(iv) In ***Pukhraj*** (*supra*) the Supreme Court was dealing with a case in which the Appellant therein had filed a Complaint against his superior officer in the Postal Department, under Sections 323 and 502 of IPC, alleging that, when the Appellant went with a certain Complaint to the second Respondent, the said Respondent kicked him in his abdomen and abused him by saying "*sale, gunde, badmash. . .*". The Respondent filed an application under Section 197 of the Cr.P.C. praying that cognizance of the offence ought not to be taken by the Court , without the sanction of the Government, as required by Section 197 of the Cr.P.C. That, the alleged acts, if at all done by the accused, were done, while discharging his duties as a public servant. The trial Magistrate dismissed the application. The High Court allowed the revision application of the Respondent, while the Supreme Court noted that it might be possible for the Respondent to place materials on record during the course of the trial, indicating what his duties were and also that the acts complained of were so interrelated with his official duty, so as to attract the protection afforded by Section 197 of the Cr.P.C. The Supreme Court reiterated that the question whether sanction was necessary or not might have to depend from stage to stage upon the facts and circumstances of the case. The section is not restricted only to cases of anything purported to be done in good faith, as a person who ostensibly acts in execution of his duty, still purports so to act, although he may have a dishonest intention. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of

duty. The Supreme Court allowed the Appeal, to proceed without the sanction.

(v) Relevantly, the Supreme Court referred to the ratio in ***Dr. Hori Das Singh*** vs. ***The Crown***[11], wherein it was observed as follows;

> **"**.....
> The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction.
> .....**"**

(vi) In ***Matajog Dobey*** vs. ***H. C. Bhari***[12], the Supreme Court was of the view that there must be a reasonable connection between the act and the official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

(vii) On the edifice of the foregoing pronouncements of the Supreme Court, considering the facts placed before me, I am of the considered view that the matter against the Petitioner can proceed without sanction at this stage and it is for the Trial Court to gauge whether it is necessary for sanction under Section 197 of the Cr.P.C. to be obtained for prosecuting/proceeding against the Petitioner.

(viii) The argument of Learned Senior Counsel for the Petitioner that non-compliance of Section 202(1) of the Cr.P.C. was against the mandate of law was sought to be fortified by the decision of the Supreme Court in ***Aroon Poorie*** (*supra*), wherein it was observed that the provisions of Section 202(1) of the Cr.P.C.

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[11] AIR 1939 FC 43
[12] AIR 1955 SC 44

was mandatory and the Magistrate was required to hold an inquiry either by himself or direct an investigation by the police prior to the issuance of process. As the mandatory process in ***Aroon Poorie*** (*supra*) had not been followed the Trial Court would not have the jurisdiction to issue process/summons as was done.

(ix) Indeed, it is no longer *res integra* that the provisions of Section 202 of the Cr.P.C. are mandatory. This provision vests upon the Magistrate the jurisdiction to conduct inquiry, for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment of Section 202 of the Cr.P.C, which came into force from 23-06-2006, vide Act 25 of 2005, makes it mandatory for a Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the Court, as in the instant case.

(x) In ***Vijay Dhanuka and Others*** vs. ***Najima Mamtaj and Others***[13], the Supreme Court while elucidating the term "inquiry" observed that inquiry means every inquiry other than the trial conducted under the Cr.P.C. by a Magistrate or Court. It was also elucidated that it is evident from Section 2(g) of the Cr.P.C. that every inquiry other than trial conducted by the Magistrate or the Court is inquiry. That, no specific mode or manner of inquiry is provided under Section 202 of the Cr.P.C. and the inquiry envisaged under Section 202 of the Cr.P.C., the witnesses are examined whereas under Section 200 of the Cr.P.C., examination of the Complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an "inquiry"

[13] (2014) 14 SCC 638

envisaged under Section 202 of the Cr.P.C. The Supreme Court observed as follows;

> **"12.** ……. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.**"**

6. The impugned Order dated 02-03-2021, reveals that the Magistrate perused the Complaint and examined the Complainant and his two witnesses on solemn affirmation and thereafter the process was issued. In light of the above pronouncement, this suffices to establish inquiry. Pertinently, it may be remarked that the judicial system in our country is an adversarial system and not inquisitorial, where the Magistrate would be expected to be actively involved in investigating into the matter personally for arriving at the truth. Under the present legal system followed, it suffices that the Magistrate has taken steps for examining the witnesses as held in ***Vijay Dhanuka*** (*supra*). Consequently, this argument advanced by Learned Senior Counsel for the Petitioner also cannot be countenanced.

7. For the foregoing detailed reasons, the impugned Orders suffer from no deficiency and thereby warrant no interference. The Petition consequently stands rejected and dismissed.

8. Crl.M.C. is disposed of accordingly.

9. Pending applications, if any, also stands disposed of.

(Meenakshi Madan Rai)
Judge
06-06-2025

Approved for reporting : **Yes**

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