RAJU

v.

STATE OF HARYANA

MAY 2, 2001

[M.B. SHAH AND BRIJESH KUMAR, JJ.]

Indian Penal Code-Sections 302 and 376—Death Penalty—Justification of—Accused raped and thereafter committed murder of an 11 year old girl—Accused admitted that he had committed murder as the girl threatened to disclose the incident to her family—Accused not a habitual criminal—Held, this is not the rarest of rare crimes justifying death penalty.

The Appellant was prosecuted for commission of offences under Sections 302, 376 and 363 of the Indian Penal Code. The prosecution story was that on 5.1.1997, the deceased, an eleven-year-old girl, had gone out to fetch milk at about 6 p.m. PW2 saw the Appellant offering toffees to the deceased and other children. Thereafter, the Appellant and the deceased went away. As the deceased did not come back till 9.00 p.m., PW1 and some other persons searched for her through the night. The dead body of the deceased was found the next morning. Blood stained brick and blood was also found on the spot. FIR was lodged by PW1 on 6.1.1997 at 7.30 a.m.

The Appellant made an *extra judicial* confession before PW3 and admitted that he had committed rape and murder of the deceased. PW3 was known to the father of the Appellant. The Appellant admitted that he gave two brick blows to the deceased as she stated that she would disclose the incident, at her house.

The Appellant requested PW3 to help him.

The FSL report established that that the pants and the shirt worn by the Appellant had several stains of human blood. Semen and blood were found on the underwear of the Appellant.

The Appellant was convicted by the Sessions Judge under Sections 302, 376 and 363 of the Indian Penal Code and was sentenced to death under Section 302, to 7 years rigorous imprisonment under Section 376 and to 3 years rigorous imprisonment under Section 363.

A **The Appellant filed an appeal to the High Court against the order of the Sessions Judge. The matter was also referred to the High Court for confirmation of death penalty under Section 366 of the Code of Criminal Procedure. The High Court confirmed the conviction of the Appellant and the sentence awarded by the Sessions Judge.**

B **The Appellant filed appeal before this Court.**

Dismissing the appeal against conviction and commuting death penalty to imprisonment of life, the Court.

HELD : 1. The High Court after appreciating the entire evidence has C **rightly confirmed the conviction order passed by the Sessions Court. The evidence on record, particularly the evidence of PW1 and PW2 which clearly establishes that Appellant enticed deceased, a young girl aged about 11 years, to accompany him on 5.1.1997 at about 6 P.M. There is no reason to discard the extra judicial confession made by the Appellant before PW3. There is no explanation given by the Appellant as to how blood was there on the shirt** D **put on by him and how there were blood stains on the pant and underwear. [412-D-E]**

2. In the present case, from the confessional statement made by the Appellant, it would appear that there was no intention on the part of the Appellant to commit the murder of the deceased child. He caused injury to E **the deceased by giving two brick blows as she stated that she would disclose the incident at her house. On the spur of the moment without there being any premeditation, he gave two brick blows which caused her death. There is nothing on record to indicate that the Appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these** F **circumstances, it would be difficult to hold that the case of the Appellant would be rarest of rare case justifying imposition of death penalty. [414-B-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 581 of 2000.

G From the Judgment and Order dated 26.4.2000 of Punjab and Haryana High Court in Murder Reference No. 3 of 1999 and Crl. A. No. 463-DB/99.

Tara Chand Sharma, Rajeev Sharma and Ms. Pankhuri Srivastava for the Appellant.

H Gautam Awasthi and Mahabir Singh for the Respondent.

The Judgment of the Court was delivered by

SHAH, J. In Sessions Case No. 7 of 1997 after appreciating the evidence, the Sessions Judge, Gurgaon by order dated 7.9.1999 convicted the appellant for the offence punishable under Sections 302, 376 and 363 I.P.C. and sentenced him to death under Section 302, to 7 years rigorous imprisonment under Section 376 and 3 years rigorous imprisonment. under Section 363. The High Court of Punjab and Haryana at Chandigarh by order dated 26th April, 2000 in Murder Reference No. 3 of 1999 and Criminal Appeal No. 463-DB of 1999 confirmed the conviction and sentence. That judgment and order is under challenge in this appeal.

It is the prosecution case that Rinku aged about 11 years was missing from the evening of January 5, 1997. Her body was found on the next day at about 6.30 a.m. The prosecution story as revealed by PW 1 Ram Kewal was that he lodged the FIR at 7.30 a.m. on finding the dead body of Rinku near the bushes at Medical College ground. It is his say that on 5.1.1997, she had gone out of the house at about 6.00 p.m. to bring milk. After she brought milk, he saw Raju (accused) offering toffees to Rinku and other children. PW2 Makhan Lal a neighbour had also seen Rinku and Raju going towards Chandan Nagar. As Rinku had not returned till 9.00 p.m., they looked for her as well as Raju throughout the night. In the morning, they found the dead body of Rinku. Blood stained brick and blood was also found lying on the spot. Immediately, after asking PW2 to wait at the scene of offence, PW1 Ram Kewal reached at the Gurgaon Police Station and lodged the FIR at about 7.30 a.m. Further prosecution version is that on 6.1.1997 accused contacted PW3 Subhash Sharma and made confessional statement to him that he committed rape and murder of Rinku near the boundary wall of college building. He stated that he caused injury to the deceased by the brick on her head and mouth as the deceased stated that she would report at the house with regard to the rape committed by him. Accused sought his help to save him. It is the say of the witness that when he was taking the accused towards the police station, the uncle of the girl and the police met him and he handed over the accused to the police. After completing the necessary investigation, the accused was charged and convicted as stated above.

Mr. Tara Chand Sharma, learned counsel for the appellant submitted that the High Court committed error in convicting the appellant as there is no evidence on record to connect the accused with the crime. The circumstantial evidence upon which reliance is placed by the High Court is not sufficient

so as to convict the appellant for the offence for which he is charged and in any case, it is not a case for imposing the punishment of death. It is his contention that if Ram Kewal PW1 and Makhan Lal PW2 were knowing that the deceased child had accompanied the accused by evening time, and she did not return till midnight, they would have immediately lodged the FIR for kidnapping. As they have not done so, it would mean that they were not knowing that the deceased had gone in the company of the accused who was the tenant of PW1 for few months and thereafter residing in neighbourhood.

As against this, learned counsel for the State submitted that the crime committed by the accused is heinous. There is sufficient circumstantial evidence on record to connect the accused with the crime and the courts below have rightly convicted the accused and imposed the death sentence.

We have gone through the entire evidence on record, particularly, the evidence of PW1 Ram Kewal and PW2 Makhan Lal which clearly establishes that accused enticed deceased Rinku young girl aged about 11 years to accompany him on 5.1.1997 at about 6 p.m. PW1 has stated that he saw Raju taking Rinku towards Chandan Nagar. It has come in evidence of PW1 that when she did not return to the house up to 8 or 9 p.m., the whole night they searched for Rinku and accused Raju, but could not locate them. On the next morning, Ram Kewal PW1 along with Makhan Lal PW2 reached near the bushes at Government College compound and found the dead body of Rinku lying there. Immediately PW1 went to the police station City Gurgaon and lodged the FIR Ex. PA. The I.O. prepared the necessary panchnama and blood stained earth, blood stained brick on which hair were also stuck, shawl and pair of chappal were taken into possession vide recovery Memo Ex.PB. Dr. Suresh Bakshi PW5 along with Dr. Vandana Narula PW 13 conducted the post mortem examination and noticed three injuries on her person. The cause of death in their opinion was due to shock and haemorrhage as a result of injuries which were ante-mortem in nature and sufficient to cause death in ordinary course of nature. The evidence of PW1 is also corroborated by the evidence of PW2 Makhan Lal who is resident of the same locality and is not related to the deceased or the accused. He was ironing the clothes in front of house of PW1 in the same locality. He saw accused distributing toffees to the children at about 6.00 p.m. and noticed that Raju was talking with the deceased Rinku while going towards Chandan Nagar. He accompanied PW1 for search of Rinku. In view of the aforesaid evidence, in our view, the prosecution has established beyond any doubt that accused enticed minor Rinku on 5.1.1997 at evening time and took her towards Chander Nagar at

Gurgaon. The accused and deceased were last seen together going towards Chandan Nagar by PW2. Secondly, accused along with the deceased was not traceable on the night of the incident. The dead body of Rinku was traced in the morning in the Government College compound near bushes. Search continued for the whole night. Therefore, not lodging of FIR during the night time would not at all be a ground for doubting the evidence of PW1 and PW2. Apart from the aforesaid evidence, in our view, there is no reason to discard the extra judicial confession made by the accused before PW3 Subhash Sharma. PW3 is also resident of the same locality and was working on a lathe machine in Patel Nagar, Gurgaon. After making confession, accused sought his help to save him. It has come on record that father of the accused was plying rickshaw and PW3 was sending his goods in his Rickshaw and that the accused was coming to his work-shop quite often. The witness has also stated that the father of the accused was meeting him on number of occasions. On 8.1.1997, the father of the accused asked PW3 to inquire about the case and, therefore, he had gone to the police station. At the police station, he accompanied the police with Raju at the scene of offence. The accused pointed out the place where he committed rape and where he had thrown the dead body. He had denied the suggestion that as he was having good relations with PW1, he was making false statement. In our view, there is no reason to discard the confessional statement made before an independent witness who was known to the accused and his father.

Further, FSL report establishes that the pant put on by the accused was stained with numerous small dark brown stains/streaks especially on the front. Similarly, the multi coloured printed terrycot shirt of the accused was also stained with numerous darkish stains specially on his sleeves and contained human blood as per the FSL report. On the underwear worn by the accused, blood and semen was found. There is no explanation given by the accused how the blood was there on the shirt put on by him and that how there were blood stains on the pant and underwear. We would add at this stage that in his statement under Section 313 Cr. P.C. the accused abjured his guilt and denied all the allegations made against him. According to him he had paid advance rent of one year to Ram Kewal PW1 but he was turned out of the house after six months and that he had been falsely implicated in the case as there was quarrel between him and Ram Kewal PW1. In our view, this defence is totally baseless. If the accused was turned out of the house after taking one year's rent in advance, there was no reason for PW1 to implicate the accused in the crime.

In this view of the matter, in our view, the High Court after appreciating

A the entire evidence has rightly confirmed the conviction order passed by the Sessions Court. However, the next question is whether this would be a rarest of rare cases where extreme punishment of death is required to be imposed. In the present case, from the confessional statement made by the accused, it would appear that there was no intention on the part of the accused to commit the murder of the deceased child. He caused injury to the deceased B by giving two brick blows as she stated that she would disclose the incident at her house. It is true that learned Sessions Judge committed error in recording the evidence of SI Shakuntala, PW 15 with regard to the confessional statement made to her, but in any set of circumstances, evidence on record discloses that accused was not having intention to commit the murder of the girl who C accompanied him. On the spur of the moment without there being any premeditation, he gave two brick blows which caused her death. There is nothing on record to indicate that the appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these circumstances, it would be difficult to hold that the case of the appellant would be rarest of rare case justifying imposition of death penalty. D

We, therefore, uphold the conviction of the appellant under Section 302, but commute the sentence of death to imprisonment of life. Subject to the aforesaid modification of sentence, this appeal is dismissed.

B.K.M. Appeal dismissed.

M.N. DAMANI

v.

S.K. SINHA AND ORS.

MAY 2, 2001

[D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.]

Code of Criminal Procedure, 1973—Section 482—Quashing of Proceedings—Scope of—Complaint by A against B—Allegations of forgery, threat and use of force made by B against A in application for bail—A files complaint for defamation—Proceedings quashed by the High Court—Held, there was a **prima facie** *case—Quashing not justified—Indian Penal Code—Section 500.*

Constitution of India—Article 136—New plea—Complaint filed by A against B—B raising plea of the complaint being barred by limitation for the first time before this Court—Held, fresh plea cannot be raised.

The Respondents were accused in a proceeding under Section 138 of the Negotiable Instruments Act, 1881. The Respondents filed an application for bail in the said proceedings and alleged therein that the Appellant had forcibly broken open he drawer and removed the cheque book. The Respondents further alleged that the Appellant forced the Respondents to write and sign the cheque.

The Respondents were ultimately convicted for offence under Section 138 of the Negotiable Instruments Act. The appeal filed by the Respondents against their conviction was dismissed.

The Appellant, thereafter, filed a private complaint against the Respondents alleging commission of offence under Section 500 of the Indian Penal Code. The Appellant alleged in the complaint that the Respondents had made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation. The Appellant further alleged that due to the imputations made by the Respondents, the reputation of the Appellant was lowered in the eyes of his partners, the staff and the workers.

On the basis of the complaint filed by the Appellant, the Magistrate

A recorded the sworn statement of the Appellant and issued summons to the Respondents for offence punishable under Section 500 of the Indian Penal Code.

The Respondents filed a petition under Section 482 of the Code of Criminal Procedure praying for quashing the proceedings. The High Court B allowed the petition filed by the Respondents and quashed the proceedings.

The Appellant filed a Special Leave Petition before this Court against the order of the High Court. The Respondents, *inter alia* contended that the complaint was barred by limitation. This plea was not raised before the lower courts.

C

Allowing the appeal, the Court

HELD : 1. On a plain reading of the order of the Magistrate, issuing summons to the respondents, keeping in view the allegations made in the complaint and sworn statement of the Appellant, it appears that a *prima facie* D case under Section 500 of the Indian Penal Code is made out. [420-D]

2. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit the prosecution to continue. [420-D]

E 3. Assuming that the imputations made could be covered by exception 9 of Section 499 Indian Penal Code, several questions still remain to be examined-whether such imputations were made in good faith, in what circumstances, with what intention etc. All these can be examined on the basis of evidence in the trial. [420-F]

F *Sewakram Sobhani* v. *R.K. Karanjia, Chief Editor, Weekly Blitz and Ors.*, [1981] 3 SCC 208; *Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi and Ors.*, [1996] 6 SCC 263; *Madhavrao Jiwaji Rao Scindia and Anr.* v. *Sambhajirao Chandrojirao Angre and Ors. etc.*, AIR (1988) SC 709; *Manjaya* v. *Sesha Shetti*, (1888) ILR 11 Mad. 477; *Sayed Ally* v. *King Emperor*, AIR (1925) Rangoon 360; *Anthoni Udayar and Ors.* v. *Velusami Thevar and* G *Anr.*, AIR 35 (1948) Madras 469 and *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdry and Ors.*, (1872) WR 11 SC 283, referred to.

4. Since the question of limitation was not raised before the High Court by the Respondents and further whether the offence is a continuing one or not and whether the date of the commission of offence could be taken as the H one mentioned in the complaint are not the matters to be examined at this

stage. [422-H] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 596 of 2001.

From the Judgment and Order dated 22.2.2000 of the Karnataka High Court in Crl. Petition No. 3668 of 1999. B

L. Nageswara Rao, Jayant Muthraj, Shambhu Nath Singh and D. Mahesh Babu for the Appellant.

B.B. Singh for the Respondents.

C

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. Leave granted.

The appellant filed a private complaint against the respondents alleging that they made imputations against him in the application made under Section D 436 Cr.P.C. before the XIth Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bangalore in C.C. No. 24877/96. The imputations made are to the following effect: -

> "However Mr. M.N. Damani removed the cheque book at 9-30 by forcibly breaking open the drawer and made the accused 2 and 4 to E write and sign by forge/threat as mentioned in the correspondence."
>
> "Mr. M.N. Damani had collected the cheques from us forcefully at 9-30 p.m. by threatening to hit us by lifting the office chair and by forcefully break opening the drawer of table containing the cheque book which was locked by our Accountant while leaving the office F for the day."

The Magistrate found these allegations as false and convicted the respondents (accused) for the offence under Section 138 of the Negotiable Instruments Act on 17.12.1998. An appeal filed against the said order was G dismissed by the IV Additional Sessions Court, Bangalore on 30.7.1999. According to the appellant the respondents made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation; due to these imputations made by them, the reputation of the appellant has been lowered in the eyes of his partners, the staff and the workers of factory at Vapi. Hence he prayed for H

A punishing the respondents for the offence under Section 500 IPC. The Magistrate, on the complaint, after taking cognizance of the offence, recorded the sworn statement of the complainant (appellant herein). The Magistrate in his order stated thus: -

> B "From the sworn statement of the complainant and also from the documents produced by him, it is clear that the accused persons have made imputation against the complainant intending to harm or knowing or having reasons to believe, that such imputation will harm the reputation of the complainant. In my opinion, there are sufficient grounds to proceed the case against the accused persons for the C offence punishable under section 500 of the I.P.C."

Hence he issued summons to respondents 1 to 3 for the offence punishable under Section 500 IPC.

The respondents filed a criminal petition before the High Court under D Section 482 Cr.P.C. praying for quashing the proceedings in C.C. No. 25353/99 arising out of PCR 559/99, pending on the file of the XIth Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bangalore. After hearing the learned counsel for the respondents and the appellant (party-in-person) the learned single Judge of the High Court allowed the petition and quashed the E proceedings in C.C. No. 25353/99. Hence this appeal is brought before this Court assailing the order of the High Court.

Mr. L. Nageswara Rao, learned senior counsel for the appellant, contended that the impugned order is, on the face of it, unsustainable. According to him the High Court was not right in interfering with the order F passed by the learned Magistrate issuing summons to the respondents prima facie finding a case against them for proceeding with the complaint. In support of his submissions he cited two decisions of this Court in *Sewakram Sobhani* v. *R.K. Karanjia, Chief Editor, Weekly Blitz and others,* [1981] 3 SCC 208 and *Shatrughna Prasad Sinha* v. *Rajbhau Surajmal Rathi and others* G [1996] 6 SCC 263.

Mr. B.B. Singh, learned counsel for the respondents, while making submissions supporting the impugned order, raised a new contention that the complaint filed by the appellant was barred by time and no cognizance of it could have been taken by the Magistrate. This argument was made on the H basis that similar statements were made in the letter dated 26.2.1996 and the

same were repeated in the application filed by the respondents under Section 436 Cr. P.C. seeking their discharge in CC No. 24877/96; the complaint was filed on 13.8.1999; if 26.2.1996 is taken as the starting point for limitation the complaint filed on 13.8.1999 was clearly barred and no cognizance of it could be taken under Section 468 Cr.P.C. This argument was refuted contending that this point of limitation was not raised before the Magistrate; the offence was continuing one having regard to its nature; the imputations made in the application filed by the respondents on 26.9.1996 under Section 436 Cr.P.C. seeking their discharge is considered as the date of commission of offence, the complaint filed by the appellant is not hit by Section 468 Cr.P.C. The learned counsel for the respondents in support of his submissions relied on decisions in *Manjaya against Sesha Shetti,* (1888) ILR 11 Mad., 477; *Sayed Ally* v. *King Emperor,* AIR (1925) Rangoon 360; *Anthoni Udayar and others* v. *Velusami Thevar and another,* AIR 35 (1948) Madras 469 and *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdry and others,* (1872) WR 11 SC 283.

We have considered the rival submissions. The High Court relying on para 7 of the judgment in *Madhavrao Jiwaji Rao Scindia and another* v. *Sambhajirao Chandrojirao Angre and others etc.* AIR (1988) SC 709 exercising jurisdiction under Section 482 quashed the proceedings. The learned Judge did not bestow his attention to the facts of that case and the discussions made in paras 6 and 8 of the said judgment. In that case the complaint was filed for offences punishable under Sections 406 and 407 read with Sections 34 and 120-B of the Penal Code. That was a case where the property was trust property and one of the trustees was member of the family. The criminal proceedings were quashed by the High Court in respect of two persons but they were allowed to be continued against the rest. In para 6 of the same judgment it is clearly stated that the court considered relevant documents including the trust deed as also the correspondence following the creation of the tenancy and further took into consideration the natural relationship between the settler and the son and his wife and the fall out. Para 8 of the judgment reads: -

> "8. Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal

A offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the
B criminal case should not be continued."

Thus, the said judgment was on the facts of that case, having regard to various factors including the nature of offences, relationship between the parties, the trust deed and correspondence following the creation of tenancy. The High Court has read para 7 in isolation. If para 7 is read carefully two
C aspects are to be satisfied: (1) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to permit a prosecution to continue. On plain reading of the order of the Magistrate, issuing summons to the respondents keeping in view the allegations made in the complaint and sworn
D statement of the appellant it appears to us that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit a prosecution to continue. The learned Judge has failed to apply the tests indicated in para 7 of the judgment on which he relied. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a
E trial. The Magistrate had convicted the respondents for the offences under Sections 138 of the Negotiable Instruments Act and the appeal filed by the respondents was also dismissed by the learned Sessions Judge. Assuming that the imputations made could be covered by exception 9 of Section 499 IPC, several questions still remain to be examined - whether such imputations
F were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. The decisions in *Manjaya* against *Sesha Shetti,* (1888) ILR 11 Mad., 477, *Sayed Ally* v. *King Emperor,* AIR 1925 Rangoon 360 and *Anthoni Udayar and others* v. *Velusami Thevar and another,* AIR 35 (1948) Madras 469, cited by the learned counsel
G for the respondents are the cases considered "after conviction" having regard to the facts of those cases and the evidence placed on record. The decision in *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdry and others,* (1872) WR 11 SC 283 arose out of a suit for damages for defamation. These decisions, in our view, are of no help to the respondents in examining whether the High Court was justified and right in law quashing the criminal proceedings that
H too exercising its jurisdiction under Section 482 Cr.P.C.

Para 6 of the judgment in *Sewakram's case* (supra) reads: A

"6. The order recorded by the High Court quashing the prosecution under Section 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under B Section 251 of the Code. The requirements of Section 251 are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or demands to be tried. The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under Section 500 of the C Code unless he pleads one of the exceptions to Section 499 of the Code."

Xxx xxx xxx xxx

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

Again, in para 18 of the judgment dealing with the aspect of good faith in relation to 9th Exception of Section 499, it is stated that several questions arise for consideration if the 9th Exception is to be applied to the facts of the case. Questions that may arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposes to F demolish the defence and that stage for deciding these questions had not arrived at the stage of issuing process. It is stated, "Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on." G

Para 13 of the judgment in *Shatrughna Prasad Sinha's* case (supra) reads: -

"13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, H

A on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community B as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and C come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate D prima facie came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not E a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC."

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

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

In the result for the reasons stated the impugned order of the High Court is set aside and that of the Magistrate is restored. The appeal is allowed accordingly. A

B.K.M. Appeal allowed.