

A RAJDEEP SARDESAI

v.

STATE OF ANDHRA PRADESH & ORS.

(Criminal Appeal No. 857 of 2012)

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MAY 14, 2015

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Code of Criminal Procedure, 1973:

C s.199(4)(b) – Prosecution for defamation – Previous
sanction – Second respondent, the Additional Commissioner
of Police aggrieved with the news item allegedly making false
implication against him with regard to Sohrabuddin encounter
D case published by appellants in their respective publications
and/or telecasted on their channel – Second respondent
sought previous sanction u/s.199(4)(b) for prosecution of
appellants which was accorded and complaints were filed
against appellants through State Public Prosecutor –
E Magistrate took cognizance of offence and passed
summoning orders – s.482 petition by appellants on the
ground that they were not individually named in the said
sanction order – High Court refused to quash the proceedings
– Held: It was not necessary for the State Government to
F separately issue sanction order against each one of the
appellants when they were all responsible for telecasting and
publishing the said news item in electronic and print media
and also when the names of the said electronic and print
G media were already mentioned in the said sanction order – It
is sufficient if one sanction is accorded to prosecute all the
concerned persons involved in that occurrence.

s.199 – Exercise of power under – Held: Is in
administrative and ministerial capacity and such sanction is
as per the subjective satisfaction on the part of the State
H Government – Discussed.

s.199 – Contention for the appellants that the act of the second respondent allegedly aiding the Gujarat Police Officers to facilitate taking Sohrabuddin from Bidar to Ahmedabad, has nothing to do with the discharge of his public functions, hence, the said statement in the news item allegedly defaming the second respondent does not attract s.199 – Held: Such contention wholly untenable in law, for the reason that determining the question on whether or not the second respondent while aiding the Gujarat Police at that point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record – All India Services (Conduct) Rules, 1968.

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Dismissing the appeals, the Court

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HELD: 1. The previous sanction was accorded to launch necessary prosecution against the channel and the newspaper. Section 199 of Cr.P.C., r/w the All India Services (Conduct) Rules, 1968 provides that previous sanction must be accorded, authorising the initiation of criminal prosecution against the accused, however, the said provisions do not state that it is necessary to mention the names of each one of the accused who are alleged to have committed the offence in the same alleged transaction. Therefore, in the case on hand, when the previous sanction was accorded by the State Government against those who were responsible for the telecast/publication of the news both in electronic and print media which according to the second respondent damaged his reputation, it was not necessary for the State Government to separately issue sanction order against each one of the appellants, when they are all responsible for telecasting and publishing the said news

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A item in the electronic and print media and also when the
names of the said electronic and print media have
already been mentioned in the said sanction order.
Therefore, there is no merit in the contention on behalf
of the appellants that their names have not been
B specifically mentioned in the said sanction order. [Para
26] [28-G-H; 29-A-E]

2. The exercise of power by the State Government
under Section 199 of Cr.P.C. is in the administrative and
C ministerial capacity and such sanction is as per the
subjective satisfaction on the part of the State
Government. [Para 27] [29-G]

D *Gour Chandra Rout & Anr. v. The Public Prosecutor,
Cuttack* AIR 1963 SC 1198: 1963 Suppl. SCR 447;
P.C. Joshi & Anr. v. The State of Uttar Pradesh AIR 1961
SC 387: 1961 SCR 63; *Mansukhlal Vithaldas
Chauhan v. State of Gujarat* 1997 (3) Suppl. SCR 705:
(1997) 7 SCC 622 – Held inapplicable.

E 3. The sanction was accorded by the State
Government after appreciating that the statements
telecast/published by the appellants in the electronic and
print media as well as the statement given by the
F appellant in the Urdu Daily on the basis of which the
news is published by its Editor, which were all
statements defaming the second respondent while he
was discharging his public function as a public servant.
Therefore, the contention on behalf of the appellants that
G there was no application of mind on the part of the State
Government in according the said sanction is wholly
untenable in law. [Para 28] [30-H; 31-A-C]

H 4. The contention was urged by the appellants that
the act of the second respondent allegedly aiding the

Gujarat Police Officers to facilitate taking Sohrabuddin from Bidar to Ahmedabad, has nothing to do with the discharge of his public functions, hence, the said statement in the news item allegedly defaming the second respondent being telecast and published in electronic and print media do not attract Section 199 of Cr.P.C. This contention is also wholly untenable in law, for the reason that determining the question on whether or not the second respondent while aiding the Gujarat Police at that point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record. [Para 29] [31-C-G]

5. By careful reading of Section 199(4) of the Cr.P.C., it does not indicate that in order to initiate criminal proceedings against the accused, the public servant needs to obtain sanction from the State Government in respect of each one of the persons against whom the same transaction of offence is alleged and the names of the accused are required to be mentioned specifically in the sanction order accorded by the State Government. It is sufficient if one sanction is accorded to prosecute all the concerned persons involved in that occurrence. [Para 32] [33-A-C]

Rubabbuddin Sheikh v. State of Gujarat and Ors. 2010 (1) SCR 991; 2010(2) SCC 200 – Distinguished.

Master Girdhari Lal, Printer & Publisher of Naya Bharat v. The State 1969 CriLJ P&H 1318; *Pachhalloor Noohu v. Public Prosecutor* 1975 CriLJ Kerala 1304; *Sant Lal v. Krishan Lal* 1976 CriLJ Delhi 215; *B. Basavalingappa and Anr. v. V. Narasimhan* 1974 Cri LJ Karnataka 66 – approved.

- A *Urmila Devi v. Yudhvir Singh* (2013) 15 SCC 624 : 2013 SCALE 513; *Madan Lal v. The State of Punjab* AIR 1967 SC 1590: 1967 SCR 439; *Jagir Singh v. Ranbir Singh and Anr.* AIR 1979 SC 381: 1979 (2) SCR 282; *Kartar Singh & Ors. v. The State of Punjab* AIR 1956 SC 541: 1956 SCR 476; *R. Rajagopal & Anr. v. State of T.N. & Ors.* (1994) 6 SCC 632 : 1994 (4) Suppl. SCR 353– referred to.

Case Law Reference

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|---|-------------------------|--------------------|---------|
| C | 1963 Suppl. SCR 447 | held inapplicable. | Para 12 |
| | 1961 SCR 63 | held inapplicable. | Para 12 |
| | 1997 (3) Suppl. SCR 705 | held inapplicable. | Para 12 |
| | 2013 SCALE 513 | referred to. | Para 12 |
| D | 1967 SCR 439 | referred to. | Para 13 |
| | 1979 (2) SCR 282 | referred to. | Para 15 |
| | 2010 (1) SCR 991 | distinguished | Para 18 |
| | 1956 SCR 476 | referred to. | Para 22 |
| E | 1994 (4) Suppl. SCR 353 | referred to. | Para 22 |
| | 1969 CriLJ P&H 1318 | approved | Para 25 |
| | 1975 CriLJ Kerala 1304 | approved | Para 25 |
| F | 1976 CriLJ Delhi 215 | approved | Para 25 |
| | 1974 CriLJ Karnataka 66 | approved | Para 25 |

CRIMINALAPPELLATE JURISDICTION: Criminal Appeal No. 857 of 2012.

- G From the Judgment and Order dated 29.04.2011 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 1638 of 2008.

WITH

- H Criminal Appeal Nos. 853, 854, 855, 856, 858, 851, 850

**RAJDEEP SARDESAI v. STATE OF ANDHRA
PRADESH & ORS.**

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and 852 of 2012.

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Guru Krishna Kumar, Sait Mahmood, Abhinav Mukerji, Sumoto de, Tanya Shree, Vivek Agarawal, Aruneshwar gupta, Manish Raghav, Nikhil Singh, Bijan Kumar Ghosh, Abhimanue Shrestha, Shilpi Dey (For Kamini Jaiswal) for the Appellant.

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P. Vishwanath Shetty, P. Venkat Reddy (For Venkat Palwai Law Associates), D. Mahesh Babu, T. N. Rao, Pappu Nageshwar Rao, Bina Madhavan (For Lawyer S Knit & Co) for the Respondents.

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The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. The present group of appeals is directed against the final common judgment and order dated 29.4.2011 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 1638 of 2008 and batch matters whereby, the High Court dismissed all the criminal petitions except Criminal Petition No. 7592 of 2007, which were filed against the order of summoning in various complaints filed by the Government of Andhra Pradesh on behalf of the second respondent. The following table would be apposite to clarify which appeal is filed against which criminal petition/complaint case:-

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Crl. Appeal Nos. before this Court	Crl. Petns. arising from Complaint Nos.	Complaint filed for defamation under Section (s) against appellants	Permission given for filing complaint vide Sanction Nos.
<p><u>857/2012</u> (Rajdeep Sardesai v. State of A.P. & ors.) <u>850/2012</u> (Sidhartha Gautam v. State of A.P. & Ors.) <u>852/2012</u> (Swati Vashista & Anr. v. State of A.P. & Ors.) <u>853/2012</u> (V.K. Shashikumar v. State of A.P. & Ors.) <u>855/2012</u> (Ahmed Ali Shaik & Anr. v. State of A.P. & Ors.) <u>856/2012</u> (Hemender Sharma & Ors. v. State of A.P. & Ors.)</p>	<p>Crl. P. Nos. 1874, 1590, 1646 & 1638 of 2008 filed before High Court against CC No. 1/2008 - reg. telecasting a news programme in CNN-IBN English News channel under the caption "20 minutes- Sohrabuddin Inside Story" on 13.5.2007 at 1730 hrs.</p>	<p>199(2) Cr.PC before the Court IV, Addl. Metropolitan Sessions Judge, Nampally imposing charges under Sections 499, 500 and 120B of IPC</p>	<p>G.O. Rt. No.6581 dated 27.10.2007</p>

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<p><u>Cri.A.Nos.854/2012</u> (Gulab Kothari & Ors. v. State of A.P. & Anr.) and <u>858/2012</u> (Hemender Sharma & Ors. v. State of A.P. & Ors.</p>	<p>Cri. P. No. 264 of 2008 before High Court against CC No.3/2008-reg. publication of news item in Rajasthan Patrika, Saturday Edn. dated 12.5.2007 under the Heading "Vanjara Par Kashtra Phanda</p>	<p>199(2) r/w Sec. 200 Cr.PC before the Court of II Addl. Metropolitan Sessions Judge, Nampally, imposing charges under Ss. 499, 500, 501, 502 and 120B of IPC</p>	<p>G.O. Rt. No.6582 dated 27.10.2007</p>
<p><u>Cri.A.851/2012</u> (Lateef Mohammad Khan v. State of A.P. & Anr.)</p>	<p>Cri. P. No.1252 of 2008 filed before High Court against CC No.24/2007-reg. publication of news items in Siasath Urdu Daily, dated 8.5.2007</p>	<p>199(2) r/w Sec.200 Cr.PC before the court of I Addl. Metropolitan Sessions Judge, Hyderabad imposing allegations under Sections 499, 500, 501, 502 and 120B of IPC</p>	<p>G.O. Rt. No.6580 and dated 27.10.2007</p>

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2. Brief facts of the case are stated hereunder:

A news item on various dates in the year 2007, allegedly making false implication against the second respondent-Rajiv Trivedi, Additional Commissioner of Police (Crimes and SIT), Hyderabad, Andhra Pradesh, with regard to the Sohrabuddin encounter case was published by the appellants in the respective publications and was telecast on CNN-IBN. A representation was given by the second-respondent to the Andhra Pradesh State Government seeking previous sanction under Section 199(4)(b) of the Code of Criminal Procedure (in short 'Cr.P.C.') for prosecution of the appellants for offences punishable under the provisions referred to supra. Accordingly, the previous sanction was accorded by the State Government vide G.O. Rt. Nos. 6581, 6582, 6583 and 6580 dated 27.10.2007 in favour of the second respondent permitting him to file complaints against the appellants through the State Public Prosecutor before the appropriate court of law against

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the individuals connected with electronic and print media as A
hereinbelow:

- a) Siyasat Urdu Daily: Sri Latif Mohammad Khan
- b) CNN-IBN English News Channel B
- c) Rajasthan Patrika (Jaipur) Hindi daily
- d) The Deccan Chronicle English Daily
- e) The Etemaad Urdu Daily C

(points (a)-(e) are hereinafter referred to as
'individual print and electronic media')

3. One of the above mentioned news items which was D
telecast on CNN-IBN English News channel under the caption
"30 minutes- Sohrabuddin the Inside Story" on 13.5.2007 at
1730 hours, which is subject matter of CC No. 1 of 2008, is
extracted hereunder for our examination:-

"Police sources say Vanjara and Pandian nabbed E
Kousarbai in Bidar with help from S.P. Rajiv Trivedi of
the Hyderabad Special Investigation Unit..... Rajiv
Trivedi provided cars with fake number plates in which
Sohrabuddin was brought to Ahmedabad and then killed F
in a fake encounter."

4. Pursuant to the above said sanction accorded by the
State Government of Andhra Pradesh, the criminal proceedings
were initiated by the State Public Prosecutor on behalf of the
State of Andhra Pradesh against the appellants. The State of G
Andhra Pradesh represented by the State Public Prosecutor
filed the complaints against the accused-appellants for the
offences referred to supra. The Additional Metropolitan
Sessions Judge before whom complaints were instituted by
the State Public Prosecutor, has taken the cognizance of the H

A offences alleged against the appellants and passed orders
summoning them to appear before the Court for further
proceedings in the respective cases.

5. Aggrieved by the summoning orders passed by the
B Additional Metropolitan Sessions Judge in C.C. No. 27 of
2007, C.C. NO. 3 of 2007, and C.C. No.24 of 2007, the
appellants filed CrI. P. Nos. 7592 of 2007, 264 of 2008 and
1252 of 2008 under Section 482 of Cr.P.C. before the High
Court of Andhra Pradesh, seeking to quash the same, urging
C various legal contentions.

6. The High Court after hearing all the above said petitions
together, advertng to the previous sanction order accorded in
favour of respondent No. 2 by the State Government under
D Section 199(4)(b) of the Cr.P.C., permitting the State Public
Prosecutor to initiate criminal proceedings for the offences
alleged against the appellants referred to supra and after
dealing with the contentions with regard to the legality and
validity of the said sanction orders read with the Rules and
E advertng to various judgments of this Court, allowed only
Criminal Petition No. 7592 of 2007 (M.J. Akbar & Anr. v. The
State of A.P.) and dismissed all other criminal petitions holding
that the news telecast in the electronic media by CNN-IBN and
other news items published in various newspapers of the
F appellants *per se* are integrally connected with the official
discharge of duties of the second respondent and held that
whether the same amounts to defamatory, libel or scandalous
statements is a matter that has to be decided on the evidence
to be adduced by the parties. The High Court further held that
G in the absence of any privilege to the broadcaster on par with
Section 7 of the Press and Registration of Books Act, 1867,
the appellants cannot claim to quash the criminal proceedings
initiated against them and there was no merit to quash the
said criminal proceedings against the appellants. Aggrieved
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by the common order of the High Court, these appeals are filed by the appellants raising certain substantial questions of law for consideration of this Court. A

7. Learned senior counsel Mr. Guru Krishna Kumar appearing on behalf of the appellants in Criminal Appeal Nos. 850, 852, 853, 855, 856, 857 of 2012 has contended that the State Public Prosecutor cannot make a complaint under Section 199(2) of Cr.P.C. against an individual in respect of whom no sanction has been accorded by the State Government as required under Section 199(4) of the Cr.P.C. B C

8. It is further contended by him on behalf of the appellants that they have been summoned on the complaint instituted by the State Public Prosecutor on behalf of the second respondent on the basis of the previous sanction order accorded by the State Government under Section 199(4) of the Cr.P.C. for prosecuting the individual electronic and print media involved in the case on hand and not for the prosecution of any named individual in the said sanction order and therefore, there is no application of mind on the part of the State Government while according the previous sanction orders in favour of the second respondent to initiate criminal proceedings under the said provisions referred to supra against the appellants herein. D E

9. It is further contended on behalf of the appellants that the High Court has erred in dismissing the criminal petitions of the appellants and not quashing the criminal proceedings against the orders of summons passed by the Additional Metropolitan Sessions Judge after taking cognizance of the complaints filed by the public prosecutor against the appellants, which are not maintainable in law. It is contended by him that the High Court has also not considered the relevant fact that telecasting the story by the appellant is not in connection with discharge of public functions of the second respondent being a public servant and this aspect of the matter has not been F G H

A dealt with by the High Court thereby, it has rendered the findings
as erroneous in law and therefore, the same are liable to be
set aside.

10. Further, it is contended by him that the High Court has
B failed to take into consideration an important aspect of the
matter namely, the State Government while examining the
representation submitted by the second respondent for
according previous sanction as required under Section 199(4)
C of the Cr.P.C. and All India Services (Conduct) Rules of 1968,
in his favour authorising the State Public Prosecutor to initiate
criminal proceedings against the appellants does not reflect
application of mind on the part of the State Government as
they have failed to find out whether or not the comments made
D against the second respondent by the individual electronic and
print media have got content which are defamatory, scandalous
or libellous and whether the same warrant the State
Government to permit such institution of criminal proceedings
E against the appellants under Chapter XXI of the Indian Penal
Code, 1860. Therefore, it is contended that the above explained
reasons would show lack of application of mind on the part of
the State Government to the facts presented to it and therefore,
the impugned sanction order accorded by it in favour of the
second respondent to initiate criminal proceedings against
F the appellants under the provisions of Cr.P.C. referred to supra
is vitiated in law and is liable to be set aside.

11. Further, it is contended by the learned senior counsel
that the High Court has also failed to take into consideration
G another relevant fact that the criminal complaints instituted by
respondent No. 1-State Government against the appellants,
is silent about their role in committing the alleged offence of
telecasting/publishing comments and allegations against the
second respondent which are allegedly defamatory, libellous
and scandalous.
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12. It is also contended on behalf of the appellants that the High Court has failed to appreciate that to arraign the appellants as the accused, the complainant ought to have made positive averments against them in the complaints and attributed a specific role to each one of them in committing the alleged offence, warranting initiation of criminal proceedings, the same has not been done, therefore, the summoning order issued by the Metropolitan Sessions Judge and the complaints filed against the appellants by the State Public Prosecutor are not sustainable in law and are liable to be quashed. The learned senior counsel in support of his contentions has placed reliance upon the following judgments of this Court in the cases of **Gour Chandra Rout & Anr. v. The Public Prosecutor, Cuttack**¹, **P.C. Joshi & Anr. v. The State of Uttar Pradesh**², **Mansukhlal Vithaldas Chauhan v. State of Gujarat**³ and **Urmila Devi v. Yudhvir Singh**⁴.

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13. Further, the learned senior counsel placing reliance upon Section 196(2) of Cr.P.C. contended that a specific sanction order is required to prosecute in respect of each person to initiate criminal proceedings under Section 120-B of I.P.C., the same has not been obtained by the second respondent. In support of this contention he placed reliance upon the judgment of this Court in the case of **Madan Lal v. The State of Punjab**⁵.

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14. Mr. Aruneshwar Gupta, the learned counsel appearing for the appellants in Criminal Appeal Nos. 854 and 858 of 2012, reiterated the aforesaid legal submissions made by Mr. Guru Krishna Kumar, the learned senior counsel on behalf of the appellants referred to supra. It is further contended by him in Criminal Appeal No. 854 of 2012 that it is evident from the

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¹ AIR 1963 SC 1198

² AIR 1961 SC 387

³ (1997) 7 SCC 622

⁴ (2013) 15 SCC 624 / 2013 SCALE 513

⁵ AIR 1967 SC 1590

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A notice dated 13.8.2007 that the sanction for the prosecution was sought against the Editor, News Reporter and Printer and Publisher of Rajasthan Patrika newspaper, however, no sanction was sought against the Appellant Nos. 1, 2 and 3 in Criminal Appeal No. 854 of 2012 who are the Editor in Chief, Advisor and printer and publisher of the said newspaper. After perusal of all the documents and material on record, the State Government granted sanction only against the Editor of Rajasthan Patrika Newspaper (the appellant in Criminal Appeal No. 858 of 2012) by its order dated 27.10.2007, after proper application of mind. The application for grant of sanction against appellant Nos. 1-3 who are the Editor in Chief, Advisor and Printer and Publisher was specifically rejected by the State Government, therefore, the criminal proceedings initiated against them is not valid in law.

15. It is further contended by him that since the respondents have not challenged the sanction accorded by the State Government dated 27.10.2007, authorising the criminal proceedings against the Editor and rejecting grant of sanction order against appellant Nos. 1-3 in CrI. Appeal No.854 of 2012, the same has become final, therefore, the public prosecutor has no authority to file any criminal complaint against the appellants in Criminal Appeal No.854 of 2012 who are the Editor-in-Chief, Advisor and Printer and Publisher of Rajasthan Patrika. He contended that what cannot be derived directly cannot be obtained indirectly by the process of court proceedings. He further placed reliance on the decision of this Court in the case of **Jagir Singh v. Ranbir Singh and Anr.**⁶, contending that in the absence of sanction to prosecute a named person, the public prosecutor cannot file a complaint and the Trial Court has no jurisdiction to judicially review the sanction order and issue summons against those persons whose name do not specifically appear as accused in the order

⁶ AIR 1979 SC 381

of sanction accorded by the State Government. It is further A
contended that this aspect of the matter has not at all been
considered by the High Court even though the legal submission
was made in this regard before it.

16. Both the learned counsel on behalf of the appellants B
contended that there must be valid and cogent material before
the State Government for according previous sanction in favour
of the second respondent permitting him to initiate criminal
proceedings against the appellants. It is contended by them C
that the State Government should have examined the facts,
allegations and names of the accused and then should have
reasonably applied its mind to conclude whether or not the
reputation of the second respondent while discharging his
public function as a public servant was intended to be harmed. D
Only after such reasonable application of mind by the State
Government to the facts placed before it, the sanction can be
accorded by it in favour of the second respondent to initiate
criminal proceedings and only then the court of sessions shall
take cognizance of such offence in the criminal proceedings
initiated against the appellants. This aspect of the matter has E
not been considered by the learned Judge of the High Court
while passing the impugned Judgment. Therefore, the
impugned judgment and order is vitiated in law and liable to
be set aside. F

17. It is further urged by the learned counsel on behalf of
the appellants that the High Court has erroneously held that
under the scheme of Section 199 of the Cr.P.C., the previous
sanction is required against all such persons who have
allegedly committed the offence and not necessarily against G
specific individuals in order to prosecute them for the offences
committed against a person in respect of his conduct in the
discharge of his public functions who at that time was a public
servant employed in connection with the affairs of the Union or H

- A State. Therefore, it is contended on behalf of the appellants in Criminal Appeal No. 858 of 2012 that the criminal proceedings initiated by the first respondent on behalf of the second respondent should have been confined to only against those persons named in the Government sanction order for the
- B offences referred to supra.

18. Mr. Aruneshwar Gupta, the learned counsel for the appellants in Criminal Appeal Nos.854 and 858 of 2012 further contended that several investigations were carried out pursuant to the orders passed by this Court in the Sohrabuddin case and on 12.5.2007, a report was submitted by Ms. Johri which finds reference in judgment of this Court in the case of ***Rubabbuddin Sheikh v. State of Gujarat and Ors.***⁷. The fact of the investigation by the CBI in Sohrabuddin's case was

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D in public domain and if that is published in the print media by the appellant (in CrI. A. Nos. 854 & 858 of 2012), the same cannot be made the basis of any defamation as it has referred to the judgment in the aforesaid case which is a public record.

E 19. It is also further contended by him that Rajasthan Patrika is a subscriber of United News of India (UNI) which is one of the largest News Agencies in India, providing news to several news papers in India. The UNI published and broadcast the news item dated 12.05.2007 and the appellants

F in Criminal Appeal No. 858 of 2012, being the Editor of Rajasthan Patrika got the same translated in Hindi and published it in their news paper which is allegedly defamatory to the second respondent. It is further contended by him that United News of India is the source and first broadcaster of the

G alleged defamatory news to its subscribers including the newspaper for which the appellant is the Editor, who acted and published in bona fide the alleged offending news believing it to be true and correct. Therefore, in the absence of any

H ⁷ 2010 (2) SCC 200

prosecution of UNI, the appellant cannot be prosecuted for the offence of defamation as the same is covered under the Explanation, 3 of Section 499 of I.P.C. A

20. It is further contended that freedom of expression demands that criminal defamation in relation to publication of news items and articles may not be invoked in all the cases but should be limited to only exceptional cases to redress the immediate harm done to the reputation of the individuals who have been defamed and shall not be allowed to be used as remedy to serve the ulterior goal as the same will have a negative and damaging effect on the freedom of expression guaranteed to the press. B C

21. It is further contended by him that Section 499 of I.P.C. defines the offence of defamation as spoken or written, Section 501 of I.P.C. is for defamatory printing or engraving of defamatory matter and Section 502 of I.P.C. is for sale of printed or engraved substances containing defamatory material. Therefore, Section 499 of I.P.C. would cover the Editor while Section 501 will cover the Publisher and Printer and Section 502 of I.P.C. covers the seller. As the offences mentioned under Sections 501 and 502 of I.P.C. are specifically distinct offences which are against the Publisher and the Seller, therefore, the previous sanction order was granted in favour of the second respondent against the Editor of the Newspapers and rejected against the Printer and Publisher. Therefore, in these appeals, the appellants cannot be tried for the offences under Section 499, 501, 502 of I.P.C. with the aid of Section 120-B of I.P.C. as the liability of defamation is only limited to the Editor. D E F G

22. In Criminal Appeal No. 851 of 2012, Mr. Abhimanue Shrestha, the learned counsel appearing for appellant-Mr. Lateef Mohd. Khan, General Secretary, Civil Liberties Monitoring Committee, who has allegedly made certain false and baseless statements against the second respondent under H

A the news item "Rajiv Trivedi-Hyderabad Ka Vanjara" "Fauri
Bharkhast Karne Ka Mutalika" published on 8.5.2007 in Siyasat
Urdu Daily, contended that the appellant is neither the Publisher
nor the Seller of the said Urdu Daily, therefore, one would
believe that he made such statements on the basis of the
B information through electronic and print media. It is therefore,
contended that in view of the nature of the allegations against
the second respondent, the appellant who is the Secretary of
the Civil Liberties Monitoring Committee made the above
statements published in Siyasat Urdu Daily to make the public
C aware of the same. The alleged offences are not attracted
against him as the allegations in the complaint do not constitute
any of the offences under Sections 500, 501, 502 and 120-B
of I.P.C. The learned counsel questioned the legality and validity
D of previous sanction accorded by the State Government in
favour of the second respondent to prosecute the appellant in
the said appeal by placing reliance on the decisions of this
Court in the cases of *Kartar Singh & Ors. v. The State of
Punjab*⁸ and *R. Rajagopal & Anr. v. State of T.N. & Ors.*⁹

E 23. On the other hand, Mr. P. Vishwanath Shetty, the
learned senior counsel appearing on behalf of the State has
sought to justify the sanction order authorising the Public
Prosecutor to institute criminal proceedings against the
appellants herein, the same was accorded after applying its
F mind to the facts stated in the representation given by the
second respondent that the statements telecast and published
in the electronic and print media by the appellants were
defamatory and affected his reputation and the same were in
G connection with the discharge of his public functions as an IPS
Officer. The State Government after applying its mind was
satisfied that the reputation of the second respondent was
harmed by printing and telecasting the defamatory statements
by the appellants herein. Therefore, it accorded the sanction

H ⁸ AIR 1956 SC 541 : 1956 SCR 476

⁹ (1994) 6 SCC 632

order under Section 199(4) of Cr.P.C. in favour of the second respondent to initiate criminal proceedings against the appellant, which provision does not speak of mentioning the names against whom the criminal prosecution has to be instituted by the State Public Prosecutor.

24. He has further contended that the learned Additional Metropolitan Sessions Judge, after applying his mind with regard to the allegations made against the appellants took cognizance of the matter and issued order of summons to the appellants to appear before the sessions court with their respective counter to the criminal proceedings initiated against them. The same was stalled by the appellants herein by initiating proceedings before the High Court and this Court. It is contended by him that the challenge before the High Court has been rightly rejected after dealing with each one of the rival legal contentions urged in the Criminal Petitions filed by the appellants, which do not warrant interference by this Court in exercise of its appellate jurisdiction, as the appellants are required to face the trial in the proceedings initiated against them by respondent No. 1- the State Government.

25. Mr. Pappu Nageshwar Rao, the learned counsel appearing for the second respondent, sought to justify the sanction accorded in favour of the second respondent by drawing our attention to the provisions of Sections 132, 188, 196, 197, 199 of Cr.P.C. He sought to distinguish previous sanction provided under Section 194 and placed reliance upon the judgments of various High Courts in the cases of *Master Girdhari Lal, Printer & Publisher of Naya Bharat v. The State*¹⁰, *Pachhalloor Noohu v. Public Prosecutor*¹¹, *Sant Lal v. Krishan Lal*¹² and *B. Basavalingappa and Anr. v. V. Narasimhan*¹³ in support of the proposition of law that previous

¹⁰ 1969 CriLJ P&H 1318

¹¹ 1975 CriLJ Kerala 1304

¹² 1976 CriLJ Delhi 215

¹³ 1974 CriLJ Karnataka 66

A sanction order by the State Government can be granted under Section 198B (3)(a) of the Code of Criminal Procedure, 1898, by any Secretary or authorisation of the Government in favour of a public servant to prosecute the persons who have committed offences of defamation against him. He further placed reliance upon Section 308 proviso 2 and Section 473 of Cr.P.C., regarding the limitation for sanction and Section 484 of Cr.P.C. regarding sanction saving clause to justify that the sanction accorded by the State Government to prosecute the appellants herein is perfectly legal and valid. He therefore urged that in view of the above, the sanction accorded by the State Government in favour of second respondent cannot be found fault with by the appellants and prayed for dismissal of these appeals.

D 26. We have heard the rival legal contentions urged on behalf of learned counsel for both the parties and answer the same by assigning the following reasons.

E With regard to the contention urged by learned senior counsel Mr. Guru Krishna Kumar on behalf of the appellants in Criminal Appeal No.857 of 2012 and connected appeals that the High Court has not considered all the issues raised before it in the criminal petitions filed by the appellants seeking for quashing of the criminal proceedings initiated against them, is wholly untenable in law for the reason that from perusal of the impugned order of the High Court, it is clear that the sanction was accorded by the State Government under the relevant Government order in favour of the second respondent. On examining the facts, circumstances and evidence on record, the previous sanction is accorded to launch necessary prosecution against the CNN-IBN channel, Siyasat Urdu Daily: Sri Latif Mohammad Khan, Rajasthan Patrika (Jaipur) Hindi daily, Deccan Chronicle English Daily and Etemaad Urdu Daily. By careful reading of the provision under Section 199 of Cr.P.C.,

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read with the All India Services (Conduct) Rules, 1968, it provides that previous sanction must be accorded, authorising the initiation of criminal prosecution against the accused, however, the said provisions do not state that it is necessary to mention the names of each one of the accused who are alleged to have committed the offence in the same alleged transaction. Therefore, in the case on hand, when the previous sanction was accorded by the State Government against those who were responsible for the telecast/publication of the news both in electronic and print media which according to the second respondent damaged his reputation, it is not necessary for the State Government to separately issue sanction order against each one of the appellants, when they are all responsible for telecasting and publishing the said news item in the electronic and print media and also when the names of the said electronic and print media have already been mentioned in the said sanction order. Therefore, there is no merit in the contention urged on behalf of the appellants that their names have not been specifically mentioned in the said sanction order. The said contention is untenable in law and therefore, liable to be rejected. The same is accordingly rejected.

27. Further, the reliance placed by the learned counsel on behalf of the appellants upon the judgments of this Court referred to supra while according sanction in favour of the second respondent to initiate the criminal proceedings against the appellants the State Government has not applied its mind, this contention is also wholly untenable in law as the exercise of power by the State Government under Section 199 of Cr.P.C. is in the administrative and ministerial capacity and according of such sanction is as per the subjective satisfaction on the part of the State Government. The learned senior counsel on behalf of the appellants has placed reliance upon the judgments of this Court in the cases of *Gour Chandra Rout & Anr. v.*

A ***The Public Prosecutor, P.C. Joshi & Anr. v. The State of***
Uttar Pradesh and ***Mansukhlal Vithaldas Chauhan v. State***
of Gujarat (all referred to supra). With regard to the above
referred cases, the first two cases have not dealt with the
exercise of power under Section 199 of Cr.P.C., except stating
B the ministerial exercise of power by the State Government while
exercising its power under Section 198B (3)(a) of Cr.P.C, 1898.
In so far as the third case referred to supra upon which the
reliance placed upon by the learned senior counsel on behalf
C of the appellants, the same is in relation to the previous
sanction to be accorded by the State Government for the
purpose of prosecution under the provisions of the Prevention
of Corruption Act. Therefore, none of the above cases on which
reliance has been placed by the learned counsel on behalf of
D the appellants have any relevance to the fact situation on hand.

28. Having regard to the scheme of the Protection of Civil
Rights Act, 1955, the complainant-second respondent during
the relevant point of time was the Police Officer in the services
of the State Government and he cannot prosecute the
E appellants in a court of law without obtaining previous sanction
from the State Government as contemplated under the
aforesaid provisions of Cr.P.C. Therefore, in order to prosecute
the appellants, the second respondent made a representation
F to the State Government along with a petition with regard to
initiation of criminal proceedings against the appellants under
the provisions referred to supra in respect of which he has
sought the sanction of the State Government. On appreciation
of the same, the State Government in exercise of its
G administrative powers appreciated the facts of the matter,
rightly applied its mind and accorded the sanction under
Section 199(4) of Cr.P.C. in favour of the second respondent
to initiate criminal proceedings under the provisions referred
to supra against the appellants. The said sanction was
H accorded by the State Government after appreciating that the

statements telecast/published by the appellants in the electronic and print media as well as the statement given by the appellant in Criminal Appeal No. 853 of 2012 in the Urdu Daily on the basis of which the news is published by its Editor, which are all statements defaming the second respondent while he was discharging his public function as a public servant. Therefore, the contention on behalf of the appellants that there was no application of mind on the part of the State Government in according the said sanction is wholly untenable in law, liable to be rejected and the same is accordingly rejected.

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29. Further, the contention urged by the appellants' counsel placing reliance upon the aforesaid judgements that the act of the second respondent allegedly aiding the Gujarat Police Officers to facilitate taking Sohrabuddin from Bidar to Ahmedabad, has nothing to do with the discharge of his public functions, hence, the said statement in the news item allegedly defaming the second respondent being telecast and published in electronic and print media do not attract Section 199 of Cr.P.C. Therefore, it is contended on behalf of the appellants that the sanction accorded by the State Government is beyond its jurisdiction as the said act of aiding the Gujarat Police is an independent act and it is not in relation to the discharge of public functions of the second respondent though he, at that relevant point of time, was discharging his public functions. This contention on behalf of the appellants is also wholly untenable in law, for the reason that determining the question on whether or not the second respondent while aiding the Gujarat Police at that point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record.

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30. The reliance placed upon the judgment of this Court in the case of *Rubabbuddin Sheikh* (supra), contending that

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A the fact of the investigation by the CBI in Sohrabuddin's case was the subject matter before this Court at para 2 of the judgment in the case referred to supra, therefore, by publishing the same in the newspaper by the appellants (in CrI. A. Nos. 854 & 858 of 2012) cannot be made the basis of any
B defamation as the said news item was published after referring to the aforesaid judgment which is a public record. This contention urged on behalf of the appellants is wholly untenable in law for the reason that at para 2 of the said judgment of this
C Court in the above referred case is only with regard to the facts of that case, whereas, the allegations made against the appellants herein are for publishing and telecasting defamatory statements against the second respondent, which question of fact has to be examined, considered and answered only after
D regular trial proceedings before the learned Additional Metropolitan Sessions Judge. Therefore, the above contention urged in this regard is wholly untenable and the same is rejected.

31. Further, the learned counsel in Criminal Appeal Nos. 854 and 858 of 2012, placed reliance upon the judgment of
E this Court in the case of *Urmila Devi* (supra), in support of the proposition of law that only the Editor-In-Chief is responsible for the telecast or publication of the alleged defamatory statements against whom the sanction order is accorded and
F that there is no sanction order accorded to initiate prosecution against others. Further, the contention on behalf of the appellants that there must be specific mention of persons in the sanction order against whom prosecution can be launched and in the absence of the same, a single sanction order
G accorded by the State Government against all the other appellants in the connected appeals amounts to giving a wider interpretation of the provision under Section 199(4) of Cr.P.C., which is not the object of the aforesaid provision under the Cr.P.C. This aspect of the matter has not been examined by
H the High Court; therefore, impugned order is vitiated in law

and is contrary to the provisions of Section 199(4) of the Cr.P.C. A

32. By careful reading of Section 199(4) of the Cr.P.C., it does not indicate that in order to initiate criminal proceedings against the accused, the public servant needs to obtain sanction from the State Government in respect of each one of the persons against whom the same transaction of offence is alleged and the names of the accused are required to be mentioned specifically in the sanction order accorded by the State Government. It is sufficient if one sanction is accorded to prosecute all the concerned persons involved in that occurrence, thus, the contention on behalf of the appellants in this regard is also liable to be rejected and is accordingly rejected. B C

33. The contention urged by the learned counsel Mr. Abhimanue Shrestha on behalf of the appellants in Criminal Appeal No.851 of 2012 is also untenable in law for the reasons stated that the appellant has made a statement on the basis of the news items telecast/published in electronic and print media. The same cannot be accepted by us for the reason that it is a matter that has to be examined by the trial court after recording the findings of fact on the basis of valid and cogent evidence to be adduced by the State Public Prosecutor on behalf of the respondent. Therefore, there is no substance in the said contention urged on behalf of the appellants and the same is rejected. D E F

34. The learned counsel appearing on behalf of the second respondent rightly sought to justify the findings and reasons of the High Court in its impugned judgment, placing reliance on Sections 132, 188, 196, 197 and 199 of Cr.P.C., inter alia contending that for prosecution of an accused in the case of defamation of a public servant, sanction can be accorded under the old Section 198B(3b) of Cr.P.C., 1898, by any Secretary or authorisation by the Government. He has also G H

A placed reliance upon Section 2U of Cr.P.C. which defines a
Public Prosecutor as any person appointed under Section 24
and included any person acting under the directions of a Public
Prosecutor. The learned counsel on behalf of the second
respondent has rightly justified that the sanction accorded by
B the State Government to prosecute the appellants is perfectly
legal and valid by placing reliance on Section 308 proviso 2,
Section 473 of Cr.P.C. regarding the limitation for sanction
and Section 484 of Cr.P.C. The learned counsel has also rightly
placed reliance upon the judgments in the cases of **Master**
C **Girdhari Lal, Printer & Publisher of Naya Bharat v. The**
State, Pachhalloor Noohu v. Public Prosecutor and **Sant**
Lal v. Krishan Lal and **B. Basavalingappa and Anr. v.**
Narasimhan all referred to supra. Therefore, the submission
D made by him is well founded and the same must be accepted.

35. Further, the learned counsel for the appellants by
placing reliance on Articles 19 and 21 of the Constitution of
India contended that the initiation and continuance of the
criminal proceedings in the present cases hinder and hamper
E the very freedom of press which is most precious and constitute
an affront to the aforesaid provisions under the Constitution of
India. The said contention has been rightly rebutted by the
learned counsel on behalf of the respondents by strongly urging
that the reputation of an individual is also equally important
F and that the said aspect of the matter must be considered
after adducing cogent and valid evidence on record by the
Public Prosecutor before the learned trial Judge who shall then
appreciate the same and record his findings on merits of the
G case.

36. In view of the aforesaid reasons, we are of the opinion
that the impugned judgment passed by the High Court of
Andhra Pradesh in rejecting the petitions for quashing the
initiation of criminal proceedings against the appellants under
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Section 482 of the Cr.P.C. is perfectly legal and valid, the same does not call for interference by this Court in exercise of its appellate jurisdiction as there is no substantial question of law framed in the appeals nor is there any miscarriage of justice for the appellants to interfere with at this stage. In our considered view, having regard to the nature of the complaint, the respondents are required to prove the allegations against the appellants by adducing valid and cogent evidence, the same has to be considered by the trial court and accordingly record the findings on the merits of the case. The appeals are devoid of merit, liable to be dismissed and are accordingly dismissed. The orders granting stay of further proceedings before the trial court shall stand vacated.

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Devika Gujral

Appeals dismissed.

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