

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 13279/2024

(Arising out of impugned judgment and order dated 02-09-2024 in CRLMC No. 1013/2020 passed by the High Court of Delhi at New Delhi)

ARVIND KEJRIWAL & ANR.

Petitioner(s)

VERSUS

STATE (NATIONAL CAPITAL TERRITORY OF DELHI) & ANR. Respondent(s)

(IA No. 220289/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 30-09-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Vivek Jain, AOR
Mr. Mohd. Irshad, Adv.
Mr. Karan Sharma, Adv.
Mr. Sadiq Noor, Adv.
Mr. Rajat Jain, Adv.

For Respondent(s) Ms. Sonia Mathur, Sr. Adv.
Mr. Piyush Beriwal, AOR
Mr. Neeraj, Adv.
Ms. Shubhi Bhardwaj, Adv.
Mr. Nikhil Chandra Jaiswal, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. Heard Mr. Abhishek Manu Singhvi, learned senior counsel appearing for the petitioners. Also heard Ms. Sonia Mathur, learned senior counsel appearing for the respondent No. 2.

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NITIN KALPEDIA
Date: 2024.10.01
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Reason: []

The counsel for the petitioners reads Section 199 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") to say that for prosecution

for defamation, a complaint has to be made by an aggrieved person. The definition of 'Defamation' as given in Section 499 of the IPC, is then read to point out that the concerned publication should have the effect of harming the reputation of the complainant. By referring to Explanation-IV of Section 499 IPC, it is argued that unless the imputation, directly or indirectly, in the estimation of others, lowers the credibility of the complainant, such imputation cannot be said to have harmed a person's reputation and the penal provision would not be attracted.

3. The impugned judgment of the High Court (dated 02.09.2024) is based on, *inter alia*, another High Court judgment rendered on 29.08.2024 in Criminal M.C. No. 1394/2020 (*Shashi Tharoor v. State of NCT of Delhi*), which was stayed on 10.09.2024 by this Court. It has been argued from the side of the petitioners that unless 'injuries or harm to reputation' and 'being aggrieved by such imputation' are demonstrable on a *prima facie* basis, summoning of a person on charges of causing criminal defamation, may not be warranted.

4. Further, it is contended that nowhere in the complaint, it has been projected by the Complainant (Respondent No. 2) as to how his reputation has been lowered in the estimation of others. It is submitted that the concerned statements were made a few months before the parliamentary elections and those should be understood to be as part of the political discourse by the respective political parties contesting the elections.

5. On the other hand, Ms. Sonia Mathur, learned senior counsel would point out that Respondent No. 2 had not filed the complaint in his individual capacity but did so as the authorised representative of the BJP i.e., a political party. The counsel refers to the authorisation letter dated 16.01.2019 in support of her contention. According to the counsel, the concerned statements are defamatory in nature as they lower the credibility of the BJP, amongst the voters. She prays for time to file the counter affidavit.

6. The issue as to whether the Complainant (Respondent No. 2) or a political party would be covered under the definition of 'aggrieved persons' within Section 199 Cr.P.C. will require examination.

7. In a democratic nation like India, freedom of speech is a fundamental right guaranteed under Article 19(1)(a) of the Constitution. Therefore, a defamatory complaint under Section 499 of the IPC must necessarily be made by an 'aggrieved person' under Section 199 of the Cr.P.C. As such, the threshold has to be higher than usual, especially in context of public discourse amongst political personalities and parties.

8. Some understanding on the threshold level required for attracting charges of defamation can be gathered by perusing the ratio in *S. Khushboo v. Kanniammal & Anr.* reported in (2010) 5 SCC 600. In particular, the following paragraph of the aforementioned judgment is relevant:

"44. We are of the view that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, we are therefore inclined to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused."

9. Additionally, in the context of defamation, the Court had observed the following in *Subramanian Swamy v. Union of India, Ministry of Law & Ors.* reported in (2016) 7 SCC 221:

"198. The said provision is criticised on the ground that "some person aggrieved" is on a broader spectrum and that is why, it allows all kinds of persons to take recourse to defamation. As far as the concept of "some person aggrieved" is concerned, we have referred to a plethora of decisions in course of our deliberations to show how this Court has determined the concept of "some person aggrieved". While dealing with various Explanations, it has been clarified about definite identity of the body of persons or collection of persons. In fact, it can be stated that the "person aggrieved" is to be determined by the courts in each case according to the fact situation. It will require ascertainment on due deliberation of the facts. In *John Thomas v. K. Jagadeesan* [*John Thomas v. K. Jagadeesan*, (2001) 6 SCC 30 : 2001 SCC (Cri) 974] while dealing

with "person aggrieved", the Court opined that the test is whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. In *S. Khushboo* [*S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299], while dealing with "person aggrieved", a three-Judge Bench has opined that the respondents therein were not "person aggrieved" within the meaning of Section 199(1) CrPC as there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or readily identifiable group of people. The Court placed reliance on *M.S. Jayaraj v. Commr. of Excise* [*M.S. Jayaraj v. Commr. of Excise*, (2000) 7 SCC 552] and *G. Narasimhan* [*G. Narasimhan v. T.V. Chokkappa*, (1972) 2 SCC 680 : 1972 SCC (Cri) 777] and observed that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an "aggrieved person", the trial and conviction of an accused in such a case by the Magistrate would be void and illegal. Thus, it is seen that the words "some person aggrieved" are determined by the courts depending upon the facts of the case. Therefore, the submission that it can include any and everyone as a "person aggrieved" is too specious a submission to be accepted."

10. As is discernible from the above, the threshold for placing reasonable restrictions on the freedom of speech and expression is indeed very high. Additionally, as is evident in *S. Khushboo* (supra), there exists a presumption in favour of the accused.

11. Issue notice, returnable in 4 weeks.

12. In the meantime, further proceedings in pursuant to the impugned order is stayed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)
ASSISTANT REGISTRAR