

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.64 OF 2003

1. Shri Maulik Kotak,
Age 38 years, Occupation
Printer, Publisher
2. Shri Bharat Kapadia,
Age 42 years, Occupation
Assistant Publisher and Editor
3. Shri Dyanesh Maharao,
Age 45 years, Occupation
Executive Editor
4. Shri Ajit Popat,
Age 37 years, Occupation
Reporter
5. Shri Mahesh Shah,
Age 44 years, Occupation
Reporter
6. Shri Kaushik Mehta,
Age 33 years, Occupation
Reporter
7. Smt.Jyoti Rawal,
Age 43 years, Occupation
Reporter

Petitioner Nos.1 to 7 having
their address as 62, Vaju Kotak
Marg, Mumbai 400 001

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Janardyan s/o Krishnrao
Yerawar, Age about 42 years,
Occupation Business,
R/o Akshya Niwas, Ulhasnagar,
Malegaon, Nanded

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioners 1 and 3
Mr K.S.Patil, A.P.P. for respondent No.1
Mr S.G.Rudrawar, Advocate for respondent No.2

- WITH -

CRIMINAL WRIT PETITION NO.65 OF 2003

1. Shri Maulik Kotak,
Age 38 years, Occupation
Printer, Publisher
2. Shri Bharat Kapadia,
Age 42 years, Occupation
Assistant Publisher and Editor
3. Shri Dyanesh Maharao,
Age 45 years, Occupation
Executive Editor
4. Shri Ajit Popat,
Age 37 years, Occupation
Reporter
5. Shri Mahesh Shah,
Age 44 years, Occupation
Reporter
6. Shri Kaushik Mehta,
Age 33 years, Occupation
Reporter
7. Smt.Jyoti Rawal,
Age 43 years, Occupation
Reporter

Petitioner Nos.1 to 7 having
their address as 62, Vaju Kotak
Marg, Mumbai 400 001

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Ramesh Pralhad Pathe

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioners 1 and 3
Mr K.S.Patil, A.P.P. for respondent No.1
Mr V.D.Hon, Advocate for respondent No.2

- WITH -

CRIMINAL WRIT PETITION NO.108 OF 2003

1. Shri Maulik Kotak,
Age 38 years, Occupation
Printer, Publisher
2. Shri Bharat Kapadia,
Age 42 years, Occupation
Assistant Publisher and Editor
3. Shri Dyanesh Maharao,
Age 45 years, Occupation
Executive Editor
4. Shri Ajit Popat,
Age 37 years, Occupation
Reporter
5. Shri Mahesh Shah,
Age 44 years, Occupation
Reporter
6. Shri Kaushik Mehta,
Age 33 years, Occupation
Reporter
7. Smt.Jyoti Rawal,
Age 43 years, Occupation
Reporter

Petitioner Nos.1 to 7 having
their address as 62, Vaju Kotak
Marg, Mumbai 400 001

..PETITIONERS

VERSUS

1. The State of Maharashtra

2. Shri Macchindra Karbhari Varpe,
Age 35 years, Occupation
Advocate, R/o Shivajinagar,
Sangamner, Taluka Sangamner,
District Ahmednagar

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioner Nos.1 and 3
Mr K.S.Patil, A.P.P. for respondent No.1
Mr V.D.Hon, Advocate for respondent No.2

- WITH -

CRIMINAL WRIT PETITION NO.109 OF 2003

1. Shri Maulik Kotak,
Age 38 years, Occupation
Printer, Publisher
2. Shri Bharat Kapadia,
Age 42 years, Occupation
Assistant Publisher and Editor
3. Shri Dyanesh Maharao,
Age 45 years, Occupation
Executive Editor
4. Shri Ajit Popat,
Age 37 years, Occupation
Reporter
5. Shri Mahesh Shah,
Age 44 years, Occupation
Reporter
6. Shri Kaushik Mehta,
Age 33 years, Occupation
Reporter
7. Smt.Jyoti Rawal,
Age 43 years, Occupation
Reporter

Petitioner Nos.1 to 7 having
their address as 62, Vaju Kotak
Marg, Mumbai 400 001

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Prabhakar Jagganath Balade,
Age 41 years, Occupation
Agriculture and Service,
R/o Dahegaon, Bolaka,
Taluka Kopargaon,
District Ahmednagar

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioners 1 and 3
Mr K.S.Patil, A.G.P. for respondent No.1
Mr V.D.Hon, Advocate for respondent No.2

- WITH -

CRIMINAL WRIT PETITION NO.557 OF 2003

1. Mahesh s/o Kantilal Shah,
Age 50 years, Occu.Business,
R/o Geeta Niwas, Near Laxminarayan
Mandir, Laxminarayan Lane,
Manthurdas Road,
Kandivali (West), Mumbai
2. Sudhakar s/o Kashinath Joshi,
Age 68 years, Occu.Pensioner,
R/o Plot No.22, Occup.Gangotri
Apartment, Ring Road, Jalgaon

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Shri Bhagwan Rangrao Patil,
Age 32 years, Occu.Advocate
R/o Kharjad road, Chalisgaon,
Taluka Chalisgaon, District Jalgaon

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioners 1 and 3
Mr K.S.Patil, A.G.P. for respondent No.1
Mr V.D.Hon, Advocate for respondent No.2

- WITH -

CRIMINAL WRIT PETITION NO.558 OF 2003

1. Vinod Pandya,
Age 50 years, Occu.Service3
2. Ramesh Chotalal Dave,
Age 40 years, Occu.Service,
Publisher (Weekly Abhiyan)
3. Bipin s/o Dhanshankar Pandya,
Age 50 years, Occu.Reporter,
Nos.1 to 3 R/o 41/(A), B
Govt.Estate, Charkop, Kandivali,
(West), Mumbai 400 067
4. Mahesh s/o Kantilal Shah,
Age 50 years, Occu.Business,
R/o Geeta Niwas,
Near Laxminarayan Mandir,
Laxminarayan Lane,
Manthurdas Road,
Kandivali (West), Mumbai
5. Sudhakar s/o Kashinath Joshi,
Age 68 years, Occu.Pensioner,
R/o Plot No.2, Opp.Gangotri
Apartment, Ring Road, Jalgaon

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Karamsibhai Dhanjibhai Patel,
Age 45 years, Occu.Business,
R/o Pragati Stone Instries,
Ganesh Road, Chalisgaon
Taluka Chalisgaon,
District Jalgaon

..RESPONDENTS

Mr S.P.Katneshwarkar, Advocate for petitioner Nos.4 and 5
Mr K.S.Patil, A.P.P. for respondent No.1
Mr V.D.Hon, Advocate for respondent No.2

CORAM : A.P. BHANGALE, J

**DATE OF RESERVING
THE JUDGMENT : 14th June
2013**

**DATE OF PRONOUNCING
THE JUDGMENT :19 th June,
2013.**

COMMON JUDGMENT

1. Heard submissions at the Bar. The petitioners in all these petitions pray for quashing and setting aside the orders passed by the learned Chief Judicial Magistrate, J.M.F.C courts at Nanded, Newasa, Sangamner , Kopargaon as also Chalisgaon thereby issuing process in respective Summary Criminal Cases and also pray for setting aside the complaints filed by respondents-complainants. (mentioned details of number of cases and the details as to the courts and orders impugned)

| Criminal Writ Petition No. | Name of Court whose order is impugned | Criminal Case No. | Offences U/s. |
|---|---|----------------------|---------------|
|---|---|----------------------|---------------|

| | | | |
|---------|--|-------------------------|--------------|
| 64/2003 | Order dated 19-11-2002 by CJM, Nanded. | SCC no 3199/200 2 | 500, 34.IPC |
| 65/2003 | Order dated 05-07-2002 JMFC, Newasa, Dist. Ahamadnagar. | 208/2002 | 500, 34 IPC. |

| | | | |
|-----------|--|-----------|--|
| 108/2003 | Order dated 21-09-2002 by JMFC, Sangamner Dist. Ahmednagar | 1246/2002 | 295-A, 499, 500, 501 `read with 34 IPC |
| 109 /2003 | Order dated 07-08-2002 JMFC, Kopargaon, Dist. Ahmednagar. | 1292/2002 | 500, 109, 120B/34 IPC |
| 557/2003 | Order dated 14-07-2003 by JMFC, Chalisgaon Dist Jalgaon. | 225/2002 | 295-A, 500, 34 IPC. |
| 558/2003 | Order dated 16-11-2002 JMFC, Chalisgaon Dist. Jalgaon. | 226/2002 | 295-A, 500, 34 IPC. |

2. The brief facts stated in respect of in Criminal Writ Petition No.64 of 2003, Criminal Writ Petition No.65 of 2003, Criminal Writ Petition No.108 of 2003, Criminal Writ Petition No. 109 of 2003 are summarized thus:

An article was published on 8.7.2002 in Marathi weekly "Chitralkha", making certain allegations against Pandurangshastri Athawale, known as "Dada" and Jayshree Didi (Dhanashri Talwalkar) of "Swadhyaya Pariwar." The publication imputed that the Dada and Didi lost their balance and imputed that Dada made speech like an instigating terrorist leader that they possess the thousands youth like LTTE who can jump from

the terrace of Oberoi Hotel and can finish any body at his instance. The article also alleged that the Swadhyayees have started leaving the Swadhyaya pariwar and and huge gap is being created between the the followers of Swadhyaya and Dada and there began a climax of unprecedented rope pulling for to grab the property worth crores of rupees. Movement started fading since Didi, niece of Dada , took over the movement since 1995- last five years . Swadhyayees who had learnt lessons of peace and patience have raised serious questions about her method of working, her intention and her character. Swadhyayees are disappointed due to their deception in the name of Adhyatma about which 'Chitralkha' wrote many times . Retired justice B.J. Diwan etc left Swadhyaya movement due to ill functioning of Didi The complainants quoted the article in the complaint and averred that due to this defamatory article, all the Swadhyayees became sad. There are lacs of people connected with Swadhyaya Pariwar. The respondents complainants claiming association with Swadhyaya Pariwar, at respective places in State of Maharashtra filed complaints against the petitioners herein under Section 500 read with sec. 34 of Indian Penal Code. Upon registration of complaints as Summary Criminal Cases in the Court of learned C.J.M. Nanded, J.M.F.C. Newasa, Sangamner and Kopargaon, and Chalisgaon respectively, the learned Magistrate passed order of issuance of process against the petitioners.

3. In Criminal Writ Petition No.557 of 2003 and Criminal Writ Petition No.558 of 2003 the facts in brief are thus :

The petitioners in above said two petitions pray for quashment of further proceedings instituted at the instance of complainant in the Court of Judicial Magistrate, First Class, Chalisgaon. Respondent complainants in respective petitions filed complaint in the Court of Judicial Magistrate, First Class, Chalisgaon against the petitioners alleging commission of offence under Section 500, 295-A read with sec.34 of Indian Penal Code, on the basis of same article published on 8.7.2002 in Marathi weekly "Chitralkha" thereby making certain imputations against Shri Pandurangshastri Athawale, popularly called and known as "Dada" and Jayshree Didi (Smt. Dhanashri Talwalkar) of Swadhyaya Pariwar. The complaints were registered as Criminal Case No.225 of 2002 and Criminal Case No.226 of 2002. The learned Judicial Magistrate, First Class, Chalisgaon directed inquiry by Police under Section 156 (3) of Cr.P.C. Upon investigation, charge-sheet was filed against the petitioners under Section 295-A, 500 read with sec.34 of Indian Penal Code. The learned Judicial Magistrate, First Class, Chalisgaon by order dated 16.11.2002, directed issuance of summons against the petitioners and non-bailable warrant against petitioner No.1. Hence these petitions.

4. The process came to be issued against the Petitioners-accused is challenged as illegal, wrong, without verifying the contents of the complaint and against the established principles of law in the absence of any examination of the prima facie case as required by the ingredients of Section 499 of the Indian Penal code. The petitioners pleaded that the article was published at the information and the evidence given by the Swadhyayees themselves. The Petitioners challenged that the respondents-complainant have no locus to challenge the article as they are not the aggrieved persons as only “Dada” and “Didi” could have filed the defamation case individually as “persons aggrieved”. It is further contended that the article was inspired by the desire to serve the public interest and the criticism was not malicious. And hence no case of defamation was made out. It is argued that the assuming for the sake of argument that the feelings of the individual complainants have been injured due to defamatory publication of Article in respect of their religious heads “Dada” and “Didi” it can not bestow a locus standi for each of of such individuals professing membership of ‘Swadhyaya Pariwar’ to maintain many complaints on the same ground in different courts of the State, intending to harass the Petitioners. It is argued with reference to the ruling in G. Narsimhan & others vs. T.V. Chokkappa reported in AIR 1972 SC 2609 that the collection of persons must be identifiable, definite and determinate class in

relation to the imputations . Complaint by an individual who is not the “person aggrieved” within meaning of section 199 (1) of the Criminal Procedure Code for alleged defamation of 'Dada' and 'Didi' is not maintainable. Honourable Supreme Court in the aforesaid ruling held that conviction would be illegal and void if complaint for defamation is by one who is not the 'aggrieved person'. Apart from this it is argued that any one in public life should be prepared to face fair and bonafide criticism, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Kartar Singh & Others V/s. The State of Punjab, AIR 1956 S.C. 541 wherein it is observed that whoever fills a public position must accept an attack as a necessary, though unpleasant, appendage to his office. Public men in such positions may as well think it worth their while to ignore any vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same. The Petitioners For the purpose of canvassing the proposition that the petitioners have not committed any offence under Chapter XXI of Indian Penal Code and that the complainants are not the persons aggrieved by the offences alleged against the petitioners, reliance is placed on the decision of the Bombay High Court in the case of Balasaheb Keshav Thackeray V/s. State of Maharashtra and another, 2003 (1) Mh.L.J. 775 wherein a complaint was filed by a member of the Congress party against the chief of another

political party Shiv Sena, and also the Chief Editor of the Maharashtra Daily 'Samna' alleging defamatory statements made by him against two top leaders including the president of the party in the election meeting. The complainant claimed a right to file the complaint for the said defamation on the ground that he was a Congressman and that the leaders of the Congress Party had been defamed. It cannot be said that the Congressmen as a class is an identifiable body. Therefore, even assuming that the alleged statements were defamatory of the Congressmen, complainant was not entitled to file a complaint for the same. He was not the "person aggrieved" within the meaning of the term as given in Section 199 (1) of Criminal Procedure Code. He was not entitled to file a complaint for defamation against the petitioner for the alleged defamation.

5. The legal position is settled that cognizance of complaints for offence of defamation punishable under Chapter XXI of the Indian Penal Code is barred except where the complaint is lodged by an aggrieved and defamed person. No one who is ill motivated to harass or persecute the accused can be allowed to substitute the aggrieved and defamed person in prosecution for defamation case when allegations were not aimed at such individual seeking to prosecute the accused for defamation.

6. My attention is then invited to the ruling in Gopalbhai R. Prajapati vs . Pratapbhai Hamirbhai Bhede reported in LAWS (GJH)-2006-3-20 (Gujarat High Court)-criminal misc applications 4518 of 2003 etc moved under Section 482 of the Criminal Procedure Code decided on 09-03-2006 .The identical group of 21 complaints were filed in different Courts in the State of Gujarat in respect of the same accusations as made herein in respect of the identical alleged defamatory publication. The Gujarat high Court considered the modus operandi adopted by the complainants to pressurize and threaten the accused persons . The High court also made reference to the 35 to 40 complaints filed in the State of Maharashtra and it referred to the nature of allegations as non-specific, general, too vague and are not attributed to the particular accused. The High Court also considered the meaning of “Swadhyaya Pariwar” as family of Swadhyayees-self studying group-and that the family can not constitute the class. Gujarat High Court also observed that it is very difficult to hold that “Swadhyaya pariwar” is a religion. And therefore the the question of insulting the religion or the religious beliefs of a class of citizens does not arise. Gujarat High Court in its detailed judgment held that if the article is construed as defamation of Pandurang Shastri Athawale and Didi or any other Trustee, as per law only one of them can file a Complaint under section 499, 500 of I.P.C. and not the respondents who cannot be

considered as 'aggrieved persons' due to alleged defamation. After considering the plethora of rulings ,availability of defences against the private complaints, prolonged prosecutions and remoteness of conviction in the facts and circumstances and in view of section 482 of the Cr. P. Code , it was concluded that it is a fit case to exercise inherent jurisdiction to quash and set aside the complaints . I am persuaded and satisfied to accept the same view for the same reasons recorded by the Gujarat High Court on the ground that it would equally apply on all fours , in the identical facts and circumstances of the present complaints as well. If the complaints are allowed to continue while, chances of conviction are extremely remote as the complaints were not filed by the persons who were in fact aggrieved by the allegedly defamatory publication, but by the persons who were professing themselves as members of the Swadhyaya pariwar. None of them claimed interest or locus as Trustees of the Swadhyaya Trust so as to have prima facie right to file the complaint. Private complaints are pending since 2002 and no useful purpose can be served by remanding and keeping them pending when admittedly Pandurang Shastri Athawale known as “ Dada “ is no more living and “Didi” who is presently heading “Swadhyaya Pariwar” according to the Petitioners , though living did not come forward to show any interest to continue the private prosecutions pending in various courts in the State of

Maharashtra. No satisfactory material could be pointed out on behalf of the various respondents-complainants to show even prima facie that the "Swadhyaya Pariwar " is an determinate and an identifiable legal body so as to constitute the words used in the article as defamatory of each individual professing as it's member to legally enable each of such individual as recognized constituents to maintain a complaint. Therefore it would be sheer harassment to the Petitioners-accused and waste of precious time , if they are made to undergo the prolonged ordeal of trials in various courts in State of Maharashtra, for the same reasons for which the contentions of the private complainants were turned down by the Gujarat High Court by a detailed judgment .Under these circumstances it would be sheer waste of valuable time for the presiding officers of the Courts as well as for all those concerned with the progress of the trials, if the trials in the cases in hand are allowed to go ahead with chances of conviction extremely bleak in view of the settled law and facts exhaustively stated in the ruling in Gopalbhai's case (SUPRA).

7. In sequel to the discussion as above I must conclude that the imputations were not against the complainants personally nor the published article was aimed at them so as to legally enable them to lodge and persecute the complaints against the Petitioners for defamation , hence this is fit case to quash and set

aside the complaints. The Petitions are therefore allowed as prayed for. The impugned orders of issuance of process and complaint proceedings are quashed and set aside. Rule is made absolute accordingly.

(A.P. BHANGALE)
JUDGE

(aaa/64.03criwp)
