

## **S. Khushboo vs Kanniammal & Anr on 28 April, 2010**

**Equivalent citations: AIR 2010 SUPREME COURT 3196, 2010 (5) SCC 600, 2010 AIR SCW 2770, 2010 (3) AIR KANT HCR 4, (2010) 4 MAD LJ(CRI) 99, (2010) 2 RECCRIR 793, (2010) 2 BOMCR(CRI) 270, (2010) 2 CURCRIR 397, (2010) 1 CRILR(RAJ) 381, (2010) 3 KCCR 1929, (2010) 2 ALLCRILR 737, (2010) 1 MADLW(CRI) 594, (2010) 2 DLT(CRL) 628, (2010) 2 ORISSA LR 156, (2010) 46 OCR 375, 2010 CALCRILR 2 189, (2010) 3 CHANDCRIC 150, (2010) 69 ALLCRIC 821, (2010) 2 ALLCRIR 2082, (2010) 2 GUJ LH 334, (2010) 3 JCR 56 (SC), 2010 (2) SCC(CRI) 1299, 2010 (4) SCALE 462, (2010) 90 ALLINDCAS 106 (SC), 2010 CRILR(SC MAH GUJ) 381, (2010) 4 SCALE 462, (2010) 2 CRIMES 414, 2010 CRILR(SC&MP) 381, 2010 CRI. L. J. 2828, 2010 (90) ALLINDCAS 106, 2010 (3) AIR KAR R 4, 2010 (2) CALCRILR189, 2010 (2) CRIMES414**

**Author: B.S. Chauhan**

**Bench: K.G. Balakrishnan, Deepak Verma, B.S. Chauhan**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 913 of 2010  
[Arising out of SLP (Crl.) No. 4010 of 2008]

S. Khushboo

Versus

Kanniammal & Anr.

... Appellant

... Respondents

WITH Criminal Appeal 914/2010 @SLP (Crl.) No. 6127 of 2008 Criminal Appeal 915/2010 @SLP (Crl.) No. 6257 of 2008 Criminal Appeal 916/2010 @SLP (Crl.) No. 6258 of 2008 Criminal Appeal 917/2010 @SLP (Crl.) No. 6259 of 2008 Criminal Appeal 918/2010 @SLP (Crl.) No. 7049 of 2008 Criminal Appeal 919/2010 @SLP (Crl.) No. 6264 of 2008 Criminal Appeal 920/2010 @SLP (Crl.) No. 6277 of 2008 Criminal Appeal 921/2010 @SLP (Crl.) No. 7052 of 2008 Criminal Appeal 922/2010 @SLP (Crl.) No. 7053 of 2008 Criminal Appeal 923/2010 @SLP (Crl.) No. 7050 of 2008 Criminal Appeal 924/2010 @SLP (Crl.) No. 7051 of 2008 Criminal Appeal 925/2010 @SLP (Crl.) No. 4761 of 2008 Criminal Appeal 926/2010 @SLP (Crl.) No. 4772 of 2008 Criminal Appeal 927/2010 @SLP (Crl.) No. 4767 of 2008 Criminal Appeal 928/2010 @SLP (Crl.) No. 4763 of 2008 Criminal Appeal 929/2010 @SLP (Crl.) No. 4765 of 2008 Criminal Appeal 930/2010 @SLP (Crl.)

No. 4762 of 2008 Criminal Appeal 931/2010 @SLP (Crl.) No. 4764 of 2008 Criminal Appeal 932/2010 @SLP (Crl.) No. 4770 of 2008 Criminal Appeal 933/2010 @SLP (Crl.) No. 4769 of 2008 J U D G M E N T Dr. B.S. CHAUHAN, J

1. Leave granted in all the cases.

2. The appellant is a well known actress who has approached this Court to seek quashing of criminal proceedings pending against her. As many as 23 Criminal Complaints were filed against her, mostly in the State of Tamil Nadu, for the offences contemplated under Sections 499, 500 and 505 of the Indian Penal Code, 1860 [hereinafter `IPC'] and Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 [hereinafter `Act 1986']. The trigger for the same were some remarks made by the appellant in an interview to a leading news magazine and later on the same issue was reported in a distorted manner in another periodical. Faced with the predicament of contesting the criminal proceedings instituted against her in several locations, the appellant had approached the High Court of Madras, praying for the quashing of these proceedings through the exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 [hereinafter `Cr.PC.']. The High Court rejected her plea vide impugned judgment and order dated 30.4.2008. At the same time, in order to prevent the inconvenience of litigating the same subject-matter in multiple locations directed that all the cases instituted against the appellant be consolidated and tried together by the Chief Metropolitan Magistrate, Egmore (Chennai). Aggrieved by the aforesaid judgment, the appellant approached this Court by way of a batch of Special Leave Petitions.

3. Before addressing the legal aspects of the case before us, it would be useful to examine the relevant facts. In September 2005, `India Today' a fortnightly news magazine had conducted a survey on the subject of the sexual habits of people residing in the bigger cities of India. One of the issues discussed as part of this survey was the increasing incidence of pre-marital sex. As a part of this exercise, the magazine had gathered and published the views expressed by several individuals from different segments of society, including those of the appellant. The appellant expressed her personal opinion wherein she had noted the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same. However, appellant had also qualified her remarks by observing that girls should take adequate precautions to prevent unwanted pregnancies and the transmission of venereal diseases. This can be readily inferred from the statement which was published, a rough translation of which is reproduced below:

"According to me, sex is not only concerned with the body; but also concerned with the conscious. I could not understand matters such as changing boyfriends every week. When a girl is committed to her boyfriend, she can tell her parents and go out with him. When their daughter is having a serious relationship, the parents should allow the same. Our society should come out of the thinking that at the time of the marriage, the girls should be with virginity.

None of the educated men, will expect that the girl whom they are marrying should be with virginity. But when having sexual relationship the girls should protect

themselves from conceiving and getting venereal diseases."

These remarks were published alongside a survey, the relevant extracts of which are stated below:

"Will you marry a person who had relationship with others?

18% - Yes, 71% - No Is it necessary to be a virgin till the time of marriage?

65% - Yes, 26% - No The remaining percentage of people said: Do not know/Cannot say 82% women had given an opinion that a girl should be a virgin at the time of marriage."

4. Subsequently, 'Dhina Thanthi', a Tamil daily carried a news item on 24.9.2005 which first quoted the appellant's statement published in 'India Today' and then opined that it had created a sensation all over the State of Tamil Nadu. This news item also reported a conversation between the appellant and a correspondent from 'Dhina Thanthi', wherein the appellant had purportedly defended her views in the following manner (rough translation reproduced below):

"The persons who are protesting against my interview, are talking about which culture? Is there anyone who does not know about sex in Tamil Nadu? Is there anyone who does not know about AIDS? How many men and women do not have sex before marriage?

Why are people saying that after the marriage the husband and wife should be honest and faithful to each other? One should have confidence in the other, only to avoid the mistakes from being committed. If the husband, without the knowledge of the wife, or the wife, without the knowledge of the husband, have sex with other persons, if a disease is caused through that, the same will affect both the persons. It will also affect the children. Only because of this, they are saying like that."

However, soon after the publication of the above mentioned news item, the appellant had sent a legal notice dated 2.10.2005 to the Editor of 'Dhina Thanthi', categorically denying that she had made the statement quoted above. In fact, the appellant had asked the publisher to withdraw the news-item carried on 24.9.2005 and to publish her objections prominently within three days of receipt of the notice, failing which the appellant would be constrained to take appropriate legal action against the newspaper.

5. As outlined above, the publication of these statements in 'India Today' and 'Dhina Thanthi' drew criticism from some quarters and several persons and organisations filed criminal complaints against the appellant. For instance, the complainant in the appeal arising out of SLP (Crl) No. 4010 of 2008 has stated that she is a married woman who is the Treasurer of a District-level unit of the Pattali Makal Katchi [hereinafter 'PMK'], a political party, and is also involved in social service. She had quoted some parts of the statements published in 'India Today' and 'Dhina Thanthi' to allege that the appellant's interview had brought great shame on her since it had suggested that women of

her profile had engaged in premarital sex. The complainant further alleged that the appellant's remarks had caused mental harassment to a large section of women, and in particular women from Tamil Nadu were being looked down upon with disrespect and contempt.

6. In the appeal arising out of SLP (Crl.) 4764 of 2008, the complainant is a male advocate who is a District Secretary of the PMK for Salem District. In his complaint, there is no direct reference to the news-item published in 'Dhina Thanthi' on 24.9.2005. Instead the complainant has stated that he found second-hand accounts of the same to be quite shocking since the appellant had questioned the need for women to maintain their virginity or chastity. It was alleged that these remarks were an abuse against the dignity of the Tamil women and that they had grossly affected and ruined the culture and morality of the people of the State. It was further submitted that these statements could persuade people to involve themselves in unnatural crimes and that the appellant's acts amounted to commission of offences punishable under Sections 499, 500, 504, 505(1)(b) and 509 IPC read with Section 3 and 4 of Act 1986. Similarly, in the appeal arising out of SLP (Crl.) 6127 of 2008, the complainant is a lady advocate who has been practicing in the Trichy District Courts for more than 10 years. She has quoted some portions from the statements published in 'India Today' and 'Dhina Thanthi' to submit that the appellant's acts were punishable under Sections 292, 500, 504, 505(1)(b) and (c), 505(2) and 509 IPC read with Section 6 of Act 1986.

7. Likewise, in the appeal arising out of SLP (Crl.) 6259 of 2008, the complainant has stated that she is a married woman belonging to a reputed family and that she is serving as the President of the District Magalir Association of the PMK (in Thiruvarur) and rendering social service. In her complaint, some parts of the appellant's statements have been quoted to allege that she had suffered great mental agony and shame since it was suggested that all women in Tamil Nadu had lost their virginity before marriage. In this respect, the complainant has alleged that the appellant had committed offences punishable under Sections 499, 500, 504, 505(1)(b) and 509 IPC read with Section 6 of Act 1986. It is noteworthy that in most of the other cases filed in various districts of Tamil Nadu, the complainants are functionaries of the PMK and similar allegations have been levelled against the appellant. Oddly enough, one of the complaints had even been filed in Indore, Madhya Pradesh.

8. As mentioned earlier, the appellant approached the High Court of Madras to seek quashing of all the criminal proceedings instituted against her in this connection. In its judgment dated 30.4.2008, the High Court refused to quash the proceedings by exercising its inherent powers under Section 482 Cr.PC, on the premise that the relevant considerations in this case were questions of fact which were best left to be determined by a trial judge. The High Court noted that two basic questions were involved in the case. Firstly, whether the appellant could claim any of the recognised defences against the allegations of having committed defamation, as contemplated by Section 499 IPC. Secondly, whether the complainants could at all be described as 'aggrieved persons' within the meaning of Section 199 Cr.PC since that was linked to the question of whether the complaints had been made in a bona fide manner. The High Court thought it fit to leave both these questions for consideration by a trial judge, and in a partial reprieve to the appellant it was directed that all the criminal proceedings pending against her be consolidated and tried by the Chief Metropolitan Magistrate at Egmore, Chennai. However, the High Court also proceeded to record its own views

regarding the contents of the appellant's statements and even made some strong observations condemning the incidence of premarital sex and live-in relationships.

9. In the proceedings before us, Ms. Pinki Anand, learned counsel appearing for the appellant, has submitted that the complainants (respondents in these appeals) were not 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.PC and hence they were not competent to institute private complaints for the alleged offences. It was stated that the appellant had made a fair and reasonable comment as a prudent person, and therefore, the opinion expressed by the appellant is fully protected under Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression to all citizens. Furthermore, it was contended that even if the allegations in the various complaints are taken on their face value and accepted in their entirety, the same do not disclose any offence whatsoever and the opinion of the appellant does not, by any means, fall within the ambit of Sections 499, 500 and 505 IPC or Sections 3 and 4 of Act 1986. It was also canvassed that the criminal proceedings had been instituted in a mala fide manner by the workers of a particular political party, with the intention of vilifying the appellant and gaining undue political mileage.

10. In response, Sh. Kanagaraj, Sr. Adv., Sh. S. Gowthaman, Adv. and Sh. B. Balaji, Adv. appearing for the respondents, submitted that since the High Court has refused to quash the complaints, this Court should not interfere either since the complaints require determination of factual controversies that are best left to be decided by a court of first instance. They have asserted that the complainants in these cases are mostly women belonging to Tamil Nadu, who were personally aggrieved by the appellant's remarks. It was argued that the endorsement of pre-marital sex by a prominent person such as the appellant would have a morally corruptive effect on the minds of young people. Her statement would definitely obscure some basic moral values and expose young people to bizarre ideas about premarital sex, thereby leading to deviant behaviour which would adversely affect public notions of morality. It was contended that the constitutional protection for speech and expression is not absolute and that it is subject to reasonable restrictions based on considerations of 'public order', 'defamation', 'decency and morality' among other grounds.

11. We have considered the rival submissions made by learned counsel for the parties and perused the record.

12. In order to decide this case, it will not be proper for us to either condemn or endorse the views expressed by the appellant. When the criminal law machinery is set in motion, the superior courts should not mechanically use either their inherent powers or writ jurisdiction to intervene with the process of investigation and trial. However, such forms of judicial review can be exercised to prevent a miscarriage of justice or to correct some grave errors that might have been committed by the subordinate courts. [See decision of this Court in: M/s Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., AIR 1998 SC 128]. In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors., AIR 1992 SC 604, to take note of two such guidelines which are relevance for the present case :-

"(1). Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

... (7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *M/s Medchl Chemicals & Pharma Ltd. Vs. M/s Biological E. Ltd. & Ors.*, AIR 2000 SC 1869, this Court observed that a criminal complaint or a charge sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence. Similarly, in *M/s Zandu Pharmaceutical Works Ltd. & Ors. Vs. Mohd. Sharaful Haque & Ors.*, AIR 2005 SC 9, this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "may examine the questions of fact" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice. In *Shakson Belthissor Vs. State of Kerala & Anr.*, (2009) 14 SCC 466, this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed:

"One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint."

14. There can be no quarrel about this Court's competence to quash criminal proceedings pending before the subordinate courts. However, this power must be exercised sparingly and with circumspection. In light of the position summarized above, we can examine the present case with two considerations in mind, namely whether the allegations made against the appellant support a prima facie case for the offences mentioned in the respective complaints, and whether the complaints were made in a bona fide manner.

15. Perusal of the complaints reveals that most of the allegations have pertained to offences such as defamation (Sections 499, 501 and 502 IPC), obscenity (Section 292 IPC), indecent representation of women and incitement among others. At the outset, we are of the view that there is absolutely no basis for proceeding against the appellant in respect of some of the alleged offences. For example, the Act, 1986 was enacted to punish publishers and advertisers who knowingly disseminate materials that portray women in an indecent manner. However, this statute cannot be used in the present case where the appellant has merely referred to the incidence of pre-marital sex in her statement which was published by a news magazine and subsequently reported in another periodical. It would defy logic to invoke the offences mentioned in this statute to proceed against the

appellant, who cannot be described as an 'advertiser' or 'publisher' by any means. Similarly, Section 509 IPC criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act. Clearly this offence cannot be made out when the complainants' grievance is with the publication of what the appellant had stated in a written form. Likewise, some of the complaints have mentioned offences such as those contemplated by Section 153A IPC ('Promoting enmity between different groups etc.')

which have no application to the present case since the appellant was not speaking on behalf of one group and the content of her statement was not directed against any particular group either.

16. Coming to the substance of the complaints, we fail to see how the appellant's remarks amount to 'obscenity' in the context of Section 292 IPC. Clause (1) to Section 292 states that the publication of a book, pamphlet, paper, writing, drawing, painting, representation, figure, etc., will be deemed obscene, if -

7 It is lascivious (i.e. expressing or causing sexual desire) or 7 Appeals to the prurient interest (i.e. excessive interest in sexual matters), or 7 If its effect, or the effect of any one of the items, tends to deprave and corrupt persons, who are likely to read, see, or hear the matter contained in such materials.

In the past, authors as well as publishers of artistic and literary works have been put to trial and punished under this section. In the present case, the appellant takes full responsibility for her statement which was published in 'India Today', a leading news magazine. It would be apt to refer back to the decision of this Court in *Ranjit D. Udeshi Vs. State of Maharashtra*, AIR 1965 SC 881, wherein it was held that if a mere reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. It was observed that in the field of art and cinema, the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions, the same are taken for granted without in any way tending to debase or debauch the mind. What is to be considered is whether a class of persons, not an isolated case, into whose hands the book, article or story falls will suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. Even though the decision in that case had upheld a conviction for the sale of a literary work, it became clear that references to sex cannot be considered obscene in the legal sense without examining the context of the reference.

17. This position was later clarified in *Samaresh Bose Vs. Amal Mitra*, AIR 1986 SC 967, where the Court held that in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the viewpoint of the author, the judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary and artistic value. Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have on the minds of the reader.

18. There are numerous other decisions, both from India and foreign country which mandate that 'obscenity' should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person. Owing to the clear formulation on this issue it is not necessary for us to discuss these precedents at length. In the present case, the appellant has merely referred to the increasing incidence of pre-marital sex and called for its societal acceptance. At no point of time appellant described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. Furthermore, the statement has been made in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities. Even though this survey was not part of a literary or artistic work, it was published in a news magazine thereby serving the purpose of communicating certain ideas and opinions on the above-mentioned subject. In the long run, such communication prompts a dialogue within society wherein people can choose to either defend or question the existing social mores. It is difficult to appreciate the claim that the statements published as part of the survey were in the nature of obscene communications.

19. We must also respond to the claim that the appellant's remarks could have the effect of misguiding young people by encouraging them to indulge in premarital sex. This claim is a little far-fetched since the appellant had not directed her remarks towards any individual or group in particular. All that the appellant did was to urge the societal acceptance of the increasing instances of premarital sex when both partners are committed to each other. This cannot be construed as an open endorsement of sexual activities of all kinds. If it were to be considered so, the criminal law machinery would have to take on the unenforceable task of punishing all writers, journalists or other such persons for merely referring to any matter connected with sex in published materials. For the sake of argument, even if it were to be assumed that the appellant's statements could encourage some people to engage in premarital sex, no legal injury has been shown since the latter is not an offence.

20. "Offence" means 'an act or instance of offending'; 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'.

"Offence" has to be read and understood in the context as it has been prescribed under the provisions of Sections 40, 41 and 42 IPC which cover the offences punishable under I.P.C. or under special or local law or as defined under Section 2(n) Cr.P.C. or Section 3(38) of the General Clauses Act, 1897 (vide *Proprietary Articles Trade Association Vs. Attorney General for Canada* AIR 1931 PC 94;

*Thomas Dana Vs. State of Punjab* AIR 1959 SC 375; *Jawala Ram & Ors. Vs. The State of Pepsu (now Punjab) & Ors.* AIR 1962 SC 1246; and *Standard Chartered Bank & Ors. Vs. Directorate of Enforcement & Ors.* AIR 2006 SC 1301).

21. While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 IPC. At this juncture, we may refer to the decision given by this Court in *Lata*



Singh Vs. State of U.P. & Anr., AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'.

22. It would also be instructive to refer to a decision of the House of Lords (U.K.) in *Gillick Vs. West Norfolk and Wisbech Area Health Authority*, (1985) 3 All ER 402. In that case, mother of a teenage girl had questioned the decision of the National Health Service (NHS) to issue a circular to local area health authorities which contained guidelines for rendering advice about contraceptive methods to girls under the age of 16 years. Objections were raised against this circular on the ground that the health service authorities had no competence to render such advice and that doing so could adversely affect young children while at the same time interfering with parental autonomy in the matter of bringing up children. The majority decision rejected the challenge against the circular by clarifying that the rendering of advice about contraceptive methods and their provision by medical professionals did not amount to a sexual offence. Among the several aspects discussed in that case, it was held that the provision of information about contraceptive facilities to girls under the age of 16 years could not be opposed on the ground that such information could potentially encourage more sexual activity by the teenagers. For the purpose of the present case, this decision supports the reasoning that we must fully understand the context and the purpose for which references to sex have been made in any given setting.

23. We now turn to the question whether the appellant's remarks could reasonably amount to offence of defamation as defined under Section 499 IPC. In the impugned judgment dated 30.4.2008, the High Court observed that as to whether the appellant could claim a defence against the allegations of defamation was a factual question and thus would be decided by a trial Court. However, even before examining whether the appellant can claim any of the statutory defences in this regard, the operative question is whether the allegations in the impugned complaints support a prima facie case of defamation in the first place. It is our considered view that there is no prima facie case of defamation in the present case. This will become self-evident if we draw attention to the key ingredients of the offence contemplated by Section 499 IPC, which reads as follows:

"499. Defamation.- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1. - It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2. - It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3. - An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. ..."

(emphasis supplied) The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499 further states that 'It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.'

24. With regard to the complaints in question, there is neither any intent on part of the appellant to cause harm to the reputation of the complainants nor can we discern any actual harm done to their reputation. In short, both the elements i.e. mens rea and actus reus are missing. As mentioned earlier, the appellant's statement published in 'India Today' (in September 2005) is a rather general endorsement of premarital sex and her remarks are not directed at any individual or even at a 'company or an association or collection of persons'. It is difficult to fathom how the appellant's views can be construed as an attack on the reputation of anyone in particular. Even if we refer to the remarks published in 'Dhina Thanthi' (dated 24.9.2005) which have been categorically denied by the appellant, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are in the nature of rhetorical questions wherein it was asked if people in Tamil Nadu were not aware of the incidence of sex. Even if we consider these remarks in their entirety, nowhere has it been suggested that all women in Tamil Nadu have engaged in premarital sex. That imputation can only be found in the complaints that were filed by the various respondents. It is a clear case of the complainants reading in too much into the appellant's remarks.

25. This takes us to the question of whether the impugned complaints were made in a bona fide manner. As we have already noted, most of the complainants are associated with the PMK, a political party which is active in the State of Tamil Nadu. This fact does add weight to the suggestion that the impugned complaints have been filed with the intention of gaining undue political mileage. It may be reiterated here that in respect of the offence of defamation, Section 199 Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational

purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.PC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala & Ors.*, (2000) 7 SCC 552, this Court observed as under:

"The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense."

26. We can also approvingly refer to an earlier decision of this Court in *G. Narasimhan & Ors. Vs. T.V. Chokappa*, AIR 1972 SC 2609. In that case a controversy had arisen after 'The Hindu', a leading newspaper had published a report about a resolution passed by the Dravida Kazhaghham, a political party, in its conference held on January 23-24, 1971. Among other issues, the resolution also included the following words:

"It should not be made an offence for a person's wife to desire another man."

The Hindu, in its report, gave publicity to this resolution by using the following words:

"The Conference passed a resolution requesting the Government to take suitable steps to see that coveting another man's wife is not made an offence under the Indian Penal Code."

A complaint under Sections 499, 500 and 501 IPC was filed in response to this report. Like the present case, the Court had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine Section 198 of the Code of Criminal Procedure, 1898 (analogous to Section 199 of the Cr.PC. 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an "aggrieved person"

or not. But there is a departure from this norm in so far as the provision permits only an "aggrieved person" to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition 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. This Court further noted that the news-item in question did not mention any individual person nor did it contain any defamatory imputation against any individual. Accordingly, it was held that the complainant was

not a 'person aggrieved' within the meaning of Section 198 CrPC, 1898.

The Court also took note of Explanation 2 to Section 499 IPC which contemplates defamation of 'a company or an association or any collection of persons as such'.

Undoubtedly, the explanation is wide but in order to demonstrate the offence of defamation, such a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons, as distinguished from the rest of the community stood defamed. In case the identity of the collection of persons is not established so as to be relatable to the defamatory words or imputations, the complaint is not maintainable. In case a class is mentioned, if such a class is indefinite, the complaint cannot be entertained. Furthermore, if it is not possible to ascertain the composition of such a class, the criminal prosecution cannot proceed.

While deciding the case, this Court placed reliance on the judgment of the House of Lords in *Knupffer Vs. London Express Newspaper Ltd.* (1944) 1 ALL ER 495, wherein it had been held that it is an essential element of the cause of action for defamation that the words complained of should be published "of the complainant/plaintiff". Where he is not named, the test would be whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to.

In fact, it is the reputation of an individual person which must be in question and only such a person can claim to have "a legal peg for a justifiable claim to hang on".

27. Coming back to the facts of the present case, the complainants have alleged defamation in respect of imputations against the character of Tamil-speaking women, which could perhaps be viewed as a class of persons. However, we have already explained, the appellant's remarks did not suggest that all women in Tamil Nadu have engaged in premarital sex. In fact her statement in 'India Today' did not refer to any specific individual or group at all. If we refer to one of the questions asked as part of the concerned survey, one of the answers shows that 26% of the people who responded to the same did not think that it was necessary for women to retain their virginity till the time of marriage. Clearly the appellant was not alone in expressing such a view, even though it may be unpopular or contrary to the mainstream social practices. Even if it were assumed that the news-item carried in 'Dhina Thanthi' caused mental agony to some sections of women in Tamil Nadu, there is no prima facie case for any offence. What is interesting to note is that not all of the complainants are women, and in fact almost all the complainants are associated with a particular political party.

28. 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.

29. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes. Admittedly, the appellant's remarks did provoke a controversy since the acceptance of premarital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive. In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the 'freedom of speech and expression'. It would be apt to refer to the following observations made by this Court in *S. Rangarajan Vs. P. Jagjivan Ram & Ors.*, (1989) 2 SCC 574, which spell out the appropriate approach for examining the scope of 'reasonable restrictions' under Art. 19(2) of the Constitution that can be placed on the freedom of speech and expression:-

" ... Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest.

In other words, the expression should be inseparably locked up with the action

contemplated like the equivalent of a 'spark in a powder keg'.

The Court further held:

" ... The standard to be applied by the Board or courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man ... The different views are allowed to be expressed by proponents and opponents not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue. ... Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance of the views of others. Intolerance is as much dangerous to democracy as to the person himself."

30. Thus, dissemination of news and views for popular consumption is permissible under our constitutional scheme. The different views are allowed to be expressed by the proponents and opponents. A culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of non-dogmatic and non- conventional morality has to be tolerated as the same cannot be a ground to penalise the author.

31. Before saying omega, it is necessary for us to point out certain unwarranted developments that have taken place ever since the matter was heard till date. In fact, during the course of hearing, certain queries were put to the learned counsel appearing for parties so as to clarify the legal issue involved in the matter but unfortunately, those queries have been highly misunderstood not only by media but also by common man. As a result thereof, we have been flooded with several letter petitions making a prayer for review of the order passed by us. It is pertinent to mention here that no order was passed by us and only during the course of hearing, we had either given some instances or put some questions to the learned counsel which were answered by them. Thus, this hyper active attitude of the common man was, indeed, not called for. Some have even gone to the extent of telling us that we should have known the Indian mythology before putting such question. Thus, whatever we have said during the course of the hearing should be reviewed. We fail to understand how such an attitude could be adopted by those learned persons who were involved in sending various letter petitions to us. Admittedly, all those persons who have sent letters to us were not present on that particular date but must have gathered information from the print and electronic media which evoked their sentiments to such an extent that they prayed for review.

32. It is, therefore, not only desirable but imperative that electronic and news media should also play positive role in presenting to general public as to what actually transpires during the course of the hearing and it should not be published in such a manner so as to get unnecessary publicity for its own paper or news channel. Such a tendency, which is indeed growing fast, should be stopped. We are saying so as without knowing the reference in context of which the questions were put forth by us, were completely ignored and the same were misquoted which raised unnecessary hue and cry.

33. We hope and trust in future, they would be little more careful, responsible and cautious in this regard.

34. In conclusion, we find that the various complaints filed against the appellant do not support or even draw a prima facie case for any of the statutory offences as alleged. Therefore, the appeals are allowed and the impugned judgment and order of the High Court dated 30.4.2008 is set aside. The impugned criminal proceedings are hereby quashed.

.....CJI.

..... J.

(DEEPAK VERMA) ..... J.

(Dr. B.S. CHAUHAN) New Delhi April 28, 2010