Supreme Court of India
Sewakram Sobhani vs R.K. Karanjia, Chief Editor, ... on 1 May, 1981
Equivalent citations: 1981 AIR 1514, 1981 SCR (3) 627
Author: A Sen
Bench: Sen, A.P. (J)

PETITIONER:
SEWAKRAM SOBHANI

Vs.

RESPONDENT:
R.K. KARANJIA, CHIEF EDITOR, WEEKLY BLITZ & ORS.

DATE OF JUDGMENT01/05/1981

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
REDDY, O. CHINNAPPA (J)
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 1514 1981 SCR (3) 627
1981 SCC (3) 208 1981 SCALE (1)851

ACT:
Penal Code-Section 499-Ninth exception-Scope of-Respondent made imputations regarding character of appellant in an article published in his journal purporting to be based on confidential report of a high official of State Government-Government claimed privilege in regard to report-Magistrate proceeded to record plea of accused without seeing report-Government waived privilege before High Court-In revision High Court held the news item justified on the basis of report-High Court, whether competent to quash the order of Magistrate.

HEADNOTE:
A news item published in the Blitz weekly of which the respondent was the Editor, stated that the appellant enticed a female detenu who alongwith him, was detained in the Central Jail under the Maintenance of Internal Security Act and that she had conceived through him and that on getting released on parole she had the pregnancy terminated. It was further stated that a confidential enquiry conducted by a senior officer of the Home Department revealed that it was the appellant who was responsible for the detenu's pregnancy.

On release from jail the appellant lodged a criminal complaint against the respondent. Before the Magistrate the respondent prayed that the report of the Enquiry Officer be sent for. But the report could not be obtained because the State Government claimed privilege in respect of that report. When the Magistrate proceeded to record the plea of the accused under section 251 of the Code of Criminal Procedure, the respondent requested that his plea be recorded only after the enquiry report was produced; but the Magistrate rejected the request.

The respondent thereupon filed a revision before the High Court for setting aside the order of the Magistrate. Waiving privilege the State Government produced a copy of the enquiry report before the High Court.

A single Judge of the High Court quashed the proceedings on the view that the respondent's case clearly fell within the ambit of the ninth exception to section 499, I.P.C. because, according to him, the publication had been made honestly in the belief of its truth and also upon reasonable ground for such belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under like circumstances.

On the question whether the High Court was right in quashing the order of the Magistrate, remanding the case to the Magistrate.

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(Per majority: Chinnappa Reddy and A.P. Sen JJ-Baharul Islam J dissenting)

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HELD: The order passed by the High Court should be set aside. The Magistrate should record the plea of the accused under section 251 Cr. P.C. and thereafter proceed with the trial according to law.

(Per Chinnappa Reddy, J.)

To attract the ninth exception to section 499, I.P.C. the imputations must be shown to have been made (1) in good faith and (2) for the protection of the person making it or of any other person or for the public good. The insistence of the section is upon the exercise of due care and attention. The standard of care and attention must depend on the circumstances of an individual case, the nature of imputation, the need and the opportunity for verification and so on. In every case it is a question of fact to be decided on its particular facts and circumstances. [631 A-B]

Harbhajan Singh v. State of Punjab, [1965] 3 SCR 232 @ 244, Chaman Lal v. The State of Punjab [1970] 3 SCR 913 @ 916 and 918.

Several questions may arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposed to demolish the defence. In the instant case the stage for deciding these questions had not arrived yet. Answers to such questions, even before the plea of the accused was recorded, could only be a priori conclusions.

[632 H]

The respondent's prayer before the High Court was to quash the Magistrate's order and not to quash the complaint itself as the High Court has done. But that was only a technical defect which need not be taken seriously in an appeal under Article 136 of the Constitution where the Court is concerned with substantial justice and not with shadow puppetry. [630 G]

(Per A.P. Sen J.)

The order of the High Court quashing the prosecution under section 482 of the Code of Criminal Procedure is wholly perverse and had resulted in manifest miscarriage of justice. The High Court has pre-judged the whole issue without a trial of the accused persons. The matter was at the state of recording the pleas of the accused under section 251 Cr. P.C. The circumstances brought out clearly showed that the respondent was prima facie guilty of defamation punishable under section 500 of the Indian Penal Code unless covered by one of the exceptions of section 499 Indian Penal Code. [635 E-F]

The burden to prove that his case would come within the ninth exception to section 499, namely, that the imputation was in good faith and was for the protection of the interests of the person making it or of any other person or for the public good was on the respondent. All that the respondent prayed for was that the Magistrate should not proceed to record his plea under section 251 Cr. P.C. without perusing the enquiry report. There was no application for quashing the prosecution itself. [636 F; 637 C]

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The enquiry report in respect of which the Government claimed privilege had by itself no evidentiary value. The contents of that report could not be made use of unless the facts were proved by evidence aliunde. The report being per se defamatory, it was for the accused to plead the ninth exception in defence and discharge the burden of proving good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good. [637 E; G; H]

Sukro Mahto v. Basdeo Kumar Mahto and Anr. [1971] Supp. SCR 329 at 332, Harbhajan Singh v. State of Punjab [1965] 3 SCR 235, Chaman Lal v. State of Punjab [1970] 3 SCR 913, referred to.

The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege. Journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under the first exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either

justify these assertions or in the limited cases specified in the ninth exception, show that the attack on the character of another was for the public good or that it was made in good faith. [638 G-H]

Dr. N.B. Khare v. M.R. Masani and Ors., ILR 1943 Nag. 347, Arnold v. King Emperor LR (1913-14) 41 Ind. App. 149 at 169, referred to.

(Per Baharul Islam J.)

The Court did not commit any error in quashing the appellant's complaint. [646 E]

The High Court's judgment justifies the factual submission of the respondents that their application was under section 482 as well as under sections 397 and 401 of Cr. P.C. and that they claimed and canvassed the protection under the ninth exception to section 499, I.P.C. The omission in the prayer portion of a petition, particularly in a criminal case, is not fatal. The High Court, in its revisional jurisdiction, can always grant suitable relief justified by law as well as facts and circumstances of a particular case. [641 H; 642 D]

The definition of "good faith" which is couched in negative terms indicates that lack of good faith has been made a part of the offence which the prosecution has to establish beyond reasonable doubt. On the other hand, proof by the accused of the report to be an authentic document is enough. It would create a doubt in the mind of the Court as to the lack of "good faith" on the part of the accused. [644 F-G]

If on a complaint made by a citizen alleging laxity in the observance of jail rules, if the report submitted by a high Government official on the basis of an enquiry conducted by him was for public good and if the respondents had reasons to believe its contents to the true, they will be protected under the ninth exception even if the burden of proof of good faith is on the accused. Good faith need not be proved beyond reasonable doubt. [645 B]

The report of the enquiry officer was exhaustive, reasoned and was based on evidence. The report leads one to believe the imputations. If that be so, it
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cannot be said that the respondents published the report or its summary without due care and attention. This establishes good faith under the ninth exception to section 499 Therefore, the publication obviously was for public good. [646 B-C]

In the instant case even if the findings of the report be proved to be false, the respondents would be protected. Sending back the case to the Magistrate would be an exercise in futility and abuse of the process of the criminal court as the High Court has pointed out. [646 D-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 543-545 of 1979.

Appeals by special leave from the judgment and order dated the 15th April, 1978 of the Madhya Pradesh High Court in Criminal Revision No. 701/77, 105/78 & 103/78 respectively.

H.K. Puri for the Appellant.

R.K. Garg, Sunil Kumar Jain and V.J. Era for Respondents Nos. 1, 2, 5 & 6.

S.K. Gambhir and Vijay Mansaria for the State. The following Judgments were delivered CHINNAPPA REDDY, J. I agree with my brother A.P. Sen that the order passed by the High Court should be set aside and that the Magistrate should be directed to record the plea of the accused under Sec. 251 Criminal Procedure Code and thereafter, to proceed with the trial according to law. The facts leading to these appeals have been stated in the judgments of both my brethren A.P. Sen and Baharul Islam and it is unnecessary for me to state them over again.

The prayer in the application before the High Court was merely to quash the order dated November 30, 1977 of the learned Chief Judicial Magistrate, Bhopal and not to quash the complaint itself as the High Court has done. But, that was only a technical defect and we do not take serious notice of it in an appeal under Art. 136 of the Constitution where we are very naturally concerned with substantial justice and not with shadow puppetry. The position now is this: The news item in the Blitz under the caption 'MISA Rape in Bhopal Jail' undoubtedly contained serious imputations against the character and conduct of the complainant. In order to attract the 9th Exception to Sec. 499 of the Indian Penal Code, the imputations must be shown to have been made (1) in good faith, and (2) for the protection of the person making it or of any other person or for the public good. 'Good Faith' is defined, in a negative fashion, by Sec. 52 Indian Penal Code as follows: "Nothing is said to be done or believed in 'Good faith' which is done or believed without due care and attention". The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too the question whether an imputation was made for the public good. In fact the 1st Exception of Sec. 499 Indian Penal Code expressly states "Whether or not it is for the public good is a question of fact". 'Public Good' like 'Good faith' is a matter for evidence and not conjecture.

In Harbhajan Singh v. State of Punjab, this Court observed (at p. 244):

> "Thus, it would be clear that in deciding whether an accused person acted in good faith under the Ninth Exception, it is not possible to lay down any rigid rule or test. It would be a question to be considered on the facts and circumstances of each

> case...what is the nature of the imputation made, under what circumstances did it come to be made; what is the status of the person who makes the imputation; was there any malice in his mind when he made the said imputation; did he make any enquiry before he made it; are there reasons to accept his story that he acted with due care and attention and was satisfied that the imputation was true? These and other considerations would be relevant in deciding the plea of good faith made by an accused person who claims the benefit of the Ninth Exception".

Again in Chaman Lal v. The State of Punjab this Court said (at p. 916):

> "In order to establish good faith and bona fide it has to be seen first the circumstance under which the letter was written or words were uttered; secondly, whether there was any malice; thirdly, whether the appellant made any enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith".

Later the Court said (at p. 918):

> "Good faith requires care and caution and prudence in the background of context and circumstances. The position of the person making the imputation will regulate the standard of the person making the imputation will regulate the standard of care and caution".

Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the Article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verification? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result of any ill will or malice which the author bore towards the political group to which the complainant belonged? Was the article merely intended to malign and scandalise the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? These and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. 'Good faith' 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on.

SEN, J. This appeal, by special leave, is directed against an order of the Madhya Pradesh High Court dated April 15, 1978 quashing the prosecution of the respondent, R.K. Karanjiya, Chief Editor, Blitz, for an offence under s. 500 of the Indian Penal Code for publication of a news-item in that paper which was per se defamatory, on the ground that he was protected under Ninth Exception to s. 499 of the Code.

During the period of Emergency the appellant, who is a senior lawyer practising at Bhopal, was placed under detention under s.3 (1) (a) (ii) of the Maintenance of Internal Security Act, 1971 and was lodged in the Central Jail, Bhopal. There were several other detenus belonging to the opposition parties lodged along with him in the same jail, including three lady detenus, viz., Smt. Uma Shukla, Smt. Ramkali Misra, Advocate and Smt. Savitha Bajpai, later State Minister, Public Works Department. The husband of Smt. Uma Shukla, a practising advocate at Bhopal, was not detained. Smt. Shukla was released on parole for a week between June 10 and 18, 1976. On her return to the jail it was found that she had conceived. She was examined on July 30, 1976, by a lady doctor, Dr. (Mrs) N.C. Srivstava, Woman Asst. Surgeon and the pregnancy was reported to be six weeks old. Smt. Shukla was again released on parole in the month of August 1976 and on August 24, 1976, she got the pregnancy terminated by Dr. (Mrs) Upadhayay at the Zanana Hamidia Hospital, Bhopal with the written consent of her husband under s.3 of the Medical (Termination of Pregnancy) Act, 1976.

While the order of detention of the appellant was still in operation, there was an ex parte confidential enquiry held by Shri S.R. Sharma, I.A.S. Deputy Secretary (Home) Government of Madhya Pradesh, into the circumstances leading to the pregnancy of Smt. Shukla. The Enquiry Officer by his report dated November 3, 1976, apparently held that the pregnancy was due to illicit relations between the appellant and Smt. Shukla, during their detention in the Central Jail. On December 25, 1976, the Blitz, in its three editions in English, Hindi and Urdu simultaneously flashed a summary of the report and the story as given out was that (i) there was a mixing of male and female detenus in the Central Jail, Bhopal, (ii) the appellant had the opportunity and access to mix with Smt. Shukla freely, and (iii) Smt. Shukla became pregnant through the appellant. The news-item was per se defamatory. It is somewhat surprising that the Enquiry Report, which was a document of highly confidential nature, should have found its way to the Press.

With the revocation of Emergency, the appellant along with the other political detenus was released from detention. On his release, the appellant lodged a criminal complaint for defamation against the respondent, R.K. Karanjia. The respondent, on appearing before the Magistrate, moved an application under s. 91 of the Code of the Criminal Procedure, 1973, praying that the report of the Enquiry Officer be sent for as it was likely to be lost or destroyed. On August 23, 1976 the learned Magistrate allowed the application and directed that the report with the concerned file be produced. The State Government, however, did not comply with the direction and by an application dated December 31, 1977, claimed privilege in respect of the Enquiry Report which still awaited consideration. On October 29, 1977 when the case was fixed for recording the plea of the accused under s. 251 of the Code, the respondent moved an application stating that the plea should be recorded only after the Enquiry Report was produced. The learned Magistrate by his order dated November 30, 1977, rejected the said application of the respondent as to the summoning of the records and directed the accused persons to appear in person or through counsel for explaining to

them the substance of the accusation and also for recording their pleas.

Thereafter, the respondent filed a revision before the High Court under s. 397 of the Code for setting aside the order of the learned Magistrate and alternatively under s. 482 of the Code, if it were held to be an interlocutory order. The revision was heard by a learned Single Judge and it appears that the Government Advocate made available a copy of the Enquiry Report for the perusal of the learned Judge. The learned Judge by his order dated April 15, 1978, quashed the proceedings on the ground that the respondent's case "clearly falls within the ambit of exception 9 of section 499 of the Indian Penal Code". In reaching that conclusion, he observed that "it would be abuse of the process of the court if the trial is allowed to proceed which ultimately would turn out to be a vexatious proceeding". The reasoning advanced by him was as follows:

> The real question to ask is, did the applicants publish the report for public good, in public interest and in good faith? My answer is in the affirmative. It was a publication of a report for the welfare of the society. A public institution like prison had to be maintained in rigid discipline; the rules did not permit mixing of male prisoners with female prisoners and yet the report said the prison authorities connived at such a thing, a matter which was bound to arouse resentment and condemnation. The balance of public benefit lay in its publicity rather than in hushing up the whole episode. Further, there was good faith in the publication. The source on which the publishers acted was the proper source on which they were entitled to act and they did so with care and circumspection. The report further shows that the publication had been honestly made in the belief of its truth and also upon reasonable ground for such a belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under like circumstances.

(emphasis added) It is somewhat strange that the learned Judge should have made public the contents of a document in respect of which the State Government claimed privilege.

The order recorded by the High Court quashing the prosecution under s. 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has pre-judged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under s. 251 of the Code. The requirements of s. 251 are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or demands to be tried. The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under s. 500 of the Code unless he pleads one of the exceptions to s. 499 of the Code. The offending article which is per se defamatory, is as follows:

> MISA RAPE IN BHOPAL JAIL (By Blitz Correspondent). Blitz: A shocking sex scandal involving a top RSS leader of M.P. was discussed at a secret meeting of Jan Sangh MLAs and MPs here recently. The alleged escapades of 55 years old Sewakram Sobhani, a close confidant of RSS Chief Bhausaheb Devras, with the young wife of another RSS man in the Bhopal Central Jail, where both were detained under MISA, have rocked RSS Jan Sangh circles of the State.

> According to a report submitted to the State Government by a Deputy Secretary in the Home Deptt. who inquired into the grisly affair, Sobhani was reportedly responsible for making Mrs. Uma Shukla, 22 year old wife of a lawyer Yogesh Shukla, pregnant. Abortion?
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> When this was discovered she was quietly released on parole and, at her own request, taken for abortion to the Sultania Zanana Hospital. After discharge she refused to rejoin her husband but stayed during the remaining period of her parole in the hide-out of the 'total-revolutionaries' in the Professor's Colony. She returned to jail later and was transferred to the Hoshangabad Jail, while Sobhani was sent to the Raipur Central Jail.
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> The Official report throws light on how Sobhani allegedly enticed Mrs. Shukla with the help of a high official of the Bhopal Central Jail despite a ban on contacts between male and female detenus. The jail official, himself a close sympathiser of the RSS allowed Sobhani to meet her frequently in his office and their love sessions were in his anteroom. Yogesh Shukla has made a representation to the State Government alleging that Sobhani had committed adultery with his wife and demanded action against the jail authorities for permitting a "rape" of his wife.

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

We are completely at a loss to understand the reasons which impelled the High Court to quash the proceedings. The respondent, in his revision directed against the order of the learned Magistrate dated November 30, 1977, asserted in paragraph 5 that the case pre-eminently a fit case for quashing the impugned order either in the revisional jurisdiction of the High Court or in the exercise of its inherent powers under s. 482 of the Code to prevent the abuse of the process of law and to secure the ends of justice. The prayer made in the revision was in these terms:

> The applicants pray that the impugned order be quashed and the learned Magistrate be directed to persue the report which he has sent for under section 91, Criminal Pro. Code and pass suitable orders according to law.

All that the respondent wanted is that learned Magistrate should not proceed to record the plea of the accused persons under s. 251 of the Code without perusing the Enquiry Report under s. 91 of the Code. There was no application made before the High Court under s. 482 of the Code for quashing the prosecution itself. The averment contained in paragraph 4 that the Blitz only published a concise summary from the findings reached by the Deputy Secretary (Home) who was the Enquiry Officer appointed by the Government and, therefore, it was the duty of the learned Magistrate, to go through the report for himself and hold that no accusation had been made and the question of

explaining it to the accused did not arise and the proceedings were liable to be dropped because no ingredients constituting an offence under s. 500 of the Code had been made out, must be read in conjunction with paragraph 5 and in support of the limited prayer made in revision. This cannot be construed as invoking the High Court's powers under s. 482 of the Code for quashing the whole proceedings.

We have considerable doubt about the propriety of the High Court making use of the Enquiry Report which has no evidentiary value and in respect of which the Government claimed privilege. The application made by the Government claiming privilege still awaited consideration. While the Government claimed privilege at one stage, it appears to have waived the claim and produced the Enquiry Report and made the contents public. There was no factual basis for the observations made by the High Court underlined by me, except the Enquiry Report. The contents of the Enquiry Report cannot be made use of unless the facts are proved by evidence aliunde. There is also nothing on record to show that the accused persons made any enquiry of their own into the truth or other-wise of the allegations or exercised due care and caution for bringing the case under the Ninth Exception. The Enquiry Report cannot by itself fill in the lacunae.

A bare perusal of the offending article in Blitz shows that it is per se defamatory. There can be no doubt that the imputation made would lower the appellant in the estimation of others. It suggested that he was a man devoid of character and gave vent to his unbridled passion. It is equally defamatory of Smt. Shukla in that she was alleged to be a lady of easy virtue. We need not dilate on the matter any further. It is for the accused to plead Ninth Exception in defence and discharge the burden to prove good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good.

In Sukro Mahto v. Basdeo Kumar Mahto & Anr this Court observed:

> The ingredients of the Ninth Exception are first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a question of fact.

After referring to the two earlier decisions in Harbhajan Singh v. State of Punjab and Chaman Lal v. State of Punjab the Court held that there must be evidence showing that the accused acted with due care and caution. "He has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was correct. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to s. 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true."

The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations,

sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith: per Vivian Bose, J. in Dr. N.B. Khare v. M.R. Masani and Ors.

As the matter is of great public importance, it would, perhaps, be better to quote the well-known passage of Lord Shaw in Arnold v. King Emperor (2) The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to this power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful: but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position.

For these reasons, we must set aside the order passed by the High Court and direct the Magistrate to record the plea of the accused persons under s. 251 of the Criminal Procedure Code, 1973 and thereafter, to proceed with the trial according to law.

BAHARUL ISLAM, J. Had there been no subsequent development after the impugned judgment of the High Court, I could have persuaded myself to agree to the order proposed by my Brother Sen, J., but after the Inquiry Report has been released by the Government and placed before us I regret my inability to agree to the order of sending back the case to the Magistrate as proposed by my Brother, and proceed to give my own judgment.

2. The facts material for the purpose of disposal of these appeals may be stated thus: During the period of Emergency between June 1975 and March 1976 the appellant, Shri Sewakram Sobhani, an advocate, was one of the detenus under the Main-

tenance of Internal Security Act, 1976 (hereinafter 'MISA') and lodged in the Bhopal Central Jail. There were also three women detenus including Smt. Uma Shukla and Smt. Ramkali Mishra, Advocate. The husband of Smt. Uma Shukla was a practising advocate at Bhopal. He was not a detenu. Smt. Uma Shukla became pregnant while in detention in the aforesaid Central Jail and abortion was carried out in the month of August, 1976 in the Zanana Hamidi Hospital to relieve her of the pregnancy. This circumstance created an uproar and an inquiry into the affairs had to be held by Shri S.R. Sharma, Dy. Secretary (Home), Government of Madhya Pradesh, (hereinafter 'Sharma') who submitted his report dated 7.10.1976 to the Government.

3. Respondent No. 1 is the Chief Editor of the Blitz and respondent No. 5 was, at the relevant time, Bhopal Correspondent of the Blitz. Respondents 2, 3 and 4 are persons connected with the Blitz Weekly publication. The Blitz weekly is published in three languages, viz., English, Hindi and Urdu.

The Blitz weekly dated 25.12.76 published a news item purported to be a summary of the report submitted by Sharma in its Urdu and Hindi editions. The appellant took exception to the publication and filed a criminal case for defamation against the respondents under Sections 500 and 501 of the Penal Code. The Magistrate issued processes to the respondents. The respondents appeared before the Magistrate and made an application on 23.8.77 under Section 91 of the Code of Criminal Procedure, 1973 (hereafter 'the Code') requesting the court, before arriving at a conclusion whether it should proceed further with the case or not, to call for (a) the original Enquiry Report submitted by Sharma on 7.10.76; (b) the statement of witnesses recorded by Sharma, (c) the original complaint; and (d) documents of the jail Department including letters from the Government to the Department (Vide para 4 of Annexure D to the Special Leave Petition). The Magistrate called for the original Inquiry Report dated 7.10.76 submitted by Sharma to the Government, and then posted the case for production of the said records by the Government and recording the plea of the respondents. The Government failed to produce the inquiry report before the Magistrate whereupon the Magistrate issued a notice to the Government to show cause as to why contempt proceedings should not be initiated against them. The Magistrate, however, did not wait for the receipt of the report and wanted to record the plea of respondents.

The respondents then filed an application before the High Court of Madhya Pradesh under Section 397/401 read with Section 482 of the Code. It was alleged by the respondents that the Deputy Home Secretary in his report came to the following conclusions :

> (1) There was free mixing of male and female prisoners in the Bhopal Central Jail ;
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> (2) Shri Sewakram Sobhani had opportunity and also availed of the opportunity and mixed very freely with Smt. Uma Shukla; and (3) Smt. Uma Shukla became pregnant through Shri Sewak Ram Sobhani.

4. It may be mentioned that the Government later on produced the inquiry report before the High Court but claimed privilege. The learned High Court presumably perused the report before passing the impugned order. It may also be mentioned that although the Government claimed privilege in respect of the report at that time, it appears, they subsequently, after the impugned order of the High Court, waived the claim of privilege, and released the inquiry report; for, in fact, a copy of the report has been annexed and is available in the paper book of these appeals before us as Annexure `A'.

5. The submission of the appellants is that the impugned order of the High Court is beyond its revisional jurisdiction. The submission is that the respondents prayed for quashing the order of the Magistrate proceeding to record their plea before the inquiry report was produced by the Government, but the High Court has wrongly quashed the complaint itself. On the other hand the reply of the respondent is that although there was no specific prayer in the petition, the petition was also made for quashing the criminal case under Section 500/501 of the Penal Code pending before the Magistrate. The respondents' submission is that they are not guilty for the impugned publication in view of Exception 9 to Section 499 of the Penal Code.

6. A perusal of the respondents' petition before the High Court and its impugned judgment justifies the factual submission of the respondents, namely, that their application before the High Court (Copy Annexure C) was under Section 482 as well as Sections 397 and 401 of the Code, and that the respondents claimed and canvassed the protection under the Ninth Exception of Section 499 of the Penal Code. For, para 6 of the Judgment of the High Court reads :

> "The applicants feeling aggrieved have come to this Court for quashing the complaint, since they contend that the publication would squarely fall within exception 9 of Section 499 of the Indian Penal Code. The applicants further contend that the report of the Deputy Secretary (Home) is the document on the basis of which the reporting was done and unless that is got produced and inspected, the defence of exception 9 cannot be made out.....

(Emphasis added)

7. The omission in the prayer portion of a petition of a part of the claim, particularly in a criminal case, is not fatal. The High Court in its revisional jurisdiction can always grant suitable relief justified by law as well as facts and circumstances of a particular case.

That a part, Article 136 of the Constitution of India gives wide powers to the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The power is discretionary and therefore to be sparingly exercised. This power is to be exercised to meet ends of justice, to enhance justice and remove miscarriage of justice in a particular case. It does not exercise such powers for academic reasons but for practical purposes.

8. The High Court in the impugned order has held that "it would be abuse of the process of the court if the trial is allowed to proceed or alternatively to turn out to be vexatious proceeding" and therefore quashed the complaint. Such an order would be warranted under Section 482 of the Code of Criminal Procedure if the merit of the case before the High Court justified it. We have therefore to examine whether the respondents' case falls within the ambit of the Ninth Exception to Section 499 of the Penal Code as held by the High Court.

9. The appellant has not submitted before us that the summary of the report published in the Blitz is not a correct summary of the Inquiry Report. The copy of the Report, Annexure A, shows that a complaint was received from one Shri Krishsan Gopal Maheshari, advocate, alleging certain objectionable activities and misconduct on the part of the appellant and Shrimati Uma Shukla. Annexure A also shows that the Inquiry Officer Sharma, examined several witnesses including Shri Yogesh Shukla, husband of Smt. Uma Shukla.

Para 4 of the report reads :-

"The following points are in dispute :

(a) whether as alleged by the complainant there was free mixing of female members with male members detained under MISA;

(b) in case (a) is in the affirmative, whether Shri Sewakram Sobhani had an opportunity to mix freely with Smt. Uma Shukla;

(c) in case (a) and (b) are in the affirmative when, how and through whom Smt. Uma Shukla a MISA detenu conceived".

His findings are "(a) There was a free mixing of male and female prisoners in the Bhopal Central Jail;

(b) Shri Sewakram Sobhani had opportunity and also availed of opportunity and mixed very freely with Smt. Uma Shukla;

(c) Smt. Uma Shukla became pregnant through Shri Sewakram Sobhani".

It, therefore, appears that the impugned publication is a correct summary of the report and no submission has been made to the contrary by the appellant before us.

10. The only question is whether the publication falls within the Ninth Exception to Section 499 of the Penal Code, as claimed by the respondents.

Before we do that, we must not be oblivious of the fact that the Inquiry Report in question was a privileged document; it is now an unprivileged open document as indicated above. The High Court proceeded on the footing that if the document is not produced to be utilized by the accused, the benefit would go to him.

11. Section 499 defines `defamation'. It is as follows:-

"S. 499. 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 defame that person".

The Ninth Exception reads:

"It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good".

The Ninth Exception requires, inter alia, that the imputation made must be in good faith for the public good.

12. `Good faith' has been defined in Section 52 of the Penal Code as:

> "52. Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention", The definition is expressed in negative terms. Normally proof of an exception lies on the person who claims it; but the definition of the expression "good faith" indicates that lack of good faith has been made a part of the offence which the prosecution has to establish beyond reasonable doubt. On the other hand the mere proof by the accused of the report to be an authentic document is enough; it will create a doubt in the mind of the Court as to the lack of "good faith" on the part of the accused.

13. The inquiry was made and the report prepared by a highly responsible officer and submitted to the Government. It was in pursuance of a complaint made by one of the citizens pointing out laxity in observance of jail rules and highly objectionable practices of some of the prisoners and seeking improvement in jail administration. The object was to see improved conditions, and maintenance of certain standard of moral conduct by prisoners, in jail. If the complaint and the consequent inquiry report be for public good, and the respondents had reasons to believe its contents to be true, they will be protected under the Ninth Exception. Even if the burden of proof of `good faith' be on the accused `good faith' need not be proved beyond reasonable doubt. Once this is done, whether the publication was for public good would be a matter of inference.

14. The Dy. Secretary (Home) examined Shri Bhandari, Editor of Prach who was a MISA detenu as witness No. 1, complainant Maheshwari as witness No. 2, Smt. Ramkali Mishra, an advocate, and a member of Jana Sangha, another MISA detenu, as witness No. 4, Dr. Hamid Quireshi, another MISA detenu as witness No. 6, Shri Ramesh Chand Shrivastava an `independent' witness as witness No. 7, and Shri Yogesh Shukla, husband of Smt. Uma Shukla as witness No. 3. Most of the said witnesses, it appears, were the party colleagues of the appellant and his co-MISA detenus. I must not be understood to suggest the contents of the inquiry report are true; it is an exparte inquiry report; it might be the result of political rivalry, as alleged by the appellant, but it appears that political rivalry, if any, was between the members of the appellant's party and not between the party in power and party in opposition.

15. The comment of Mr. Sharma on the evidence of witness No. 3 is as follows:

"Shri Yogesh Shukla witness No. 3 has categorically stated that he had no connection with his wife and that she became pregnant through Shri Sobhani, Advocate and got the child aborted. It is worth consideration as to why the husband will come up with such an open allegation against his own wife, unless there be no very strong reasons for such a conviction. Normally, no husband, even though his wife may have conceived through somebody else will like to see his name being scandalised. Shri Yogesh Shukla witness No. 3 is an advocate, quite an educated person and we can safely presume that he knows the consequences of his statement and also their legal and moral implications on his profession. Such an open scandalous statement against his own wife could not but be a result of very strong abhoration or an outcome of utter desperation. It could also be an expression of a naked truth."

The entire report is exhaustive, reasoned and based on evidence.

16. A perusal of the report will normally lead one to believe the imputations. If that be so, it cannot be said that the respondents published the report or its summary without due care and attention. This establishes `good faith' as required by the Ninth Exception to Section 499 of the Penal Code. From what has been stated above, the publication obviously appears to be for public good.

17. The appellant submitted that he wanted an opportunity to clear himself of the imputations made against him by adducing evidence before the Magistrate to establish the falsity of the imputations made in the publication. We are not concerned with the truth or falsity of the imputations published. Even if the findings in the report be proved to be false, the respondents will be protected. Sending back the case to the Magistrate to record the respondents' plea after the perusal of the Inquiry Report will, in my opinion, be an exercise in futility and abuse of the process of the criminal court. The appellant may seek his remedy, if any, in the Civil Court. The learned High Court, therefore, in my opinion committed no error in quashing the complaint.

18. The appeal is dismissed.

ORDER In view of majority judgments, the appeals are allowed.

P.B.R. Appeals allowed.