In 1. Ravikumar vs In B.A. Harish Gowda on 7 July, 2020

BEFORE THE LXVI ADDL.CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY.
(CCH-67)

DATED: This the 7 th day of July, 2020

PRESENT
Smt. K.KATHYAYANI., B.Com, L.L.M .
LXVI Addl.City Civil & Sessions Judge,
Bengaluru

Crl.Appeal.Nos.1353/2017 & 1660/2017

Appellants in Crl.Appeal No.1353/2017 and respondents in Crl.Appeal No.1660/2017 :	1. Ravikumar, S/o Late Kenche Gowda, Editor, Publisher and Printer of Parivala Pathrike, Journal, R/o Attiguppe Village, Maralavadi Hobli, Kanakapura Taluk, Ramanagara District. 2. R.K.Ravi Kumar, S/o Late Kenche Gowda, Reporter of Parival Pathrike - Journal, R/o Attiguppe Village, Maralavadi Hobli, Kanakapura Taluk, Ramanagara District. (By Sri.S.K.Jayaramu, Advocate.)
	/Vs/
Respondent in Crl.Appeal No.1353/2017 and appellant in Crl.Appeal No.1660/2017 :	B.A. Harish Gowda, Aged about 65 years, The then Director of Pre University Education, Department and Special Officer CET Cell,

Bengaluru.

(Now retired from Service as
Secretary to Government
Food and Civil Supplies and
Consumer Affairs Department.)

Residential Address No.3,

Jaladarshini Layout,
New BEL Road,
Bengaluru 560 054.
(By Sri.S.R.Raviprakash, Advocate .)

COMMON JUDGMENT

Both the above appeals are filed under Section 374(3) of Cr.P.C. challenging the judgment passed by the learned V ACMM., Bengaluru on 30.08.2017 in CC.No.20643/2000 i.e., the complainant has preferred the Crl.Appeal No.1660/2017 seeking enhancement of the quantum of sentence. On the other hand, the accused has filed the Crl.Appeal No.1353/2017 seeking to set aside the sentence passed against him in the impugned judgment.

2. Since both these appeals are filed challenging the same judgment and thus, on the same set of facts and on the same evidence on record, these appeals are taken together for common judgment.

3. For the sake of convenience, the ranks of the parties are retained as they are before the learned Magistrate Court.

4. The brief facts of the case in both the appeals are one and the same and they are;

a) The complainant has preferred the private complaint against the accused under Section 200 of Cr.P.C. for the offence of defamation punishable under Section 500 of IPC on the allegation that the accused has written, printed and published defamatory article containing false

imputations against him in an issue of the journal "Parivala Patrike" dated 15.09.2000 and thereby also committed the offences under Sections 4, 5, 13, 14 and 15 of the Press and Registration of Books Act of 1867 (for short, "the Act").

b) On going through the evidence on record and after hearing arguments of both the sides, the learned Magistrate allowed the above complaint convicting the accused for the offences punishable under Sections 499 and 500 of IPC and Section 4 read with Sections 13 and 14 of the Act.

c) Being aggrieved by the said judgment of conviction and sentence, the accused filed Crl.Appeal No.610/2002 on the file of the Court of Fast Track (Sessions) Judge at Bengaluru, wherein, the Appellate Court had set aside the sentence in so far as the offences under the Act and upheld the conviction and sentence in respect of the offences under Sections 499 and 500 of IPC.

d) Aggrieved by the above judgment, the accused approached the Hon'ble High Court of Karnataka, Bengaluru in Crl.R.P.No.1045/2006 and by virtue of the order passed on 15.07.2013 in the above revision petition, the matter was remanded to the trial Court for continuation of the trial from the point of cross examination.

e) After the remand of the case, in order to rectify the mistakes, the complainant had filed applications under

Sections 91 and 254(2) of Cr.P.C. before the trial Court requesting to call for the records and to lead additional evidence which came to be allowed.

f) Being aggrieved by the same, the accused went with Crl.R.P.No.70/2015 before the CCH-68 which came to be dismissed as per the order dated 30.11.2015.

g) Aggrieved by the said order, the accused approached the Hon'ble High Court of Karnataka, Bengaluru in Crl.P.No.8504/2015 wherein the orders was passed on 17.08.2016 setting aside the order of the trial Court and the First Appellate Court as well as given up the charge relating to the alleged offences under the Act.

h) In the mean while, the complainant got examined PWs-4 and 5. But in view of the above orders of the Hon'ble High Court of Karnataka, the matter proceeded further with, without subjecting PWs-4 and 5 for cross examination.

i) After hearing both the sides on merits of the case and on going through the evidence on record, the trial Court has passed the impugned judgment convicting the accused for the offence under Section 500 of IPC by ordering to undergo imprisonment for 6 months and imposing fine of Rs.25,000/- and in default of payment of

fine, to undergo simple imprisonment of 3 months. It is

also ordered to pay the fine amount to the complainant as compensation.

5. Being aggrieved by the above order of sentence, both the complainant and the accused have come up with these appeals wherein the grounds urged by the complainant are that;

a) The imputations made in the journal at Ex.P-2 i.e., in the article at Ex.P-2(a) are of very serious in nature. The fact that all the imputations are false and concocted has been proved beyond any doubt. The punishment meted out to the accused by the trial Court is very meager and not commensurate with the gravity of the offence.

b) His deposition has brought out very clearly that the accused printed and published the defamatory article to defame and embarrass him when his cross examination was going on in another defamation case filed by him in CC.No.5295/1998 against the reporter, editor, printer and publisher of another journal, the accused distributed the copies outside the Court hall.

c) The accused in that case produced copy of Ex.P-2 as evidence in their favour. In that case, the accused persons were convicted by the II ACMM, Bengaluru and the same was upheld by the City Civil and Sessions Court and by the Hon'ble High Court. This fact was brought out in the evidence tendered by him.

d) The complaint was filed in the year 2000 i.e. 17 years ago. The trial Court pronounced the judgment convicting the accused in the year 2002. But the accused has successfully delayed the execution of the punishment for the subsequent 15 years by misleading the Courts and has not examined a single witness or produced a single document to substantiate the defamatory imputations made against him in the impugned article.

e) A person who prints, publishes and distributes a journal with circulation of 40,000 copies and who could engage very leading criminal lawyers before the Appellate Court and the High Court could have very easily engaged a good and responsible lawyer to defend him before the trial Court, but as a strategy to deliberately delay and thus, to

defeat his efforts to get justice, the accused avoided to cross examine his witnesses and derived the benefit out of it.

f) In the process, the accused has caused enormous hardship, suffering, mental agony and financial loss over a very long period lasting nearly 17 years. The conduct of accused therefore, is highly deplorable and he has made a mockery of the judicial system. Hence, the punishment imposed on the accused deserves to be enhanced to the maximum.

g) While sentencing the accused, the trial Court has

grossly erred in not taking into consideration the above facts and hence, prayed to call for the records and to pass proper and just sentence on the accused by enhancing from the one passed by the trial Court to the maximum punishment in the interest of justice and equity.

6. On the other hand, the grounds urged by the accused in support of his appeal are that;

a) The judgment passed by the trial Court is perverse, illegal and without looking into the facts and circumstances of the case.

b) The judgment passed by the trial Court is unsustainable because the learned trial Judge has not understood the entire facts and circumstances of the case.

c) The trial Court has not understood the exceptions given under Section 499 of IPC. He has cross examined the complainant in length to elicit the truth in respect of duty and responsibility of a Government servant.

d) During the course of cross examination of the complainant, several conspicuous points were raised since he is responsible printer, publisher and writer of a Magazine.

e) He being a writer of Magazine should have make some investigative report. While making investigation in respect of the report, he understood the character and disposition of the the complainant.

f) As admitted by the complainant, he is a printer, publisher and writer of Parivala fortnightly news paper

Magazine and that the complainant did not know him earlier to this incident. Hence, the complainant did not know any thing about him earlier to the alleged offence and the entire facts are not revealed that there is no intention to damage the reputation of the complainant.

g) He did not have any intention, enmity or mensrea to commit the offence under Section 500 of IPC against the complainant and the same has not at all been appreciated by the trial Court and the said fact is even not noticed despite of he arguing this aspect in length.

h) The trial Court has not understood the evidence of the complainant. PWs-1 and 2 have been examined and cross examined fully. But, PW-3 was not available for cross examination and his evidence needs to be discarded and the chief of PW-3 need not be considered, but the trial Court categorically stated in the judgment that PW-3 is examined and cross examined. The trial Court without understanding the proceedings of the case has considered the evidence of PW-3 in the judgment.

i) The trial Court has failed to understand the proceedings and considered the evidence of PWs-4 and 5

who are Tahasildar and Revenue Inspector of Kanakapura Taluk. In respect of these witnesses, he went up to High Court and the Hon'ble High Court dismissed the applications of the complainant filed under Sections 254(2) and 91 of Cr.P.C. seeking permission to call PWs-4 and 5 as the witnesses of the complainant in Crl.P.No.8504/2015 vide order dated 17.08.2016 and their evidence were automatically discarded in view of the said order.

j) Despite of the fact that the evidence of PWs-4 and 5 was discarded, the learned Magistrate has considered their evidence also while giving finding without understanding the case and has passed the impugned judgment and convicted him.

k) The trial Court has also considered the documents at Ex.P-26, 27, 28 and 29 which are said to have been produced by PWs-4 and 5. When their evidence itself should not be considered, the trial Court has erroneously considered these exhibits also and has not considered the

order of the Hon'ble High Court which can be understood that the learned Magistrate gone against the directions of the Hon'ble High Court.

l) The trial Court has not at all looked into the cross examination portions of PWs-1 and 2 and nothing is discussed about the same in the judgment. The trial Court ought to have been considered the evidence of PWs-1 and 2

only, but has wrongly and illegally considered the evidence of PWs-3 to 5.

m) The trial Court has specifically stated about the exhibits at Ex.P-26, 27, 28 and 29 and considered the same while passing the judgment which is wrong and illegal and the same is considered without understanding the case.

n) The trial Court has not understood the implication of the provisions of Sections 499 and 500 of IPC and passed the impugned judgment with a prejudiced mind. Since the trial Court has not at all considered his defence, the issue is prejudged before understanding the law and the facts of the case.

o) The trial Court has not at all considered the cross examination portion of PW-2 wherein he has categorically admitted that he does know as to whether the reputation of the complainant was damaged or not. PW-2 has not at all supported the case of the complainant and these facts are clearly elicited from the mouth of PW-2. The trial Court has not considered a single fact of the defence while passing the judgment.

p) The trial Court has passed the judgment in a mechanical way and viewed from any angle the impugned judgment is not sustainable.

q) Hence, both of them prayed to allow their

respective appeals and to pass the orders as sought therein.

7. In response to the due service of notices in both the appeals, the respective opposite party/the respondent/s put their appearance through their respective counsels (i.e., common counsels in both the appeals).

8. The complainant has filed his objections to the memo of appeal in Crl.Appeal No.1353/2017 denying the

para wise averments of the appeal memo and contending that;

a) He had concluded his evidence in the year 2002 by placing the evidence proving that the imputations made against him were true and that they do fall within the exceptions of Section 499 of IPC.

b) The false and the concocted imputations made by the accused against him in Ex.P-2. After the conclusion of his evidence, in the last 15 years, the accused has not examined a single witness or produced a single document to prove that the imputations made by the accused against him in Ex.P-2 were true or that they fall within the ambit of exceptions to Section 499 of IPC and he is trying to make out a case by highlighting errors in the trial Court judgment suppressing this very important fact.

c) In the elaborated deposition supported by numerous documents, he as PW-1 has brought out in

detail his official status as existed then, his achievements, his image as a public servant etc. As the false imputations made against him are defamatory per-se, as per the law

laid down by the Supreme Court, High Courts of Kerala and Karnataka in their judgments, the absence of any evidence by the accused to prove that the imputations made by him in the journal at Ex.P-2 are true and fall within the exceptions to Section 499 of IPC, are sufficient to hold that the accused had committed the offence under Section 500 of IPC.

i) The judgment of the Hon'ble High Court of Karnataka in Crl.Appeal No.52/2007 in E.Prasanna Vs H.R.Sanjeeva delivered on 11.12.2013 applies aptly to this case. The accused who was the editor, printer and publisher had published defamatory statement against the complainant and the trial Court had held that the statement imputing immoral conduct upon the complainant, printed and published by the accused were per-se defamatory and convicted the accused. The accused went in appeal and the Appellate Court held that the alleged defamatory statement fall within exceptions 1 and 2 of Section 499 of IPC and therefore, the accused has not

committed any offence punishable under Sections 500 and 502 of IPC and acquitted the accused.

ii) The complainant filed Criminal Appeal No.52/2007 before the Hon'ble High Court of Karnataka and in it's judgment dated 11.12.2013, the Hon'ble High Court has held that;

"The learned Judge of I-appellate Court has failed to notice that burden of proving the defamatory statement falls within exception 1 or 2 to Section 499 IPC would lie upon accused. The learned Judge of I-appellate Court has failed to notice pre requisites to invoke exception 1 or 2 to section 499 IPC. The accused has to prove that alleged imputation is true."

Further, the Hon'ble High Court allowed the appeal in part and convicted and sentenced the accused. So, it is very clear that, in the first place, the accused should prove that the imputations made by him against the complainant in the journal are true, only then the question of considering them under the exceptions to Section 499 of IPC will arise and not otherwise.

iii) The Supreme Court of India in its judgment in Subramanya Swamy Vs. Union of India in W.P. (Criminal) No.184 of 2014 (made available on the website of the

Supreme Court) has dealt with the matter very elaborately. In paragraph 173 of the judgment, the Hon'ble Court has reproduced its observations in Chaman Lal Vs. State of Punjab (1970 1 SCC 590) that in order to come within the First Exception to Section 499 of the Indian Penal Code, it has to be established that what has been imputed concerning the respondent is true and the publication of

the imputation is for public good. The onus of proving these two ingredients, namely truth of the imputation and the publication of the imputation for the public good is on the accused.

iv) In Konath Madhavi Amma Vs. S.M.Sherief (1985 Crl.L.J. 1496) the Hon'ble High Court of Kerala held that;

"..... in a complaint for defamation, it is not necessary for the complainant to prove his or her reputation." "it is not necessary to prove that the complainant directly or indirectly suffered from the scandalous imputations; that proof of intention, knowledge or reasonable belief on the part of the accused regarding the possible harm to reputation is sufficient and whether harm was actually caused or not is immaterial."

The Hon'ble High Court of Karnataka has relied upon the said judgment in deciding the matter in M.Somashekar and

Others Vs S.A.Subbaraju (ILR 1989 KAR 738 = 1989 (3) Kar.L.J. 195).

d) As regards to the averment that the trial Court did not show any interest to hear the oral arguments of the parties, it is not correct. He himself had voluntarily filed the written argument on the 1st day of posting the case for arguments. The trial Court adjourned the case for hearing the argument of the accused several times, but the advocate for the appellant avoided arguing on one pretext or the other. Finally, he filed the written argument which is as good as oral argument and even more reliable than oral argument because written argument becomes the part of

the Court record.

e) The averments in paragraphs 7 and 8 of the appeal Memorandum under the heading "grounds" are not correct. The judgment is very lawful and has been made on the basis of the evidence that has come forth on record. The averment in paragraph 9 and 10 of the appeal Memorandum that the appellant/accused is the printer, publisher and writer of the defamatory article is true and

correct. Rest of the allegations are far from truth and patently false.

f) By prolonging the case for 17 years, the accused ensured that one witness was not available for cross examination. He had examined PWs-4 and 5 to prove the offence committed by the accused under the Act and not in respect of the offences committed under Sections 499 and 500 of the IPC.

g) However, the learned Magistrate has considered the evidence of PWs-4 and 5 and the documents produced through them to take into consideration of the conduct of the accused in respect of the offences under Sections 499 and 500 of IPC. It is not an error but a supportive fact to show the ability of the accused to commit the offence under Sections 499 and 500 of IPC.

h) Without prejudice to the said contention, it is further submitted that even if it is considered as an error

committed by the Magistrate, it will no way affect the judgment as he has brought in sufficient evidence in the form of his elaborate deposition as PW-1 and produced 22

documents in respect of the offence under Section 499 of IPC and also the law laid down in the judgments of Supreme Court, High Courts of Karnataka and Kerala are more than sufficient to prove the case. So, the error committed by the trial Court judge in stating that PW-3 is examined and cross examined" and considering the evidence of PWs-4 and 5 will no way affect the judgment and conviction.

i) The appeal does not have any merit of consideration as it is devoid of any lawful grounds and therefore, is liable to be dismissed with costs. Hence, prayed to dismiss the appeal in the interest of justice and equity.

9. Secured the LCR.

10. Heard both the sides on merits of the case.

a) In addition, the counsel for the complainant has filed his written arguments and the additional written arguments wherein he has reiterated his statement of objections to the appeal memo in Crl.Appeal No.1353/2017.

b) He has placed his reliance on the following

judgments/decisions and produced the photo copies/on

line printouts of the same.

1. Criminal Appeal No.52/2007 E.Prasanna Vs. H.R.Sanjeeva (The Judgment of the Hon'ble High Court of Karnataka)

2. Subramanya Swamy Vs. Union of India in W.P. (Criminal) No.184 of 2014 (The Supreme of Court India Judgment).

3. 1970(1) SCC 590 Chaman Lal Vs. State of Punjab.

4. 1971(1)SCC 885 Sukra Mahato Vs Vasudeo Kumar Mahato and another.

5. AIR 1966 SC 97 Harbhajan Singh Vs State of Punjab & Another.

6. 2001(2) SCC 171 (paragraphs 28,29,and 30) - S.K. Sundaram In Re

7. 1985 Crl.LJ 1496 Konath Madhavi Amma Vs S.M.Sherief.

8. ILR 1989 KAR 738 M.Somashekhar and others Vs. S.A.Subbaraju.

c) I have carefully gone through the above noted

decisions and perused the record.

11. On the basis of the above grounds made out, the

following points are arisen for my determination in both the

appeals.

1) Whether the complainant appellant/accused appellants prove the grounds urged by them in support of their respective appeals?

2) Whether the impugned judgment requires interference by this Court?

3) What Order?

12. My findings to the above points are answered in

the;

1) Point No.1 : Partly affirmative
2) Point No.2 : Affirmative
3) Point No.3 : As per final order for the following reasons.

REASONS

13. POINTS Nos.1 AND 2:- As the findings on point No.2 is consequential to the findings on point No.1, these points are taken together.

14. As noted above, the complainant has preferred the Crl.Appeal No.1660/2017 seeking enhancement of the sentence. On the other hand, the accused has filed his

appeal in Crl.Appeal No.1353/2017 challenging the very sentence itself.

15. Hence, it is clear that if the accused succeeds in establishing the grounds urged in support of his appeal, then, there would be no question of consideration for enhancement of sentence, if the accused fails to establish his grounds, then only, the complainant can urge his grounds for enhancement of sentence.

16. Therefore, the grounds urged by the accused in support of his appeal in Crl.Appeal No.1353/2017 are taken first for consideration. As noted above, the accused has filed his appeal challenging the very sentence itself.

17. So, before proceeding with the grounds urged by the accused in support of his appeal, it is necessary to go

through the provision of Section 499 of IPC which defines

"the defamation" and it is extracted here below;

"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 excepted, to defame that person.

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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 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.

First Exception.- Imputation of truth which public good requires to be made or published. - It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception. - Public conduct of public servants. - It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further.

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Third Exception.- Conduct of any person touching any public question.- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.- Publication of reports of proceedings of Courts. - It is not defamation to publish a substantially true report of the proceedings of a Court of justice, or of the result of any such proceedings.

Explanation.- A justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above Section.

Fifth Exception. - Merits of case decided in Court or conduct of witnesses and others concerned -It is not, defamation to express in good faith any opinion whatever respecting the merits of any case civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct and no further.

Sixth Exception.- Merits of public performance - It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.- A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception. - Censure passed in good faith by person having lawful authority over another. - It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.- Accusation preferred in good

faith to authorized person. - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.- Imputation made in good faith by person for protection of his or other's interests. - 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.

Tenth Exception.- Caution intended for good of person to whom conveyed or for public good. -It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

18. In this case, it is the allegation of the complainant that the A-1 and A-2 being the Editor, Printer and Publisher of Kannada Weekly named as "PARIVALA' which is purportedly being printed and published from Ravi Printers, Atti Kuppe, Maralavdi _ Hobli, Kanakapura - 562

112, Bengaluru Rural District have written and published an imputative article against him with an intention to harm his reputation, in their above Kannada Weekly in their issue dated 15.09.2000.

19. It is evident on record that both A-1 and A-2 are one and the same person. The trial Court record in particular, the line of cross examination to the complainant reveals that there is no dispute with regard to the fact that the accused has published the questioned article. Thus, the only point that remained for adjudication is that whether

the questioned article falls within the definition of "defamation" i.e., "a defamatory article" as defined in Section 499 of IPC which is punishable under Section 500 of IPC.

20. As rightly observed by the trial Court in the impugned judgment, the definition of "defamation" in Section 499 noted above makes it clear that to form "defamation", there should be three ingredients i.e.,

a) making or publishing any imputation concerning any person;

b) such imputation must have been made by words either spoken or intended to read or by signs or by visible representations; and

c) the said imputation must have been made with the intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person.

21. In the case on hand, the weekly magazine in which the questioned article was published is exhibited as Ex.P-2; the questioned article therein is exhibited as Ex.P-2(a) and the title of the questioned article at the cover page is exhibited as Ex.P-2(c).

22. The heading of the questioned article at Ex.P-2(c) reads, " " " □ "; the heading of the

questioned article at Ex.P-2(a) reads,"

- " and the plain reading of the said article at Ex.P-2(a) clearly shows that if it does not fall within the exceptional classes stated in Section 499 of IPC,

it would definitely falls within the definition of "defamation" and leads for punishment under Section 500 of IPC.

23. The line of cross examination to the complainant and his witnesses in particular to the complainant reveals that the defence taken with regard to the questioned article is that the facts in the article were left to the opinion of the public and their journal also has social responsibility as the complainant has had as a public servant.

24. So, even there is no specific words used in the cross examination of the complainant, if the sum and substance of the line of cross examination is taken in a nut shell, it can be safely concluded that the defence is that the questioned article was published in good faith and in the public interest and to protect the interest of the public, which fall under Exceptions I to III and IX of Section 499 of IPC.

25. Before venturing into the evidence on record to appreciate the grounds urged by the accused in support of his appeal, it is also necessary to go through the relevant portions of the judgment/decisions, the counsel for the

complainant has relied on with regard to burden of proof of the Exceptions to Section 499 of IPC.

26. In Crl.Appeal No.52/2007 (in E.Prasanna Vs H.R.Sanjeeva decided on 11.12.2013) by the Hon'ble High Court of Karnataka, he has drawn my attention to the observations that;

"7. The learned Judge of I-appellate Court has failed to notice that burden of proving the defamatory statement falls within exception 1 or 2 to section 499 IPC would lie upon accused. The learned Judge of I-appellate court has failed to notice pre-requisites to invoke exception 1 or 2 to section 499 IPC. The accused has to prove that alleged imputation is true....."

27. In the decision reported in 2016(7) SCC 221 (Subramanya Swamy Vs Union of India, Ministry of Law and Ors in Writ Petition (Criminal) No.184 of 2014), he has drawn my attention to the observations of the Hon'ble Apex Court to the effect that;

"2. The structural architecture of these .... vague.

Exceptions and understanding of the same

173. Having dealt with the four Explanations, ... the Court has held that in order to come within the First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is

for the public good. The onus of proving these two ingredients, namely truth of the imputation and the publication of the imputation for the public good, is on the accused."

28. In 1970(1) SCC 590 (Chaman Lal Vs. State of Punjab decided on 06.03.1970), he has drawn my attention to the observations of the Hon'ble Supreme Court of India to the effect that;

" ..... Public good is a question of fact. Good faith has also to be established as a fact.

In order to come within ....The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant. .....

The Ninth Exception states that ..... Good faith requires care and caution and prudence in the background of context and ....."

29. In 1971(1) SCC 885 (Sukra Mahato Vs Vasudeo Kumar Mahato and another in Criminal Appeal No.53 of 1968 decided on 02.04.1971), he has drawn my attention to the observations of the Hon'ble Apex Court to the effect that;

"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. The person alleging good faith 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 true. The accent is on objective satisfaction.

8. 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. This Court in Harbhajan Singh Vs State of Punjab in dealing with the Ninth Exception to Section 499 of the India Penal Code said that it would have to be found out whether a person acted with due care and attention. This Court said there "Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role". The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reason and facts to indicate that he acted with due care and attention and was satisfied that the imputation was

true. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to Section 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 accent is on the enquiry, care and objective and not subjective satisfaction.

9. This Court in Chaman Lal Vs. State of Punjab dealing with good faith in the Ninth Exception said that "in order to establish good faith and bona fide it has to be seen first the circumstances 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.

Judged by these tests laid down in the rulings of this Court the findings of fact in the present case are that there is no evidence to show that before making the imputation the appellant had made any enquiry in good faith and the appellant had not shown due care and attention before making the imputation. By reason of the findings of fact that the appellant did not act with care and caution and secondly that the appellant was related to the respondent and thirdly that no enquiry was made by the appellant, the appellant could not claim good faith. "

30. In AIR 1966 SC 97 (Harbhajan Singh Vs State of

Punjab & Another in Criminal Appeal No.53 of 1961

decided on 02.03.1965), he has drawn my attention to the

observations of the Hon'ble Apex Court to the effect that;

"(B) Penal code (45 of 1860), S.499 Ninth Exception - good faith and public good have both to be satisfied.

Where to .... good faith and public good have both to the established. The failure to prove good faih would exclude the application of the Ninth Exception in fvour of the accused even if the requirement of public good is satisfied.

12. Section 499 of the Code defines defamation. It is

..... There is no doubt that the requirements of good faith and public good have both to be satisfied and so, the failure of the appellant to prove good faith would exclude the application of the Ninth Exception in his favour even if the requirement of public good is satisfied....."

31. In (2001)2 Supreme Court Cases 171 (S.K.Sundaram: IN RE Suo Moto Contempt Petition (Crl.) No.5 of 2000 decided on 15.12.2000), he has drawn my attention to the observations of the Hon'ble Supreme Court to the effect that:

"H. Penal Code, 1860 - S.52 - "Good faith" - A person casting aspersions on another held, can claim to have acted in good faith only if before doing so, he has made a genuine and in-depth inquiry as to the facts - A sham inquiry is not good enough - Words & phrases - "Good faith", "due care", "reasonable care.

The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in Section 52 of the Indian Penal Code. The definition starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the care sought to be exercised.

So before a person proposes to make an imputation on another the author must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make believe show for an enquiry. The enquiry expected of him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation which is up to his sleeves. If he does not do

so, he cannot claim that what he did was bona fide i.e. done in good faith.

28. The expression "good faith" in criminal jurisprudence has a definite connotation. Its import is

totally different from saying that the person concerned has honestly believed the truth of what is said. Good faith is defined in Section 52 of the India Penal Code thus:

"52. Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention.

29. See the language of the law in this regard. It starts in the negative tone excluding all except what is allowed to be within its amplitude. Insistence sought to be achieved through the commencing words of the definition "nothing is said to be done or believed in good faith" is that the solitary item included within the purview of the expression "good faith" is what is done with "due care and attention". Due care denotes the degree of reasonableness in the carte sought to be exercised. In Black's Law Dictionary, "reasonable are" is explained as such a degree of care, precaution, or diligence as may fairly and properly be expected or required, having regard to the nature of the action, or of the subject-matter and the circumstances surrounding the transaction. It is such care as an ordinary prudent person would exercise under the conditions existing at the time he is called upon to act.

30. So before a person proposes to make an imputation on another the author must first make an enquiry into the factum of the imputation which he proposes to make. It is not enough that he does just a make believe show for an enquiry. The enquiry expected to him is of such a depth as a reasonable and prudent man would make with the genuine intention in knowing the real truth of the imputation which is up in his sleeves. If he

does not do so, he cannot claim that what he did was bona fide i.e. done in good faith.

31. Dealing with the expression "good faith" in relation to the exceptions enumerated under Section 499 of the Indian Penal Code (relating to the offence of defamation) this Court in Harbhajan Singh Vs State of Punjab has stated thus:

The element of honesty which is introduced by the definition prescribed by the General Clauses Act is not introduced by the definition of the (Penal) Code and we are governed by the definition prescribed by Section 52 of the Code. So, in considering the question as to whether the appellant acted in good faith in publishing his impugned statement, we have to inquire whether he acted with due

care and attention. There is no doubt that mere plea that the accused believed that what he stated was true by itself, will not sustain his case of good faith under the Ninth Exception. Simple belief of actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role. If it appears that before making the statement the accused did not show due care and attention, that would defeat his plea of good faith."

32. In 1985 Crl.L.J. 1496 (Konath Madhavi Amma Vs S.M. Sherief in Criminal Appeal No.231 of 1981 decided on 20.03.1985), he has drawn my attention to the observations of the Hon'ble High Court of Kerala to the effect that;

"5. It is true that .... It is not necessary for the complainant to prove his or his reputation....".

33. In ILR 1989 KAR 738 (M.Somashekar Vs S.A.Subbaraju in Crl.R.P.No.93 of 1987 decided on 24.11.1988), he has drawn my attention to the observations of the Hon'ble High Court of Karnataka to the effect that;

"HELD:

As the complainant .....

It is not necessary to prove that the complainant directly or indirectly suffered from the scandalous imputations; that proof of intention, knowledge or reasonable belief on the part of the accused regarding the possible harm to reputation is sufficient and whether harm was actually caused or not is immaterial.

19. It was next argued by Sri. M.T.Nanaiah that the complainant has not proved that he has either directly or indirectly suffered any damage financially or otherwise by the publication of the alleged defamatory matter in Exhibit P-1 as per Exhibit P-1(a). In my opinion, there is no substance in this contention also as the complainant has established by examining PWs 2 to 4 that they entertained bad opinion about the complainant after they read the matter published in "Sarpakavalu" weekly newspaper sent to them by post, Even Madhavi Amma Vs S.M.Sheriff and another cited by Sri. M.T.Nanaiah that it is not necessary to prove that the complainant directly or indirectly suffered from the scandalous imputations; that proof of intention knowledge or reasonable belief on the part of the accused

regarding the possible harm to reputation is sufficient and whether harm was actually caused or not is immaterial."

34. So, the sum and substance of the dictum laid down in the above noted decisions on which the counsel for

the complainant has relied on is that the burden of proving the exceptions to Section 499 of IPC i.e., with regard to the case on hand i.e., the imputations are true, they were published in good faith in the interest of public good and to protect the public interest is on the accused.

35. The counsel for accused has not drawn my attention to any decision over ruling the dictum laid down in the above decisions.

36. One of the grounds urged by the accused in support of his appeals is that the trial Court has not understood the exceptions given under Section 499 of IPC. He has cross examined the complainant in length to elicit the truth in respect of duty and responsibility of a Government servant.

37. The cross examination portion of the deposition of the complainant of course reveal that there are some questions put forth to the complainant with regard to the responsibility of a Government servant. It is also an admitted fact that at the relevant point of time i.e., when the questioned article was published and for that matter

even before and after publishing the questioned article also, the complainant was a Government servant.

38. But, there is no question put forth to the complainant with regard to his responsibility if any, his failure if any in discharging such responsibilities, which resulted into the facts/allegations/imputations made in the questioned article. Therefore, this ground holds no water.

39. The other inter connected grounds urged by the accused are that;

a) During the course of cross examination of the complainant, several conspicuous points were raised since he is responsible printer, publisher and writer of a Magazine.

b) He being a writer of Magazine should have make some investigative report. While making investigation in respect of the report, he understood the character and disposition of the complainant.

c) As admitted by the complainant, he is a printer, publisher and writer of Parivala fortnightly news paper Magazine and that the complainant did not know him

earlier to this incident. Hence, the complainant did not know anything about him earlier to the alleged offence and the entire facts are not revealed that there is intention to damage the reputation of the complainant.

d) He did not have any intention, enmity or mensrea

to commit the offence under Section 500 of IPC against the complainant and the same has not at all been appreciated by the trial Court and the said fact is even not noticed despite of he arguing this aspect in length.

40. But, as noted above the plain reading of the questioned article itself shows that if the facts therein/the imputations therein are not proved to be true, they fall within the definition of "defamation" as defined in Section 499 of IPC.

41. Admittedly, the accused is an editor, publisher, printer having social responsibility to edit, publish and print only the truth and to bring the same before the public in the public interest and to protect the public interest. Hence, the failure on the part of the accused to prove the imputations in the questioned article are true, published in

good faith, in the interest of public and to protect the public interest itself leads to "an intentional publication of the imputations to harm the reputation of the complainant".

42. In the present case on hand, admittedly, the accused let in no independent evidence and nothing has been elicited from the mouth of the complainant to shift the onus of burden of proof on the complainant that the imputations are untrue, not published in good faith and in the interest of public and to protect the public interest.

43. However, on the other hand, the complainant

himself has entered into the witness box wherein he has reiterated each and every averment of his complaint and as noted above, the very imputations in the questioned article demonstrates that unless the imputations are proved true, published in the interest of public and to protect the public interest in the good faith, they fall within the definition of the "defamation" as defined in Section 499 of IPC. Hence, these grounds also hold no water.

44. The other ground urged by the accused in support of his appeal is that the trial Court has not understood the

evidence of the complainant. PWs-1 and 2 have been examined and cross examined fully. But, PW-3 was not available for cross examination and his evidence needs to be discarded and chief of PW-3 need not be considered, but the trial Court categorically stated in the judgment that PW-3 is examined and cross examined. The trial Court without understanding the proceedings of the case has considered the evidence of PW-3 in the judgment.

45. It is apparent on the face of the impugned judgment that the trial Court has observed that PW-3 is subjected to cross examination. But, the deposition of PW-3 demonstrates that his cross examination was taken as nil observing that sufficient time was already given and there was direction by the Hon'ble High Court to complete the case within time (of course, the time limit is not stated

specifically). Hence, it cannot be said that because of no cross to PW-3 on behalf of the accused, the evidence of PW-3 was required to be discarded.

46. Of course, the accused has also urged that the trial Court has not understood the evidence of the

complainant. But, he has not stated how and on what basis, he urges so. However, the impugned judgment reveals that the trial Court has appreciated the evidence of the complainant in the right way. Hence, these grounds are also not sustainable.

47. The one more ground urged by the accused in support of his appeal is that the trial Court has failed to understand the proceedings and considered the evidence of PWs-4 and 5 who are Tahasildar and Revenue Inspector of Kanakapura Taluk. The reasons he has assigned in support of this ground are that;

a) In respect of these witnesses, he went up to High Court and the Hon'ble High Court dismissed the applications of the complainant filed under Sections 254(2) and 91 of Cr.P.C. seeking permission to call PWs-4 and 5 as the witnesses of the complainant in Crl.P.No.8504/2015 vide order dated 17.08.2016 and their evidence were automatically discarded in view of the said order.

b) Despite of the fact that the evidence of PWs-4 and 5 was discarded, the learned Magistrate has considered their

evidence also while giving finding without understanding the case and has passed the impugned judgment and convicted him.

c) The trial Court has also considered the documents at Ex.P-26, 27, 28 and 29 which are said to have been produced by PWs-4 and 5. When their evidence itself should not be considered, the trial Court has erroneously considered these exhibits also and has not considered the order of the Hon'ble High Court which can be understood that the learned Magistrate gone against the directions of the Hon'ble High Court.

d) The trial Court has specifically stated about the exhibits at Ex.P-26, 27, 28 and 29 and considered the same while passing the judgment which is wrong and illegal and the same is considered without understanding the case.

48. It is apparent on the face of record that there is no dispute between the parties with regard to the legal proceedings both civil and criminal between the parties with regard to the present issue i.e., the imputations in the

questioned article and the same are observed in the impugned judgment very clearly and specifically in para No.9 at the end of page No.6 and in beginning of page No.7 that the Hon'ble High Court in its order dated 17.08.2016

passed in Criminal Petition No.8504/2015 has pleased to set aside the orders passed by his predecessor in office and the LXVII Additional City Civil and Sessions Court and has given up the charges relating to the offences under the Press and Registration of Books Act, 1987.

49. Admittedly, PWs-4 and 5 were examined and they have produced Ex.P-26 to 29 consequent to allowing the application filed by the complainant under Sections 91 and 254(2) of Cr.P.C. which came to be upheld by the LXVII Additional City Civil and Sessions Court in Crl.R.P.No.70/2015 and both the said orders were set aside by the Hon'ble High Court in Criminal Petition No.8504/2015 vide order dated 17.08.2016.

50. Hence, as rightly urged by the accused the evidence of PWs-4 and 5 came to be discarded by virtue of the above order dated 17.08.2016 passed by the Hon'ble

High Court in Criminal Petition No.8504/2015 and thus, their evidence and the documents they have produced i.e., Ex.P-26 to 29 cannot be considered. But, it is apparent on the face of the impugned judgment that the evidence of PWs-4 and 5 as well as the documents at Exs.P-26 to 29 are taken into consideration by the trial Court.

51. However, the impugned judgment also demonstrates that the trial Court has taken up the allegations only with regard to offence under Section 500 of

IPC and not for any offences under the Act.

52. Admittedly, PWs-4 and 5 were examined on behalf of the complainant to substantiate his allegations under the Act and the documents at Exs.P-26 to 29 are also the documents with regard to the said allegations.

53. Hence, in fact, the observations of the oral evidence of PWs-4 and 5 as well as the documents at Exs.P-26 to 29 in the impugned judgment is nothing to do with the conclusion arrived at by the trial Court. Therefore, even this ground is correct on the facts on record, it is not

sustainable with regard to the prayer of the accused to set aside the sentence.

54. The other connected grounds urged by the accused are that;

a) The trial Court has not at all looked into the cross examination portions of PWs-1 and 2 and nothing is discussed about the same in the judgment. The trial Court ought to have been considered the evidence of PWs-1 and 2 only, but has wrongly and illegally considered the evidence of PWs-3 to 5.

b) The trial Court has not at all considered the cross examination portion of PW-2 wherein he has categorically admitted that he does not know as to, whether the reputation of the complainant was damaged or not. PW-2 has not at all supported the case of the complainant and

these facts are clearly elicited from the mouth of PW-2. The trial Court has not considered a single fact of the defence while passing the judgment.

55. Of course, the record reveals that there is a lengthy cross examination to both PWs-1 and 2. But, as

noted above, nothing has been elicited in the cross examination of the complainant/PW-1 to shift the onus of burden of proof from the accused to the complainant that the imputations in the questioned article are untrue, not published in good faith and in the interest of public and to protect the public interest.

56. On the other hand, despite of the accused failing to shift the onus of burden of proof, to substantiate his allegations, the complainant has let in the prima facie materials on record that the imputations in the questioned article are defamatory and fall within the definition of Section 499 of IPC.

57. So far PW-2 is concerned, he is examined to establish the loss/injury to the reputation of the complainant which is not of that much importance to prove the present allegations as the ingredients to attract the offence under Section 500 of IPC are as noted above;

a) making or publishing any imputation concerning any person;

b) such imputation must have been made by words either spoken or intended to read or by signs or by visible representations; and

c) the said imputation must have been made with the intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person.

58. Of course, the evidence of PW-2 is an important piece of evidence in case of claiming damages based on the imputations in the questioned article.

59. In the present case on hand, as noted above, the oral evidence of the complainant/PW-1 and the questioned article at Ex.P-2(a) themselves are sufficient to prove the above ingredients in the back ground of the accused failing to establish that the imputations in the questioned article fall within the Exceptions I to III and IX of Section 499 of IPC and thus, shifting the onus of burden on the complainant to establish that the imputations in the questioned article do not fall within the above exceptions.

60. So far the evidence of PW-3, as noted above, it cannot be taken as discarded and the consideration of his evidence is not illegal and unlawful. So far the evidence of PWs-4 and 5, as noted above, their evidence is indirectly discarded by virtue of the orders of the Hon'ble High Court

of Karnataka.

61. However, their evidence even is observed in the impugned judgment, as noted above, their evidence is admittedly with regard to the allegations under the Act and in the present case on hand, the only allegations considered are with regard to the offence under Section 500 of IPC. Hence, these grounds also are unsustainable.

62. The other grounds urged by the accused in support of his appeal are that;

a) The judgment passed by the trial Court is perverse, illegal and without looking into the facts and circumstances of the case.

b) The judgment passed by the trial Court is unsustainable because the learned trial Judge has not understood the entire facts and circumstances of the case;

c) The trial Court has not understood the implication of provisions of Sections 499 and 500 of IPC and passed the impugned judgment with a prejudiced mind. Since the trial Court has not at all considered his defence, the issue is prejudged before understanding the law and facts of the case.

d) The trial Court has passed the judgment in a mechanical way and viewed from any angle the impugned judgment is not sustainable.

63. In view of the above discussions on the other

related grounds, these grounds also hold no water.

64. As noted above, the complainant has come up with his appeal i.e., Crl.Appeal No.1660/2017 seeking enhancement of the sentence.

65. So, before proceeding to consider the grounds urged by the complainant in support of his appeal, it is necessary to go through the provision of Section 500 of IPC which deals with punishment for defamation which is extracted here below;

500.Punishment for defamation.-Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

66. So, the punishment includes imprisonment or fine or with both. The nature of imprisonment is simple which may extend to two years.

67. In the present case on hand, admittedly, the imprisonment passed is, for 6 months i.e., 1/4 th of the maximum sentence that may be passed. The impugned judgment demonstrates no reasons with regard to the quantum of imprisonment arrived at/passed.

68. So far the fine amount imposed, admittedly, it is Rs.25,000/-. As noted above, Section 500 does not say the quantum of fine. Hence, it is necessary to go through Section 29 of Cr.P.C. which deals with the sentences which Magistrates may pass which is extracted here below;

"29. Sentences which Magistrates may pass.- (1)

The Court of a Chief Judicial Magistrate may pass .....

(2) The Court of a Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding *(ten thousand rupees), or of both.

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(3) the Court of ......

(*substituted by Act No.25 of 2005, S.5, for "five thousand rupees" (w.e.f. 23.06.2006))

69. Admittedly, the impugned judgment is dated 30.08.2017 and the above provision is extracted from the book namely, "PROFESSIONAL'S, The Code of Criminal Procedure, 1973 (2 of 1974) BARE ACT with Short Comments, 2018 Edition.

70. So, prima facie, the impugned sentence with regard to fine amount exceeds by Rs.15,000/- from the maximum fine amount, a Magistrate of First Class is empowered to pass/impose which is illegal and unlawful, thus, needs intervention.

71. So far the enhancement of sentence with regard to imprisonment, the connected grounds urged by the complainant are that;

a) His deposition has brought out very clearly that the accused printed and published the defamatory article to defame and embarrass him and when his cross examination was going on in another defamation case filed

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by him in CC.5295/1998 against the reporter, editor,

printer and publisher of another journal, the accused distributed the copies outside the Court hall.

b) The accused in that case produced copy of Ex.P-2 as evidence in their favour and in the said case, the accused persons were convicted by the II ACMM, Bengaluru which was upheld by the City Civil and Sessions Court and by the Hon'ble High Court and these facts were brought out in the evidence tendered by him.

72. So far production of the copy of Ex.P-2 in the above another case, the same finds place in the chief evidence of the complainant which is not disputed.

73. So far the conviction order passed in the said case and its confirmation by the Appellate Courts including the Hon'ble High Court, there is no evidence on record. Even for the sake of arguments, those facts are admitted, they are nothing to do with this case as admittedly, the accused herein is not the accused therein and facts/allegations in both the cases are on separate and distinct cause of action.

74. So far the allegations with regard to the circulation of the questioned article in the Court premises on the date of his deposition, the complainant has deposed the same specifically and categorically in his chief evidence and there is nothing elicited in his cross examination on behalf of the accused to discard the chief evidence of the complainant in that regard.

75. So far the alleged intention of the accused to defame and embarrass him/the complainant, the accused has circulated the questioned article in the Court premises on the date of deposition of the complainant, again apart form the specific and categorical chief evidence of the complainant there is no other corroborative piece of evidence.

76. However, the very act of circulation of the questioned article having defamatory imputations that too out side the Court hall which is a public place, itself reveal the intention of defamation and embarrassment. Hence, it appears that there is some force in this ground.

77. The other connected grounds urged by the complainant in support of his appeal are that;

a) The complaint was filed in the year 2000 i.e. 17 years ago. The trial Court pronounced the judgment convicting the accused in the year 2002. But, the accused has successfully delayed the execution of the punishment for the subsequent 15 years by misleading the Courts and has not examined a single witness or produced a single document to substantiate the defamatory imputations made against him in the impugned article.

b) A person who prints, publishes and distributes a journal with circulation of 40,000 copies and who could engage very leading criminal lawyers before the appellate

Court and the High Court could have very easily engaged a good and responsible lawyer to defend him before the trial Court, but as a strategy to deliberately delay and thus, to defeat his efforts to get justice, the accused avoided to cross examine his witnesses and derived the benefit out of it.

c) In the process, the accused has caused enormous hardship, suffering, mental agony and financial loss over a very long period lasting nearly 17 years. The conduct of accused therefore, is highly deplorable and he has made a mockery of the judicial system.

78. It is apparent on the face of record that the matter is of the year 2000 and the earlier judgment was passed convicting the accused for all the offences alleged i.e., for Section 500 of IPC and for the offences under the Act in the year 2002.

79. It is also apparent on the face of record that being aggrieved by the order of conviction, the accused went in appeal and was successful in getting deleted or giving up the offences under the Act.

80. All those proceedings are initiated under the rights guaranteed by the Constitution of India. Hence, it cannot be said that initiation of the legal proceedings challenging the findings of the trial Court before the competent Appellate Court are mockery of the judicial

system. On the other hand, it is pertinent to note that it is the constitutional right of a party to have fair and just trial.

81. So far the fact that the accused is a person who prints, publishes and distributes a journal with circulation of 40,000 copies, it is admitted in the cross examination of the complainant by way of suggestion and thus, a judicial notice can be taken with regard to the allegation of the complainant that, thus, the accused could have easily engaged a good and responsible lawyer to defend him.

82. So far the allegation of the complainant that, but as a strategy to deliberately delay the proceedings and to defeat his efforts to get justice, the accused avoided to cross examine his witnesses and derived the benefit out of it, as noted above, the accused could not derive the benefit of non cross examination of PW-3.

83. However, the depositions of PWs-1 to 3 categorically show that accused took much time to cross examine the witnesses and when the cross examinations were taken as nil, came up with applications on applications seeking recall of the witnesses and was

successful in getting recalled PWs-1 and 2 which prima facie shows that the accused had deliberately took much time and prolonged the trial.

84. The record also reveals that whenever the case was stood posted for cross examination, the counsel for accused remained absent and as noted above, after taking cross examination, even further cross examination as nil, the accused has come up with the necessary applications one after another.

85. It is evident on record that in his statement under Section 313 of Cr.P.C. the accused given answer that he cannot say anything at this (then) stage to each and every question and to lead evidence, he needs time. But, he did not let in any defence evidence.

86. So far the alleged enormous hardship, suffering, mental agony and financial loss over a very long period lasting nearly 17 years, it is an admitted fact that at the relevant point of time, the complainant was Director of Pre-University Education Department and Special Officer, CET

Cell and thus, holding a responsible post and because of the present case, required to attend the Court regularly.

87. Admittedly, the offence alleged is a summons trial offence and for one or the other reason, in fact took 17 years for disposal. Because of the conduct of the accused apparent on the face of record as noted above in prolonging the trial which is also one of the main cause for delay in disposal of the case, this Court can take judicial notice with regard to the above allegations of mental agony, hard ship,

sufferings and financial loss. Hence, these allegations/grounds of the complainant in support of his appeal have some force.

88. The other ground urged by the complainant in support of his present appeal is that the imputations made by the accused are of very serious in nature and all the imputations are false and concocted has been proved beyond any doubt and thus, the punishment meted out by the trial Court is very meager and not commensurate with the gravity of the offence.

89. As noted above, the complainant is of course successful in bringing home the evidence in support of his allegations. It is pertinent to note that the complainant was in a responsible post at the relevant point of time and thus, the social impact of the questioned article is much more not only in the individual capacity of the complainant but also on the footing of his responsible post. When such being the case, the responsibility is much on the accused to ascertain the truth in the imputations before publishing the same.

90. But, the evidence on record reveals that the accused has failed to discharge his responsibility both social and professional. In that back ground, it appears that the present ground of the accused seeking enhancement of sentence holds water.

91. Accordingly, point No.1 is answered in negative with regard to the grounds urged by the accused and in affirmative with regard to the grounds urged by the complainant, thus partly in affirmative and consequently, point No.2 is answered in affirmative.

92. POINT No.3:- In view of my findings on point No.1 in affirmative with regard to the grounds urged by the complainant and consequently, point No.2 also in affirmative, considering the nature of imputations in the questioned article, the responsible post of the complainant hold then, the social impact because of the imputations in the questioned article not only individually to the complainant but also professionally, it is thought just and proper to enhance the imprisonment by additional 3 months, i.e., simple imprisonment of 9 months and fine of Rs.10,000/-.

93. In the result, I proceed to pass the following order.

ORDER

The Criminal Appeal No.1353/2017 filed by the appellant/accused under Section 374(3)(a) of Cr.P.C. is hereby dismissed.

The Criminal Appeal No.1660/2017 filed by the appellant/complainant under Section 374(3) of Cr.P.C. is hereby allowed.

Consequently, the judgment passed in CC.No.20643/2000 dated 30.08.2017 by the learned V ACMM, Bengaluru convicting the accused for the offence punishable under Section 500 of IPC is hereby confirmed and the order of sentence is modified to the effect that;

> "The accused shall undergo simple imprisonment for a period of 9 months with fine of Rs.10,000/-. In default of payment of fine amount, shall undergo simple

imprisonment for a period of 3 months.

The order of sentence and the default sentence shall run concurrently.

On deposit of fine amount, the same shall be paid to the complainant as compensation".

Office is directed to keep the original of this judgment in Crl.Appeal No.1353/2017 and the copy thereof in Crl.Appeal No.1660/2017.

Send LCR along with the copy of this order forthwith to the trial Court.

(Dictated to the Judgment Writer directly on computer, corrected by me and then pronounced in the open Court on this the 7th day of July, 2020).

(K. KATHYAYANI), LXVI Addl.CC & SJ, Bangalore.

Both the parties and their respective counsels are absent.

The Order is pronounced in the open Court (vide separate Order).

ORDER The Criminal Appeal No.1353/2017 filed by the appellant/accused under Section 374(3)(a) of Cr.P.C. is hereby dismissed.

The Criminal Appeal No.1660/2017 filed by the appellant/complainant under Section 374(3) of Cr.P.C. is hereby allowed.

Consequently, the judgment passed in CC.No.20643/2000 dated 30.08.2017 by the learned V ACMM, Bengaluru convicting the accused for the offence punishable under Section 500 of IPC is hereby confirmed and the order of sentence is modified to the effect that;

"The accused shall undergo simple imprisonment for a period of 9 months with fine of Rs.10,000/-. In default of payment of fine amount, shall undergo simple imprisonment for a period of 3 months.

The order of sentence and the default sentence shall run concurrently.

On deposit of fine amount, the same shall be paid to the complainant as compensation".

Office is directed to keep the original of this judgment in Crl.Appeal No.1353/2017 and the copy thereof in Crl.Appeal No.1660/2017.

Send LCR along with the copy of this order forthwith to the trial Court.

LXVI Addl.CC & SJ, Bengaluru