Pradip Madhawani Editor Of Nobat Daily vs State Of Gujarat on 6 September, 2003

Author: D.P. Buch

Bench: D.P. Buch

JUDGMENT

1. Rule. M/s. B P Munshi and A M Mehta, learned Advocates appearing on behalf of different respondents and waives service of notice of rule. Mr A D Oza, learned Public Prosecutor appears and waives service of notice of rule on behalf of the State.

This is a group of 51 petitions filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the aforesaid two petitioners in order to pray to quash criminal cases No. 3104, 3105, 3543 to 3552, 3561 to 3570, 3617 to 3642 and 3661 to 3669 of 2001 (in all 51 criminal cases) pending in the court of learned Chief Judicial Magistrate, Jamnagar against the present petitioners filed by the second respondent in each case for offences punishable under section 500 and 501 and 502 read with section 114 of IPC. Incidentally, the first petitioner is the Editor of a daily newspaper published at Jamnagar namely "Nobat". Petitioner No.2 is a person who appears to have given an article for being published in the said newspaper. The said article was actually published in the said newspaper.

2. The facts can be drawn from the complaint filed by the second respondent before the aforesaid Court. There it has been mentioned that the second respondent in each case is an Advocate practising at Jamnagar and elsewhere. There is no dispute about the same. It is stated in the first complaint that the second petitioner is working as President of an Association for protecting the interest of consumers at Jamnagar. It is also stated in the complaint that the first petitioner had published an article in his newspaper "Nobat" on 10.7.2001. That the second petitioner was the author of the said article. It is also stated in the said article that some allegations have been made against the Advocates of Jamnagar in the said article. Some averments from the complaint/article are reproduced as follows:

> "The Advocates are not honest. Knowing that the case is false, yet many Advocates have been collecting fees and this fact is well known. That they collect the fees in advance and thereafter they do not work."

3. It is also stated in the complaint that the above article of the second petitioner was published by the first petitioner in his newspaper "Nobat" on 10.7.2001 in such a manner that it would attract notice of so many persons. That the said issue of "Nobat" was sold at various places by the first petitioner. It is also contended that the second respondent has been practising as Advocate since long and he has earned good reputation amongst his clients and friends. That on account of the above publication of the above article, the second respondent has been defamed. That the said

article was written by the second petitioner and published by the first petitioner with a view to defame the second respondent and, therefore, both the petitioners are guilty of the aforesaid offence. Accordingly the said complaint was filed by the second respondent before the said court for the aforesaid offences. It seems that in the said complaint, the second respondent has given a list of witnesses which can be read from para 8 of the complaint as follows:

> i. Second respondent himself ii. All office bearers elected for the year 2001 A.D. in respect of Jamnagar Bar Association with Resolution passed by the said Association.
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> iii. Office bearers of the Actual Court Practitioner Advocates' Association elected for 2001.
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> iv. Office bearers of MACP Advocates' Association for the year 2001.
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> v. Office bearers for the year 2001 in respect of Revenue Advocates' Association.
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> vi. The Chairman & Secretary of the Bar Council of Gujarat.
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> vii. The Chairman and Secretary of the Bar Council of India.
>
> viii. Chairpersons and Secretaries of all the State Bar Councils of India.
>
> ix. All members of Jamnagar Bar Association.

4. After verification on oath, the learned Magistrate directed that the complaint be registered and process of summons be issued against the two petitioners above named for offence under section 500 read with section 114 of IPC.

5. In response to the service of process of summons, the petitioners appeared before the court concerned. They felt that the complaint did not make out a case for offence under section 500 of IPC and, therefore, they have preferred these petitions before this Court under section 482 of the Code.

6. It has been contended by the petitioners that the petitioners had no intention to defame the second respondent in each case. That some fair criticisms were advanced in the impugned article but no offence can be said to have been made out on a bare reading of the complaint and, therefore, the complaint deserves to be quashed. It is also contended that the petitioners have exercised right of freedom of expression of views and freedom of speech. That petitioner No.1 being the Editor of a daily newspaper is also enjoying certain freedom relating to press and, therefore, also no offence can be said to have been made out and, therefore also the complaint in each case deserves to be quashed. It has, therefore, been prayed that the complaint in each case may be quashed in exercise of inherent jurisdiction vested in this Court by section 482 of the Code.

7. Mr Zubin Bharda, learned Advocate has argued the matter on behalf of the petitioners. Mr A D Oza, learned Public Prosecutor has argued the matter on behalf of the State. On the other hand, Mr

B P Munshi, learned Advocate has argued on behalf of some of the second respondents in some petitions. Mr A M Mehta, learned Advocate has argued the matter on behalf of the remaining second respondents in remaining petitions. At the outset, it may be clarified that the second respondent in each case has withdrawn his complaint against the first petitioner, the editor of "Nobat" daily with the permission of the trial court, as has been submitted by the learned Advocates for the petitioners as well as learned Advocate for respondent No.2 in each matter. This being a summons triable private complaint, it seems that the learned Magistrate may have found it proper to permit withdrawal of the complaint. The complaint has been withdrawn in all the cases and, therefore, this court is not required to consider these petitions qua the first petitioner. In other words, we will be required to deal with the petition only with respect to the second petitioner in each case. It is not much in dispute that the second petitioner is a resident of Jamnagar and is having his institution for the protection of the interest of the consumers at Jamnagar. We are not very much concerned with the said status of the second petitioner for the purpose of deciding the present petitions. It is not much in dispute that the above article was written by the second petitioner who now remains the only petitioner in the matter. It is also not much in dispute that the said article was published by the first petitioner in his daily "Nobat" dated 10.7.2001. The contents of the said article have to be accepted as they stand. We will, therefore, be required to consider whether an offence punishable under section 500 has been made out, even prima facie, on a bare reading of the said article. Since the said article was published in vernacular language, a request was made to provide English version of the said article. Learned Advocate for the petitioners has provided an english version of the said article. He has also provided a copy of English version of the complaint, which is also in vernacular language. With a view to appreciate the contents of the said article, it would be worthwhile to reproduce the English version of the article written by the second petitioner and published by the first petitioner in his daily newspaper "Nobat" dated 10.7.2001 as under:

> 7.1. "DISTRICT JUDGE MAY TAKE STRICT STEPS AGAINST THE UNLAWFUL STRIKE OF THE ADVOCATES : REQUESTS THE CONSUMER FORUM 7.2. The Consumer Interests Protection Forum, by stating that, on account of indefinite strike of the Advocates going on since last many days in the courts of Jamnagar, the people desirous of seeking justice have been suffering loss, has requested the District Judge to take immediate measures against the unlawful strike going on at the risk and cost of the litigants who have paid fees in advance.
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> 7.3. In a statement in this regard, Shri Ramnikbhai Ganatra, President of Consumer Forum has stated that the delay in the Judicial process is a serious problem of the public and one of the many causes is insufficient number of courts. In this situation, when the Bar Association by stating that injustice has been done to the Jamnagar District by closing the working courts, has resorted to the strike, it is a question as to how far bonafide is this strike. Apart from the insufficient courts for delay in justice, one of the many reasons is the dishonesty of the Advocates themselves. It is well-known that although it is within the knowledge of the Advocate that the case is bogus, many advocates are charging fees for extension of date and when such Advocates take the flag of justice in the name of the public to fight is laughable.

7.4. It is an offence in law to delay the work after taking money in advance and it applies specially to the Advocates who are called the officers of the Court. Therefore, the different High Courts and even Supreme Court have also held that the Advocates have no right to resort to strike. On account of the strike of the advocates, there is possibility of the cases which have come up for hearing after years being delayed again. Number of people who come from far away places to attend on the date of the case have to face many hardships and then a question arises that whether by taking legal action against such unlawful strikes, it is the responsibility of any one to protect the public who is waiting for justice.

7.5. The noteworthy exaggeration of dishonesty of the strikes of the advocates is that "urgent business" has been exempted. It is required to understand the definition of this urgent business, e.g. if any accused has got to be released on bail or new case has to be filed, in short, any such matter where cash fee is receivable, is called urgent business. To make it clear, by taking care to see that the business of the advocates is not hurt in the strike, such issues are raised with a view to gain cheap publicity.

7.6. When the Supreme Court itself has held such dramas of advocates' strike, which are run frequently at the cost and risk of helpless litigants who pay fees in advance and confined to such litigants only, as unlawful, it is necessary that the District Judge of Jamnagar may take stringent measures to see that the strike of advocates going on for many days is brought to an end."

8. In order to appreciate the above position, it will be required to consider that the Members of the Bar Association of Jamnagar felt that the Judicial Officers in the District Court at Jamnagar were inadequate in number and, therefore, they requested the High Court of Gujarat on its administrative side to appoint more number of Judges in the District Court at Jamnagar. It seems that the request made was not accepted at the first instance and, therefore, the request was repeated also. Ultimately, the Jamnagar Bar Association passed a Resolution that if adequate number of Judicial Officer is not posted within the stipulated period, then they would proceed on strike. Despite said resolution, it appears, the strength of Judicial Officers at Jamnagar was not increased and therefore, the said Association decided to proceed on indefinite strike on and from 1.7.2001. Accordingly they proceeded on strike w.e.f. 1.7.2001 for an indefinite period. These facts have note been disputed for the purpose of these petitions. It seems that in the above article, couple of words have been used and it has been stated in it that the advocates have been doing "Rokadi". This is one of the words which appears to have offended the members of the Bar. Even, learned Advocates for the contesting respondents have also emphasized on this word stating that this is a derogatory word and it clearly amounts to exhibiting and demonstrating the intention of the second petitioner to defame the Advocates practising at Jamangar.

9. Now, the said word is required to be read and considered in the background of the record and proceedings of the matter. The President of Jamnagar Bar Association is the complainant in the first complaint filed by him. He is also the second respondent in the first petition before this court. There is no dispute about the same. This President of the Bar Association has filed an affidavit before this court stating that though the Advocates were on strike for few days at Jamnagar, on account of inadequate number of Judicial Officers in the District Court, Jamnagar, the Advocates did carry out certain functions. There it has been stated that the Advocates were dealing with interim relief applications and applications for enlargement of accused on bail. Mr Patel, the President of the Bar Association has thereby shown that the Advocates, though on strike, were still available for rendering their services in urgent matters of the above nature.

10. Now as against this, it has been stated at the Bar that the interim relief applications under Order 39 of the C.P. Code, 1908 and applications for enlargement of accused on bail are the matters which are promptly dealt with and disposed of also promptly. Thereby the fees of the Advocates would be released very soon. So far as the other cases are concerned, they would be delayed since evidence would be required to be recorded after receiving written stattements and after framing of issues in those cases. However, so far as bail applications and applications for interim relief are concerned, no evidence is required to be adduced and the matters are required to be disposed of on the strength of documents and affidavits. Therefore, those matters are being promptly attended and disposed of by the trial court also. This fact cannot be seriously disputed. Applications for bail and applications for interim reliefs are naturally taken up, dealt with and decided very promptly. Therefore, fees of the Advocates may be released very soon and very promptly. There is no reason to defer from the above inference. Even the advocates engaged for a limited purpose of arguing bail applications and interim relief applications may also be relieved very soon. This situation was not disputed during the arguments.

11. If the matters in which the fees are promptly released were taken up by the Advocates even during the period of strike, it might have given an impression to the author of the impugned article that this is just like cash crop in agricultural field and on the basis of such an impression the word "Rokadi" appears to have been mentioned in his article by the second petitioner. Looking to the above fact and looking to the surrounding background, it is not possible to accept that this is a defamatory word. A word may be defamatory and it may not be defamatory but it is required to be considered whether a particular word has been used in a particular background. Hence the word "Rokadi" appears to have been used in the aforesaid surrounding circumstances and looking to the said surrounding circumstances, it cannot be said even prima facie, that the author of the article intended to defame the members of the Jamnagar Bar Association. It is required to be considered that the priority of the above two categories of cases was decided by the members of the Jamnagar Bar Association themselves. It is not the case of the contesting respondents

that they were agreeable to deal with the following cases.

i. Sessions and Criminal cases of under trial prisoners, ii. Civil and criminal cases of Senior Citizens, iii. Cases under the Prevention of Corruption Act wherein the accused may be under suspension, iv. Cases of maintenance for women and children, v. Cases of implementation of maintenance order already passed in favour of women and children, vi. Criminal revision applications challenging order of maintenance for women and children, vii. Cases of custody of children, viii. Oldest civil and criminal cases pending with the court concerned, ix. Cases of dismissal, removal and termination of service wherein the person concerned may not be in job and may be suffering on account of jobless condition, x. Old motor accident claim petitions of road accident victims or their legal representatives.

xi. Cases of physically handicapped persons, xii. Cases of mentally retarded persons, xiii. Cases of persons under other legal disabilities.

xiv. Cases of matrimonial/family disputes.

The above cases may not be promptly disposed of. It is not the case of the second respondent in each case that the above referred cases were treated as urgent and important cases and they were also being dealt with by the members of the Bar during the time of strike. This is again a background in which one has to read the word "Rokadi". Therefore, it can also be said that the members of Jamnagar Bar Association opted to deal with only interim relief applications and bail applications during the course of strike. But they did not find it proper to treat the above types of cases to be urgent and important for being dealt during the course of strike. This is also a matter of background under which the author of the article appears to have been prompted to use the word "Rokadi" meaning thereby Advocates were taking up only those matter in which the fees were being promptly and shortly paid. In that view of the matter, the use of the word "Rokadi" cannot lead us to believe that the second petitioner intended to defame the members of Jamnagar Bar Association by using the said word in the said article published on 10.7.2001.

12. Another word used is found to be "Dindak" in the said article. Here also it is required to be considered that the Advocates were on strike and they were dealing only the above types of cases of interim relief applications and bail applications. A query was put to the learned Advocates for the contesting respondents as to whether the offices of the Advocates remained closed during the period of strike. Learned Advocates for the said respondents were unable to reply stating that there was no instruction from their clients on the above point. However, when it is a matter of affidavit of the President of the Bar Association that the members of the Bar Association used to deal with interim relief and bail applications, it has to be inferred that the members of the Bar Association must have been keeping the offices open. Otherwise they would not be in a position to deal with the aforesaid cases. Therefore, on the one hand, the Advocates showed themselves to be on strike and they abstained from court work, on the other hand, they attended matters of interim relief and bail applications and in order to deal with those cases, it appears that they did not keep their office closed during the period of strike. In view of the above background, again, it can be said that the word "Dindak" may have been used by the second petitioner and the second petitioner must have

carried such an impression in his mind while using the said word.

13. Now so far as the other allegations are concerned, those allegations and even the aforesaid two words appear to have been used in a general way criticizing the Advocates at large stating that the Advocates were not honest, that though they knew that the cases were false, they used to collect fees from the clients and thereafter, they did not use to work etc. These are the allegations which have been made in general against the Advocates at large. It seems that by and large the allegations made in the said article dated 10.7.2001 did not relate only to the members of Jamnagar Bar Association, there is no reason to infer that this article and the averments therein were aimed at the members of Jamnagar Bar Association. No single incident has been pointed out from the said article in order to justify an argument that the allegations and averments made in the article were aimed at the members of Jamnagar Bar Association. In that view of the matter, when the allegations are very general in nature and when the averments did not go to show that they were aimed only at the members of Jamnagar Bar Association and when the complaint shows a list of witnesses as above, it has to be accepted that even the second respondent in each petition felt that it would amount to defamation of the entire bar at large in India. In that case, it has to be accepted that the averments have not been aimed at the members of Jamnagar Bar Association only and when the averments are aimed at a large number of people which are not identifiable, then in that event, it would not be open to the second respondent to state that the averments and allegations made in the article were aimed at the members of Jamnagar Bar Association only and that this was done with an intention to defame the members of the Jamnagar Bar Association and by the said article, members of the said Association have, in fact, been defamed. When some allegations and averments have been placed in the article and when it is found that they are very general in nature, it was not proper on the part of the members of the Jamnagar Bar Association to take it that the said article is aimed only at them. It is true that the article in question was published at the time when the Jamnagar Bar Association was on strike. At the same time, when such an occasion arises, people may issue articles for criticizing the general conduct of the persons on strike. Therefore, it is not acceptable that the said article was aimed solely to defame the members of Jamnagar Bar Association. It is required to be considered that so far as the complaint against the first petitioner is concerned, it is withdrawn by concerned complainant before the trial court in all case; since the first petitioner has published an article in his daily newspaper "Nobat" stating that it was never the intention of the first petitioner to defame the members of the Bar Association at Jamnagar. Even the second petitioner has stated in this group of petition that he never intended to defame the members of the Bar Association of Jamnagar. It is true that he has not published a separate article in a newspaper but at the same time, the said fact has been conveyed in the affidavit filed before this court. This also shows that the second petitioner has also made it clear that even he did not intend to defame the members of Jamnagar bar Association in general and respondent no.2 in each petition before this court in particular.

14. Now it is well settled that when the allegations are general in nature and they are addressed to unidentifiable mass of people, then in that case, it would not amount to defamation of a particular class of people. In other words, when the allegations have been made against the advocates at large, it has to be treated to be allegations against an unidentifiable class of people and, therefore, the members of the Jamnagar Bar Association cannot treat the said allegations to have been aimed at them only.

15. The english version of para 5 of the complaint supplied by the learned Advocate for the petitioner may be reproduced for ready reference as follows:

> "5. With a view to see that all the advocates of the whole nation are defamed and their respect is insulted and with a view to cause loss to the credit of the advocates which cannot be compensated in terms of money, the accused Nos. 1 and 2 printed and got printed defamatory writings and with a sole intention of defaming the advocates in the society, and the advocates may have to feel ashamed, the accused nos. 1 and 2 by printing and getting the defamatory writing printed in "Nobat" daily on 10.7.2001, distributed such writings among the society and thereby the intention of the accused from the very beginning has been to defame the advocates in the society and that the accused no.2 being accustomed to publish such defamatory writing and with a motive of attaining their object to defame the advocates, although they were knowing that both the accused in unison with each other, have been indulging in the commission of offence under Sections 500, 501, 502, 114 of IPC, have committed the offences as aforesaid within the jurisdiction of this Hon'ble Court."

16. On a bare reading of para 5 of the complaint, it becomes very clear that even according to the complaint, the complainants of 51 complaints have felt that all the Advocates of the entire nation are defamed and they have been insulted with a view to cause loss to the credit of the Advocates which cannot be compensated in terms of money. This clearly indicates that even according to the case of the complainants, these allegations have been made in the disputed article against the Advocates of the entire country. Meaning thereby that the advocates of the entire country have been defamed. Once it is alleged that the Advocates of the entire country have been defamed by the impugned article, it would not be open to the complainant now to argue before this court that the averments and allegations in the article impugned are aimed at identifiable classes of Advocates of Jamnagar Bar Association only. Even otherwise, the article clearly indicates that criticisms were made with respect to the conduct of the Advocates proceeding on strike frequently and it is not aimed only at the members of the Jamnagar Bar Association. It, therefore, cannot be said that the averments made were aimed only at an identifiable class of Advocates. It also cannot be said that the averments in the impugned article were not aimed at the Advocates in general which cannot be treated to be an identifiable classes.

17. Therefore, when the words "Rokadi" and "Dindak" have been used in the article, in the above background, it has to be held that the writer of the article did carry an impression that the Advocates have selected a particular business which would release the fees promptly and, therefore, the above words "Rokadi" and "Dindak" have been used in the said article. Moreover, when the Advocates abstain from Court work without closing their offices also gave an impression that the Advocates were prepared to accept the brief and work in their offices but they were not prepared to work in the Court. This appears to be another impression carried by the writer of the article. It is required to be considered that on the one hand, the author of the article is a layman, not directly connected with the day to-day court work. On the other hand, he seems to have been involved with the activities of protection of consumers' rights. Therefore, when he has stated in the article that the Advocates have been collecting fees in advance, it cannot be said that the averments are totally false, derogatory and

defamatory. After all the petitioner being the author of the article,is dealing with consumer cases and, therefore, he can claim some knowledge and information from the consumers since the Advocates also are being permitted to appear even before the District Forums and State Commission etc. constituted under the Consumer Protection Act, 1986. It has not been argued on behalf of the respondents that no part of fees is collected in advance.

18. Mr A D Oza, learned Public Prosecutor appearing for the State has not touched the matter on merit. However, he expressed his views that such type of complaint should not have been filed and they could have been settled between the parties. He also expressed an opinion that in view of the fact that the complaint has been withdrawn against the first petitioner and since the second petitioner has also stated on oath that he did not intend to defame members of the Jamnagar Bar Association and looking to the facts and circumstances of the case, this would not be a case where the Advocates of Jamnagar Bar Association should proceed in the court of law against the second petitioner. We are not here to consider the said aspect of the case since it is between the parties to consider and decide as to whether or not to proceed with the matter or as to whether or not to withdraw the complaint. The Court cannot direct the parties to act in a particular direction. Even in the past, these matters were required to be dealt with by me and there was some discussion about the settlement of the matter and ultimately the stay granted was partly modified and the trial court was permitted to deal with the application for withdrawal if filed before it. Accordingly, withdrawal applications were submitted in each case with respect to the first petitioner and the complaint was permitted to be withdrawn against the first petitioner in each case. However, the matter was not settled qua the second petitioner and, therefore, this court is required to deal with and decide this group of petitions under section 482 of the Code.

19. Learned P.P. had also drawn my attention to the affidavit filed by Mr Vaishnav who appears to be Vice President of the said Association and who appears to be one of the complainant and one of the second respondent in the petition against him. It seems that he has filed his affidavit in Criminal Misc.Application No.8207 of 2001 and there he has stated that he is respondent no.2 in the said matter but that fact is not correct. In Criminal Misc.Application No.8307/2001 the complainant and the second respondent is the President of the Association and not the said deponent. Learned P.P. drew my attention to the said position and requested the court to take criminal action against the said deponent for filing false affidavit. On going through the said affidavit of the said deponent, I am of the opinion that it is not expedient to take action against the said deponent. The reason is that though he is not a complainant and second respondent in Criminal Misc.Application No.8207/2001, he is certainly a complainant and second respondent in his matter. There is no dispute that he was Vice-President of the Bar Association at the relevant point of time. Therefore, instead of filing affidavit in his petition, affidavit has been filed in Criminal Misc.Application No.8207/2001. This has caused the aforesaid anomaly. Otherwise, the facts stated by him that he was vice President of the Association, that he was practising as Advocate since 26 years and that he was respondent no.2 (in his matter) are the facts which are not seriously disputable. Therefore, it is not expedient to take criminal action against him.

20. An argument has also been advanced that even when a person has a right and freedom of speech and freedom of expression of views, the said freedom is not unrestricted. There is no dispute about

the same. Under the guise of freedom of speech and views, a person cannot defame anybody. A person cannot give abuse to anybody. There is no dispute about the same. Here the question is whether expression of views in an article is defamatory and whether there is an intention to defame a particular person or a known class of persons. If that question is in the affirmative, then the complaint can be proceeded with. If the answer is in negative, the complaint cannot be proceeded with.

21. It seems that the Jamnagar Bar Association had made some requests to the High Court on the Administrative side for appointment of more number number of Judicial Officers in the District Court, Jamnagar. At the same time, it is also required to be considered that whenever the High Court feels that the number of Judicial Officers at a particular place is inadequate, then the High Court itself may take action on the administrative side to place more number of Officers at a given place. In case, the members of a Bar Association feels that number of Judicial Officers at a particular station is inadequate, the Bar Association can also draw the attention of the High Court and request to place more number of Judges at a given station. But at times, there will be difficulty on the administrative side of the High Court also. If Judicial Officers are required to be posted more in number at a given station, they will have to be brought from other stations. Process of such postings is required to be undertaken with regard to the places from where such Judicial Officers can be brought for being posted at a particular station. This is a lengthy procedure and process. It may not be possible even for the High Court to take a prompt decision in the matter of appointment of more number of Judges at a particular station. Even otherwise, it is a known fact that there is a paucity in the number of Judicial Officers in the State as a whole. Even the process of recruitment of judicial officers is also lengthy. Large number of candidates come forward for the recruitment, written tests are taken, oral interviews are taken and thereafter selection process may be finalised and the list may go to the State Government. The State Government may enter into enquiry about the antecedents, character and conduct of the selected candidates, medical examinations are also required. This shows that this is a lengthy procedure and simply because number of judicial officers at a particular station is inadequate, it may not be possible for the High Court/State Government to appoint more number of judicial officers at the required place very promptly. In that case, though the demand of the Jamnagr Bar Association may be justifiable, it may not be possible for the High Court on its administrative side to accept such demand very promptly and to make appointment of judicial officers very promptly. In that case, had there been some tolerance, the matter could have been resolved peacefully and amicably. It appears that after a week of the strike, some judicial officers were appointed at Jamnagar as has been submitted by the learned Advocates for the contesting respondents. However, it also appears that by going on strike even the judicial officers in whatever number available at Jamnagar were also prevented from carrying out their work in a routine manner. In other words, in spite of having judicial officers for disposal of cases, on account of strike of the Advocates, even the existing strength was not permitted to function. This fact may have also weighed with the author of the said article in criticizing the conduct of the Advocates in general.

22. In the first para of the said article, it has been mentioned that on account of the indefinite strike of the members of the Jamnagar Bar Association, the people seeking justice have been put to a great deal of loss. It is also stated in it that the strike was going on at the cost and risk of the clients who

had paid fees in advance and, therefore, the District Judge should take action against the illegal strike. Now it is the inference of the second respondent that when the fees have been paid in advance and thereafter the learned Advocates go on strike and do not work, then it is against the interest of the clients who had paid fees in advance. In second para it has been stated that on the one hand, inadequate number of courts is a cause for the delay in dispensing justice. On the other hand, it is stated in this para of the article, dishonesty on the part of the Advocates is a cause in delay in disposal. Now this is not restricted to the Advocates of Jamnagar Bar Association only. It is addressed to the advocates at large. Therefore, it cannot be said that this allegation is aimed at a limited class of people. Even the third para relates to the conduct of the advocates at large. It is not restricted to the Advocates of Jamnagar Bar Association only. So far as para 4 is concerned, again it is a general allegation against the advocates at large. There is no reference to the members of Jamnagar Bar Association.

23. At the same time, again it has been stated that in such type of strikes by Advocates, urgent business is permitted to be undertaken and there the urgent business means only a matter in which an accused is to be released of bail. It is also stated in it that in short matters in which the fees are released early, shortly and promptly are treated to be urgent business. In that view of the matter, even if it is treated to be a matter aimed at members of the Jamnagar Bar Association to some extent, it has to be accepted to be a fair criticism in light of the above background. Even in the last para, the author has referred to the decisions of the Hon'ble Supreme Court holding Advocates' strike to be illegal. Lastly a request has been made to the District Judge to see that the strike of the Advocates comes to an end. Looking to the contents of the complaint again it can be said that on the one hand it does not amount to a defamation of a known class of people. On the other hand, criticism is aimed at the Advocates at large. So far as the aforesaid two words, "Rokadi" and "Dindak" are concerned, they have been used on a particular impression and the background of the said impression has been indicated in the article itself. In that view of the matter, it is not possible for this Court to hold that this article amounts to a defamation of the second respondent in each case.

24. We can find at page 10 which is a list of 51 complaints which have been filed by different Advocates and it shows the numbers of criminal cases, names of the complaints, dates of complaints and the date fixed for the appearance of the petitioner in each case. This shows that the complaints were filed between 17.7.2001 and 20.8.2001 by 51 different members of the Jamnagar Bar Association on different dates and the dates between 17.9.2001 and 23.10.2001 were given for appearance of the petitioners in those complaints. Learned P.P. has argued that this amounts to harassment to the petitioners as they would be required to attend on numerous dates for attending to those 51 cases. It is true that it appears that there are orders of the court fixing different dates with respect to different complaints. However, on account of the order of this court, all the matters were required to be heard on one particular date so that the petitioners may not be required to attend the Court on different dates.

25. Learned Advocates for the contesting respondent has argued that the issue as to whether or not the strike is illegal was not an issue before the trial court and not even before this Court. It is not much in dispute that the said issue was not there before the trial court. However, it is also a fact that

the Courts have, time and again, observed that the strike by the Advocates are not legal and even in recent pronouncement, the Hon'ble the Supreme Court has clearly laid down that the Advocates have no right to proceed on strike. (Reference - Ramon Services Pvt. Ltd. v. Subhash Kapoor reported in 2000 (SC1)-GJX-0625-SC which may be iscussed hereinafter. Therefore, it is not required to be decided by this Court as to whether or not the strike was legal since there is pronouncement of Supreme Court that advocates cannot go in strike.

26. In John Thomas V. Dr.K Jagadeesan reported in AIR 2001 SC 2651, it has been laid down that even if there is a plea that the imputation in question is not per se defamatory, then also it may be a question of fact and it has to be permitted to be proved at the stage of trial. In the present case, we find that even if the evidence is produced to prove the above allegation, it would not amount to defamation, having regard to the factual background of the matter.

26.1. In head note 'B' of Sewakram Sobhani V. R.K.Karanjiya reported in AIR 1981 SC 1514, it has been observed that journalists do not enjoy any special privileges. This point was not at dispute even before this Court.

26.2. In Balraj Khanna V. Moti Ram reported in AIR 1971 SC 1389, it has been observed that it is not necessary that a complaint for defamation must set out actual words used by the accused, which are alleged to be defamatory. Now here, article as a whole has been produced on record. The English version thereof has been reproduced in this judgment for ready reference. In my opinion, we are required to read the article as a whole and when the article is in writing and when the English version is also on record, we can decide on a reading of the said article, if the article leads to an offence punishable under Section 500 IPC.

26.3. In Sahib Singh Mehra V. State of Uttar Pradesh reported in AIR 1965 SC 1451, it has been observed that a 'person' includes collection of persons which is identifiable. This point was not at dispute before this Court. However, the arguments of the second petitioner before this Court is that the article was aimed at the advocates at large and the averments have not been aimed at the members of Jamnagar Bar Association alone. Therefore, it is not an identifiable class.

26.4. In Mrs. Dhanalakshmi V. R Prasanna Kumar and others reported in AIR 1990 SC 494, it has been observed that when a Magistrate had taken cognizance of a complaint for offences punishable under Sections 494, 496 etc. of IP Code filed by the complainant and when specific allegations in complaint disclosing ingredients of offence have been made out, then quashing of proceeding by High Court is not legal. There cannot be any dispute about the same that if the complaint discloses an offence, then such a complaint cannot be quashed.

26.5. In Rajesh Bajaj V. State NCT of Delhi and others reported in (1999) 3 SCC 259, it has been observed that if averments in complaint prima facie make out a case for investigation, the High Court cannot quash the complaint merely because one or two ingredients of the offence have not been stated in detail. Naturally, the complaint need not contain the text of a particular Section for showing that a particular offence has been committed by the accused person. If on a bare and broad reading of a complaint as a whole, some offence is made out, then the complaint cannot be quashed.

26.6. In State of Haryana and others V. Bhajanlal and others reported in 1992 Supp (1) SCC 335, detailed instructions have been given and guidelines have been provided for dealing with the cases of quashing of complaints. On a careful reading of the said judgment, I am of the view that in the present case, having regard to the contents of the impugned article in question, and reading the complaint in the background of the article, no offence is made out even prima facie.

26.7. In the case of Raman Lal V. State of Rajasthan reported in 2001 CLJ 800 was simply referred. In Mst. Janki Bai and another V. State of M.P. reported in 2001(2) Crimes 271, the matter was dealt with and decided on appreciation of evidence after trial.

26.8. In T. Kalavathy V. Veera Exports reported in 2001(2) Crimes 273, the matter related to an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. There it was noticed that the accused had corrected the year 1995 as 1996 in the cheques, but the cheques were again dishonored when presented. The accused were summoned for offence in the complaint. Alterations were not made during the permissible period of six months i.e. in January 1996. But, it was found that complaint filed on the basis of invalid instruments cannot be maintained and was liable to be quashed.

26.9. In Hari Shankar V. Kailash Narayan and others reported in 1982 Madhya Pradesh 47, it was observed that false and defamatory news were published and injunctions were sought against publication of such news. It was observed that such an injunction cannot be refused on the ground that reputation can be compensated by paying damages. It was observed that, on the contrary, it will amount to granting licence to publish defamatory news against payment of compensation. It was further observed that under Article 19(1)(A) no free hand has been given to publish defamatory matter under the guise of free expression of views and freedom of press. It has already been observed herein above that the press has no unrestricted freedom of expression of views. If a particular article amounts to defamation, then the Publisher, Author or Editor as the case may be, can be dealt with in accordance with law.

26.10. The case in M. Krishnan V. Vijay Singh reported in AIR 2001 SC 3014 is on a different set of facts. The matter related to offences punishable under Section 406, 465, 468 and 471 of IPC. There it was observed that a complaint for the aforesaid offences cannot be quashed on a mere ground that there was a primary dispute of civil nature between the parties. It has to be accepted that while deciding such an issue the Court has to find out as to whether the civil dispute outweighs the criminal dispute or vice-versa. This exercise has to be undertaken before deciding to quash a complaint.

26.11. In Hardeo Singh V. State of Bihar and another reported in (2000) 5 SCC 623, it was found that the allegations made in F.I.R. needed investigation and therefore, the F.I.R. cannot be quashed. Similar view was adopted in S.M.Datta V. State of Gujarat and another reported in 2001(3) GLH 221. In Keshub Mahindra V. State of Madhya Pradesh reported in JT 1996(8) SC 136, the matter related to appreciation of material on record. There it was observed that the material prima facie shows charges of negligence covered under Section 304(A) IPC.

26.12. The case in State of Maharashtra V. Ishwar Piraji Kalpatri and others reported in 1996 CLJ 1127 is on a different point. There it has been observed that a mere fact that complainant is guilty of malafide, it would not be a ground for quashing the complaint. If the complaint or FIR discloses an offence, then other aspects become redundant. There cannot be any dispute about the same.

26.13. In M.N.Damani V. S.K.Sinha and Others reported in 2001(2) Crimes 271 (SC), the Magistrate had issued process of summons for an offence punishable under Section 500 IPC. The petition for quashing was filed under Section 482 of the said Code. The High Court quashed the proceedings, relying upon a decision of AIR 1988 SC 709. It was observed that the High Court was justified in quashing the complaint.

26.14. Even in State of Bihar and Anr. V. Md. Khalique and Anr. reported in 2002(1) SBR 475, it has been laid down that the complaint or FIR should not be lightly quashed. It has also been observed that the power under Section 482 of the said Code is required to be exercised very sparingly.

26.15. With respect to the strike by Advocates, a decision has been shown from Ramon Services Pvt. Ltd., V. Subhash Kapoor and Others reported in 2000-(SC1)-GJX-0625 -SC. The pertinent observations can be reproduced as follows;

26.15.1. "Suit was decreed ex parte by the Trial Court in consequence of the nonappearance of the counsel on a day fixed for hearing, on the premise of the strike call - A litigant should suffer penalty for his advocate boycotting the Court pursuant to a strike call made by the association of which the advocate was a member Litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid In appropriate cases the Court itself can pass effective orders, for dispensation of justice with the objects of inspiring confidence of the common man in the effectiveness of judicial system - In the instant case the respondent has to be held entitled to the payment of costs, consequent upon the setting aside of the ex parte order passed inn his favour - Appellant is permitted to realize half of the said amount of Rs.5000 from the firm of advocates or from any one of its partners."

26.15.2. "It was held, when the advocate who was engaged by a party was on strike there is no obligation on the part of the Court either to wait or to adjourn the case on that account. Time and again the Supreme Court has said that an advocate has no right to stall the Court proceedings on the ground that advocates have decided to strike or to boycott the Courts or even boycott any particular Court. The fact remains that the appellant was set ex parte due to the absence of the appellant and his counsel in the Court when the case was taken up for hearing. In the special circumstances of this case the Supreme Court is inclined to set aside the ex parte order dated August 26, 1998, on some terms. The appellant shall pay a sum of Rs.5000 as costs to the respondent plaintiff within one month from today and on such payment (or deposit with the Trial court) the ex parte order dated August 26, 1998 would stand set aside. The Supreme Court is unable to agree with the Senior Counsel that the Courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any Court had adjourned cases during such periods it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a counsel, nor does the Court concede to the contention that the Supreme Court declared

the legal position only when Mahabir Prasad Singh was decided that strikes or boycotts are legal. The appellant is permitted to realize half of the said amount of Rs.5000 from the firm or from any one of its partners."

26.15.3. "The Supreme Court put the profession to notice that in future the advocate would also be answerable for the consequence suffered by the party if the nonappearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self-imposed dereliction of his advocate. Further the litigant who suffers entirely on account of his advocate's nonappearance in Court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the Court mulcts the party with costs for the failure of his advocate to appear, Court makes it clear that the same Court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause the Court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the Court as he or his association was on a strike. If any advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client such a claim is repugnant to any principle of fair play and canons of ethics. So when he opts to strike work or boycott the Court he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate. In all cases where the Court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the Court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate Koluttumotti Razak V. State of Kerela (2000) 4 SCC (Cri.) 829, Mahabir Prasad Singh V. Jacks Aviation (P) Ltd. (1999) 1 SCC 37; 1998 R LR 644, UP Sales Tax Service Association V. Taxation Bar Association (1995) 5 SCC 716 & K. John Koshy V. (Dr.) Tarakeshwar Prasad Shaw (1998) 8 SCC 624 relied on."

26.15.3. "Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the sttutory provisions - The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the rules made thereunder and rules of procedure adopted by the Supreme Court and the High Court Abstaining from the Courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants Legal professions is essentially a service-oriented profession The relationship between the lawyer and his client is one of trust and confidence."

26.15.5 "Generally strikes are antithesis of progress, prosperity and development. Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two besides statutory limitations, restrictions and guidelines incorporated in the Advocates Act, the rules made thereunder and rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the Courts by the advocates,

by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of notice, the litigants."

26.16. Similar observation was made in Mahabir Prasad Singh V. Jacks Aviation Pvt. Ltd. reported in 1998 (SC2)-GJX-0912-SC. The relevant observation is reproduced as follows;

> "No Court is obliged to adjourn a cause because of the strike call given by any association of advocates or a decision to boycott the Courts either in general or any particular Court. Civil Procedure Code, 1908 - Sec. 24 Transfer of cases- Change of Court is not allowable merely because the other side too has no objection for such change."

26.17. In Narrotamdas L Shah V. Patel Maganbhai Revabhai and another reported in 1984 CLJ 1790, this Court had an occasion to observe that when the lawyers were described as "Dispute Brokers" in newspaper editorial and when the advocates were on strike and when the strike was criticized, then in that event, the editorial referred to lawyers as a 'class' and not as an 'individual' or "determinate section" and therefore, the complaint was not maintainable. There also the lawyer was aggrieved by the aforesaid article published in the newspaper. A petition before the High Court was filed under Section 482 by the Editor for quashing of the said complaint. There it was observed that the editorial did not refer to a determinate class of lawyers but only to a class of lawyers.

26.17.1. 18.1. This Court had an occasion to deal with so many citations in order to appreciate the arguments advanced before it and after appreciating the facts and circumstances of the case and after referring to the relevant citations, this Court had an occasion to make appropriate observation in para 61 and 62 of the judgment as follows.

> "Para 61 : Counsel for the Bar Council submitted that the editorial is relatable to the section of lawyers of Gujarat who had decided to extend the strike up to November 6, 1983. The submission is that in the editorial there is a specific reference to-
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> (1) the region of Gujarat, (2) the controversial agitation.
>
> (3) the decision to extend the strike up to Nov 6, 1983. (4) the words "advocates and lawyers" expressing that the lawyers have position and status in the society; and (5) the phrase "Aava Kajia Dalalo" which restricts the reference to lawyers who had proceeded on agitation.
>
> "It was submitted that the term "Kajia Dalal" has been used six times and therefore prima facie it should be construed that the use of the term is deliberate and it is not a casual reference. The argument proceeds that since the writer knew that the lawyers had status and reputation in the society, and even then the term "Kajia Dalal" has been used which indicates that the same has been used contemptuously and to derogate the section of lawyers.

> 26.17.2. Para 62 : The advocates have been described as "Kajia Dalals". Wherever the term "Kajia Dalal" has been used in the editorial it is in respect of lawyers' class as a whole. The writer specifically states that in another sense the lawyers are brokers in disputes, i.e. Kajia Dalal. The author does not say that lawyers of Gujarat who have proceeded on strike are "Kajia Dalals". The controversial agitation in Gujarat and the decision to extend the strike provided an occasion to the accused to express his views as an editor of a daily newspaper. The subject "boycott of Court work by lawyers" had a topical relevance and value. Simply because the occasion and the subject matter to write the editorial are provided by the lawyers of Gujarat, it cannot be said that the description "Kajia Dalal" given by the Editor is restricted to and relatable to a particular section of lawyers in Gujarat."

26.17.3. 18.2 In the said matter, the original complainant had described himself to be an advocate in the business of lawyering and also stated in the complaint that his principal place of business is at Visnagar. Elsewhere also he had shown himself to be a person in business. This Court observed that the said complainant had treated it to be a business and not profession."

26.17.4. 18.3 In light of the background of the said reference in the complaint also, this Court found that it was a fit case wherein the complaint be quashed when the complainant himself described himself to be a person in business and not a person in profession."

26.18. Similar view was adopted in G Narasimhan and others V. T.V. Chokkappa reported in AIR 1972 SC 2609. There also it has been laid down that Sec. 198 of the said Code lays down an exception to the normal rule that a complaint can be filed by anybody, whether he is an aggrieved person or not and modifies that rule by permitting only an aggrieved person to move a society in cases of defamation. It has also been observed that the Section is mandatory, so that, if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the conviction and trial would be void and illegal. It is further stated in it that the complaint can be filed by an individual member of a collection of persons and the collection of persons must be identifiable, in relation to the imputations. In other words, if the allegations have been made against the advocates in general, then in that case, it cannot be said that the complaint is maintainable, in view of the provisions made in Section 198 of the said Code.

26.19. Similar view was adopted in K.M.Mathew V. T.V.Balan reported in 1985 CLJ 1039 as well as in Smt. Aruna Asaf Ali and others V. Purna Narayan Sinha reported in 1984 CLJ 1121 and in Sasikumar B. Menon V. S. Vijayan and another reported in 1998 CLJ 3973. Even in M.P. Narayana Pillai V. M.P. Chacko reported in 1986 CLJ 2002, it has been observed that Sec.198 of the Code will squarely apply to the cases before the Court and therefore, the Court will be required to decide the questions in light of the background of the provisions made in Sec.198 and 199 of the said Code. In Asha Parekh V. State of Bihar reported in 1977 CLJ 21 following observations have been by the Hon'ble the Patna High Court;

> "The essence of the offence of defamation consists in calling that description of pain which is felt by a person who knows himself to be the object of the unfavorable

sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavorable sentiments is exposed. The words or visible representations, therefore, complained of must contain an imputation concerning some fs particular person or persons whose identity can be established. If they contain no reflection upon a particular individual or individuals, but equally apply to others although belonging to the same class, an action for defamation will not lie. Further although the word 'person' in Section 499 of the Code includes a company or an association or a collection of persons as well as provided in explanation 2 of Section 499, but the class of person attributed to must be a small determinate body. Advocates as a class are incapable of being defamed. If any publication can be shown to refer specifically to particular individuals then alone an action for defamation may lie, not otherwise.

Held on facts that portrayal of the lawyer in the film Nadan does not have any relevance to lawyers as a class. The dialogues and visible representations point out only to Advocates who indulge in such practices. The impugned portions of the film cannot lead any reasonable person to form the conclusion that Advocate are pests and despicable bunch."

27. The learned Advocates for the contesting respondents have also argued that though the allegations have been made in the impugned article that the people at large have been suffering on account of the strike of the Advocates, there is no evidence to show that the people have suffered. It has to be accepted that even during the period of strike, the matters would be notified on board for hearing. The parties and witnesses would go to the court and as soon as it would be conveyed to them that the matters would not be taken up on account of the strike of the Advocates, they would be required to go back without conducting their matters. Therefore, it can reasonably be inferred that the people at large suffered on account of the strike by the Advocates. Even otherwise, the cases on board would not be taken up on account of the strike by the Advocates and, therefore, their cases would not be dealt with and disposed of early and, therefore, the persons being litigants and witnesses would naturally suffer. This does not require any proof. Any way, it is noticed that the averments made in the impugned article are not aimed at an identifiable class or group of persons. Moreover, looking to the facts and circumstances and the background of the article, it has to be inferred that the averments made in the impugned article did not tantamount to defamation of the members of the Jamnagar Bar Association and, therefore, it has to be accepted that no defamation has been made out even prima facie and consequently this is a fit case for exercising inherent jurisdiction under section 482 of the Code for quashing and setting aside the complaint in question. In above view of the matter, I am of the view that all these petitions are required to be allowed and the concerned criminal complaint filed by the second respondent in each case, deserve to be quashed.

28. For the foregoing reasons, these petitions are allowed. The Criminal cases No,3104, 3105, 3543 to 3552, 3561 to 3570, 3617 to 3642 and 3661 to 3669 of 2001 are quashed and set aside. Rule is made absolute accordingly.