IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 139 of 2011
Reserved on: 7.5.2025
Date of Decision: 03.07.2025

Gopal Chand ...Appellant

Versus

Ramesh Kumar and another ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the Appellant : Mr. Bimal Gupta, Senior Advocate, with Ms. Kusum Chaudhary, Advocate.

For Respondent No.1 : Mr. Karan Singh Kanwar, Advocate.

For Respondent No.2 : Ms. Devyani Sharma, Senior Advocate, with Mr. Basant Pal Thakur, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 24.9.2010, passed by learned Judicial Magistrate First Class, Paonta Sahib, District Sirmour, H.P. (learned Trial Court), vide which the respondents (accused before the learned Trial Court) were acquitted of the commission of an offence punishable under Section 500 of the Indian Penal Code (in short

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2025:HHC:21079

IPC). *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 500 of the IPC. It was asserted that the complainant is running a business and has a good reputation in the area. The accused No.1, who is Pradhan of Gram Panchayat, Gorkhuwala did not have cordial relation with the complainant. He (accused No.1) was asked to deposit the embezzled amount by the Government after the villagers complained against him. However, he believed that the complainant had made the complaint, and threatened the complainant to falsely implicate him. The complainant made a complaint to the Deputy Superintendent of Police, Paonta Sahib, on 16.2.2002 for taking action against the accused No.1. He (accused No.1) had also involved the complainant and his family members in a false case for the commission of an offence punishable under Section 498-A of IPC in connivance with one Smt. Usha. The accused published false news item in Him Ujala Newspaper, making derogatory allegations against the complainant, calling him

2025:HHC:21079

Natakbaj and Gunda. This newspaper was published by accused No.2. The complainant approached accused No.1 and asked him about the news item; however, accused No.1 threatened the complainant. The news item was published to lower the reputation and image of the complainant in the public at large. Therefore, a complaint was filed before the learned Trial Court to take action as per law.

3. The learned Trial Court recorded preliminary evidence and found sufficient reasons to summon the accused. When the accused appeared, notice of accusation was put to them for the commission of an offence punishable under Section 500 of the IPC.

4. The complainant examined himself (CW1), Jagir Singh (CW2), Vipin Kumar (CW3) and Om Prakash (CW4) to prove his case.

5. Accused No.1, Ramesh Kumar, admitted that the complainant is a resident of Khoronwala. He admitted that the relationship between him and the complainant was not cordial. He admitted that a complaint was filed against him (the accused). He stated that the complaint was filed by the complainant and the persons accompanying him. He was a

2025:HHC:21079

prosecution witness in the FIR registered for the commission of an offence punishable under Section 498-A of the IPC. He denied that he had published the news item to take revenge on the complainant or to lower his reputation. He stated that he had only issued an explanation to the news item dated 13.6.2004. The newspaper does not have any circulation in Kheruwala. The witnesses have cordial relation with the complainant. A false case was made against him due to the political revelry. False allegations were made against him in a news article dated 13.6.2004. An inquiry was made from him (the accused). He had told the truth to accused No.2, who published the news item. He never defamed the complainant.

6. Accused No.2, Vijay Gupta, stated that the complainant came to him, but he was not aware of his reputation. Ramesh Kumar (accused No.1) had sent a press note, and he prepared the news item based on that press note. The newspaper is not published in Khoronwala. He published the news item in the public interest. Ramesh Kumar came to him and asked why his explanation was not sought. Ramesh Kumar handed over a press note and affidavit to him. He published an

2025:HHC:21079

item based on the affidavit and the press note. He did not make any alterations to the news item.

7. The statements of accused No.1 Ramesh Kumar (DW1), Trilochan Singh (DW2), Ravinder Kumar (DW3) and accused No.2 Vijay Gupta (DW4) were recorded in defence.

8. Learned Trial Court held that the news item showed that it was published at the instance of Ramesh Kumar in response to the earlier news item (Ex.DW1/A). However, Ramesh Kumar denied this fact. The allegations were made in the said news item against Ramesh Kumar regarding the misappropriation of the money. Accused No.2, Vijay Gupta, admitted that the news item was published in his newspaper. The original press note/affidavit was not produced, but only its photocopy was produced; hence, it was not proved as per the law. Ramesh Kumar denied that this press note/affidavit contained his signatures. There was no other evidence to prove that the press note/affidavit was issued by the accused No. 1. Therefore, the liability of accused No.1 was not established. Accused Vijay Gupta could not be held liable because the motive to defame or lower the image of the complainant in the eyes of the public was not proved. He acted *bona fide* in good faith; hence, he could not

be held liable for the commission of an offence punishable under Section 500 of the IPC. Consequently, the complaint was dismissed.

9. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal, asserting that the learned Trial Court erred in appreciating the material on record. The language of the news item was derogatory and defamatory, and it was published to lower the image and reputation of the complainant. The news item was duly proved on record. The words Natakbaaj and Gunda are used for persons having a bad reputation, and their incorporation in the news item lowered the reputation of the complainant in the eyes of the public. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. I have heard Mr. Bimal Gupta, learned Senior Counsel assisted by Ms. Kusum Chaudhary, learned counsel for the appellant/complainant, Mr. Karan Singh Kanwar, learned counsel for respondent No.1/accused No.1 and Ms. Devyani Sharma learned Senior Counsel assisted by Mr. Basant Pal Thakur, learned counsel for accused No.2/respondent No.2.

2025:HHC:21079

11. Mr. Bimal Gupta, learned Senior Counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused. It was duly proved on record that the news item was published by accused No.2 at the instance of accused No.1. The complainant was referred to as Natakbaj and Gunda in the news item. This lowered the reputation of the complainant in the eyes of the public. Learned Trial Court erred in holding that accused No.2 had published the news item in good faith or that the involvement of accused No.1 was not proved. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

12. Mr. Karan Singh Kanwar, learned counsel for accused No.1/respondent No.1, submitted that accused No.1 had explained the earlier news item. The news item was not as per the explanation, and the accused No.2 had incorporated the words by himself. Learned Trial Court had taken a reasonable view while acquitting the accused, and this Court should not interfere with the reasonable view of the learned Trial Court. Therefore, he prayed that the present appeal be dismissed.

13. Ms. Devyani Sharma, learned Senior Counsel for accused No.2/respondent No.2 submitted that accused No.2 is not

the Editor of the newspaper but the Chief Editor. He cannot be held liable, and only an Editor is liable as per the provisions of the Press Registration Act. The news item is not defamatory. The Learned Trial Court had rightly held that the news item was published in good faith. She relied upon the judgments titled ***Kalyanam Vs. Ramesh 2003 SCC OnLine Mad 56, Ramesh Chand Aggarwal Vs. State of Haryana and another 2011 SCC OnLine P&h 17498, Kamal Kumar Goenka and another Vs. State of Jharkhand and another 2015:JHHC:4188, Vijay and another Vs. Ravindra Ghisulal Gupta, Cr. Application No. 393 of 2022*** and ***Muncherji Nusserwanji Cama Vs. State of Maharashtra 2019 SCC OnLine Bom 5605*** in support of her submission.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

15. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in ***Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433*** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading of evidence, omission to consider the material evidence and no

reasonable person could have recorded the acquittal based on the evidence led before the learned Trial Court. It was observed:

> "**11.** Recently, in the case of ***Babu Sahebagouda Rudragoudar v. State of Karnataka 2024 SCC OnLine SC 4035***, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:
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> "**38.** First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the trial court.
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> 39. This Court in ***Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471: (2022) 2 SCC (Cri) 31]*** encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)
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> "29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (***Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415: (2007) 2 SCC (Cri) 325***], SCC p. 432, para 42)
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> '42. From the above decisions, in our considered view, the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
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> (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on the exercise of such power and an appellate court,

on the evidence before it, may reach its own conclusion, both on questions of fact and law.

(3) Various expressions, such as "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc., are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is a double presumption in favour of the accused. *Firstly*, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. *Secondly*, the accused, having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

40. Further, in ***H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748]*** this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows: (SCC p. 584, para 8)

"*8. ... 8.1.* The acquittal of the accused further strengthens the presumption of innocence.

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on

record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

16. A similar view was taken in ***Bhupatbhai Bachubhai Chavda v. State of Gujarat, 2024 SCC OnLine SC 523***, wherein it was observed:-

> "**6.** It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on the evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. The Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn the order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself to the main question."

17. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

18. The news item (Ex. P3) freely translated into English reads as under: -

"Ramesh Kumar, Pradhan Gorkhuwala, refuted the allegations made against him by some persons. Ramesh Kumar, Pradhan, believes that the persons making allegations against him are a group of four brothers who are involved in the Dowry Act, 498-A. Ramesh Kumar handed over a written document to Him Ujala and explained that the originators of the allegations are a few people from the village, and all the villagers had no concern with these allegations. Pradhan, Ramesh Kumar, called the group of people making the allegation as 'Shallow Drama Troupe' and said that people of Gorkhuwala had a Television in every house and they had lost interest in the Theatre Company. Therefore, the Playwrights should go somewhere else with their Dhol (Double-Headed Drum) and Manjeera (Small Hand Cymbals) and should not disturb the peace of Gorkhuwala. Gopal Thakur, Ram Kumar and Krishan, etc., involved in the Dowry Act, have personal enmity with Ramesh because his statement is important in the case filed against them. Many times, threats were made to Ramesh to kill him. As per Ramesh Kumar, he was ready to face any inquiry regarding the development works carried out in the Panchayat because the truth is not afraid of anything. Pradhan also requested the Media to visit the spot and see the facts objectively. Pradhan Ramesh Kumar told the Press that the condition of the persons disturbing the peace and spreading Gundaraj was similar to an injured snake, and he did not care for them. He would not succumb to the person disturbing peace and spreading Gundaraj. Even though he may have to make any sacrifice."

19. A bare perusal of the news item shows that it referred to four brothers, namely Gopal Thakur, Ram Kumar and Krishan, etc, who were involved in the Dowry Act and 498-A. Ramesh Kumar (DW1) admitted in his statement recorded under Section 313 of Cr.P.C. that he was a prosecution witness in a case filed under Section 498-A of IPC. The complainant, Gopal Chand, stated in his examination-in-chief that accused No.1 had registered a case against him under Section 498-A of the IPC, in which he was acquitted. This was not challenged in the cross-examination; therefore, it is to be accepted to be correct.

20. The news item said that Ramesh Kumar called the group of people a 'Shallow Drama Troupe'. He called the people making the allegations the persons disturbing the peace and spreading the Gundaraj, and said that their condition was like an injured snake. All these allegations were made regarding the character of the complainant, who, as per the news item, was among the group of people making the allegations against him. It was laid down by Kerala High Court in ***Gopinathan v. Ramakrishnan, 2001 SCC OnLine Ker 185: (2001) 3 KLT 59*** that calling a person a gunda is *per se* defamatory. It was observed at page 60:

> **4. Point No. 1**:- Ext. P3 pamphlet, *inter alia*, contains an imputation that the complainant maintains the behaviour of a street gunda. In ***Kamalasanan v. Vasudevan (1986 KLT 464)***, the imputation was that the complainant was an ignoramus (വിവരദോഷി) It was held that the adjective was per se defamatory. According to me, the mention in Ext. P3 that the complainant was maintaining behaviour of a street gunda (image) is also per se defamatory.

21. Orissa High Court also took a similar view in ***Sadasiba Panda v. Bansidhar Sahu*, *1961 SCC OnLine Ori 13: AIR 1962 Ori 115*** and held that calling a person a goonda is defamatory. It was observed at page 117:

> "**12.** The word "goonda", according to Bhashakosh, means a wicked man, a Badmash, a naughty man, an oppressive man. There can be no doubt that if a man is called a goonda, his reputation would be damaged. Though not very clearly, the appellate Court sought to observe that the plaintiff was a man of no status. Every man has his own status, however humble, and he has a right to guard his reputation whatever it is, and the question of status is only relevant in measuring the question of compensation, and not in deciding as to whether there has been actual defamation in a case of libel."

22. A similar view was taken by the Rajasthan High Court in ***Lachhman v. Pyarchand*, *1959 SCC OnLine Raj 18: 1959 RLW 222: AIR 1959 Raj 169***, wherein it was observed at page 229:

> "**25.** Now, so far as the first aspect of the matter is concerned, it is true that the defendants had virtually called the accused a 'goonda'. I had occasion to construe this word in *Hariram* v. *B.P. sood* (16), though in another

> context, and it was held by me that the 'goonda', according to the dictionary called Rajkaj Shabd Kosh by Somdev Upadhyaya, means a hooligan, a rogue, a 'badmash'. A hooligan is a person, according to the usual dictionary meaning, who is 'one of a gang of young street rogues', or a person who readily allows himself to indulge in lawless violence. That being so, I do not feel persuaded to hold that in the circumstances of this case already pointed out above, the defendants can be said to have indulged in unnecessarily strong language when they called the plaintiff a 'goonda' so that they can be held disentitled to the plea of a qualified privilege. In other words, the description of the plaintiff as a 'goonda' can by no means be said to be entirely unjustified, and I am not at all satisfied that it can be accepted as intrinsic evidence of malice on their part. I, therefore, hold that the plaintiff has not succeeded in proving malice merely because the defendants used the word 'goonda' in relation to him."

23. This position was reiterated in ***Chellappan Pillai vs. Karanjia (30.10.1961 - KERHC): MANU/KE/0157/1961*** wherein it was observed:

> What is argued is that the word 'Goonda' does not conflate anything defamatory. It is stated that' the meaning of the word Goonda is not seen in dictionaries and the absence of any explanation, by Pw. 1 and the other witnesses as to what exactly the term means, it cannot be akin that the word has got any sinister or defamatory meaning. 'Goonda' is a Hindi word, and in the Hindi-Malayalam dictionary, the meaning of the word is given as 'Themmadi', which means a vagabond. The meaning of the word 'Goonda' can be gathered from the definition of the term 'Goonda' in the Central Provinces and Berar Goondas Act X of 1946. Section 2 of the Act defines a Goonda as meaning "a hooligan, rough or a vagabond and as including a person who is dangerous to public peace or tranquillity.' In the case of ***Ravinder Kumar Sardari Lal v. District Magistrate, Delhi AIR 1960 Punjab 332***, Justice

> Grover has used the word 'Goonda' in a sense synonymous with a dangerous and desperate character. This is what the learned Judge says:
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> > In communal and other disturbances, it is notorious that goondas become extremely active and that their activities create panic and alarm and add to the prevailing disorder. ...'"Goonda is a was understood term and it is idle to contend that to characterise a person as a "Goonda' or a soldier of a Goonda War is not per se defamatory and it does not convey a sinister or defamatory meaning.

24. Hence, it was duly proved that the news item was defamatory of the complainant.

25. The accused No.2 stated that the news item was published as per the Press Note/Affidavit (Mark D1). Accused No.1 Ramesh Kumar denied his signature on the Press Note/Affidavit (Mark-D1). He denied that he had handed over this document to accused No.2. The original press note/affidavit was not produced before the Court, and no explanation was provided for its loss. No application for leading secondary evidence was given, and this document was not legally proved.

26. Ravinder Kumar (DW3) stated that he could not say that the affidavit was attested by him in the absence of the original. He knew accused Ramesh Kumar, and he could not say who had got the affidavit attested. He could not say that it was brought by Ramesh Kumar. He admitted in his cross-

examination that, as per the register, no affidavit was attested on 17.6.2004.

27. The statement of this witness does not prove that the affidavit was executed by Ramesh Kumar (accused No.1). Thus, the plea taken by the accused No. 2 that he had published the news item as per the Press Note/affidavit of Ramesh Kumar was not proved.

28. Even otherwise, the repetition of libel is an offence, and the repeater cannot take shelter behind the plea that he had merely repeated what was said by another. It was laid down by the Punjab & Haryana High Court in ***Harbhajan Singh v. State of Punjab, AIR 1961 P&H 2015,*** that every republication of a libel is a new libel, and each publisher is answerable for his act if he originated it. It was observed: -

> **"95.** Every republication of a libel is a new libel, and each publisher is answerable for his act to the same extent as if the calumny originated with him. The publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it. But as pointed out already, in this case, no question of repeating a libel arises, because the defamatory statement has originated with the impugned statement of the accused."

29. Therefore, the plea of the accused No. 2 that he had published the news item as per the press note/affidavit is not sufficient to absolve him.

30. Accused No.2, Vijay Gupta, stated in his cross-examination that a news item was published in his newspaper concerning accused No.1, Ramesh Kumar, who came to him on 14.6.2004 and said that the news item was published against him without allowing him to put-forth his version. He handed over a press note which was attested by a Notary Public. He published the news item as per the press note (Mark-D1). He did not add anything and reproduced the contents of the press note.

31. It was submitted that Vijay Gupta is a Chief Editor, as per the declaration made in the newspaper, and a Chief Editor cannot be held liable for the publication of the news item in the newspaper. This submission is not acceptable. It is apparent from the statement of Vijay Gupta that he has not disputed the publication of the news item; hence, recourse cannot be had to the provisions of the Press and Registration of Books Act to determine the publisher. The presumption contained in the Press and Registration Act will apply in the absence of evidence. It has been observed in ***Prosser Handbook of the Law of Torts (4th Edn.***

1971) that the presumptions can be applied in the absence of evidence, and they are not evidence. It was observed in para 38:

> "A presumption, as a rule of law applied in the absence of evidence, is not itself evidence, and can no more be balanced against evidence than two and a half pounds of sugar can be weighed against half-past two in the afternoon."

32. In the present case, accused no. 2 admitted the publication of the news item, and recourse cannot be had to the presumption contained in the Press and Registration Act. Therefore, the judgments of ***Muncherji Nusserwanji Cama (supra), Vijay (supra), Kamlesh Kumar Goenka (supra) and Ramesh Chand Aggarwal (supra)*** regarding the liability of the Chief Editor do not apply to the present case.

33. Learned Trial Court held that the accused No.2 acted in good faith because he had published the news item based on the press note/affidavit and did not add anything. This conclusion is not correct. The Punjab & Haryana High Court dealt with the question of good faith in ***Harbhajan Singh*** (supra) and held that this plea is available if the person publishes the news item in good faith and for the public good. The person pleading good faith has to show that he had made a reasonable inquiry

regarding the correctness of the imputations published by him. It was observed: -

> "**75.** The ingredients of the ninth exception on which the entire arguments of the appellant have pivoted are that the imputation on the character of another should be made in good faith, for the protection of the interest of the person making it, or of any other person, or for the public good. In this case, the accused has to prove that the publication was both in good faith and for the public good. Once it is shown that the publication was made in good faith, I will have no difficulty in assuming that the first part of the imputation, namely, that the complainant was the leader of smugglers, would be for the public good. It is hardly debatable that the making of the second imputation, as to the complainant's being responsible for the commission of a large number of crimes in the Punjab, can be for the public good.
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> "The term 'good faith' is defined both in section 3(22) of the General Clauses Act (No. X of 1897), and also in section 52 of the Penal Code. According to the General Clauses Act—
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> "A thing shall be deemed to be done in 'good faith' where it is in fact done honestly, whether it is done negligently or not."
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> **76.** According to section 52 of the Penal Code—
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> "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."
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> **77.** The definition of "good faith" in the Penal Code is a negative one. The term "good faith" is not attempted to be defined there, but all that is stated is that if an act is not done with due care and attention, it would not be said to be done in "good faith". This definition comes into conflict with the definition in the General Clauses Act to this extent only that if a thing has been done negligently, though honestly, it would not be deemed to have been

done in "good faith". The definition of the term in the General Clauses Act lays stress on one aspect only, but that in the Penal Code places emphasis on two aspects, namely, the honesty of intention along with due care and attention. Thus, section 52 excludes the dement of negligence from the purview of "good faith". Both definitions retain the real essence of "good faith", which is that a thing is done "honestly". This is a feature common to both definitions, without which the term "good faith" will lose its real meaning. "Good faith", therefore, implies not only an upright mental attitude and a clear conscience of a person but also the doing of an act, showing that ordinary prudence has been exercised according to the standards of a reasonable person. "Good faith" contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It must, therefore, be summed as 'an honest determination from ascertained facts'. "Good faith" precludes pretence or deceit, and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in law, a want of good faith. Once this is shown, good faith does not require a sound judgment.

78. In the context of the law of defamation, the requirement of good faith, in publishing an article derogatory to the character of the complainant, is not satisfied by merely showing a belief on the part of the publisher in the truth of the publication. It has to be shown that the publication had been honestly made in the belief of its truth and also upon reasonable grounds for such a belief, after the exercise of such means to verify its truth, as would be taken by a man. Ordinary prudence, under like circumstances. On this question, the following observations of Mitchell, J., in ***Allen v. Pioneer Press Co. [Minnesota Supreme Court (1889) 3 L.R.A. 532, 535]***, may be cited: —

> "The next question is, whether upon the evidence the question should have been submitted to the jury, whether 'the article was published in good faith; that its falsity was due to mistake or

misapprehension of the facts'. This depends upon what is meant by the expression 'in good faith', as used in this connection.

"We may assume that the Act was designed to protect honest and careful newspaper publishers. It is not to be presumed that the Legislature intended to make so radical a change in the law of libel as to make mere belief in the truth of the article the test of good faith. If so, they have introduced a very dangerous principle, which virtually places the good name and reputation of the citizen at the mercy of the credulity or indifference of every reckless or negligent reporter.

Good faith requires proper consideration for the character and reputation of the person whose character is likely to be injuriously affected by the publication. It requires of the publisher that he exercise the care and vigilance of a prudent and conscientious man, wielding, as he does, the great power of the public press."

79. A publisher of a defamatory statement can only be protected if he shows that he had taken all reasonable precautions and then had a reasonable and well-grounded belief in the truth of the statement. The plea of "good faith" implies the making of a genuine effort to reach the truth, and a mere belief in the truth, without there being reasonable grounds for such a plea, is not synonymous with good faith. Exception 9, therefore, covers two matters: proof of good intention and the exercise of reasonable care and skill, having regard to the occasion and the circumstances. Mere subjective belief, without any objective basis, is not a dependable criterion for substantiating the ninth exception; an unnecessary aspersion is indicative of want of good faith.

80. The Advocate-General, in support of his argument that there was no good faith, has placed reliance on the observations made in a decision of the Privy Council, reported in ***Arnold v. King Emperor [I.L.R. 41 Cal. 1023].*** In certain respects, there is a similarity in this case and the

Privy Council decision. In that case, the appellant Mr. Arnold was the Editor of the "Burma Critic", a newspaper, published in Rangoon, and the proceedings arose out of a defamatory article entitled "***A Mockery of British Justice***", defaming Mr. Andrew, A district Magistrate. In a rape case of a girl aged about 11 years one Captain McCormick was prosecuted. The District Magistrate was of the view that the charge was false, and he had discharged Captain McCormick under section 209 of the Criminal Procedure Code. The allegation against the District Magistrate was that he had, by wrongly discharging the accused, "committed the basic breach of trust and was unworthy of the position he had." The jury returned a unanimous verdict of guilty and the Chief Justice sentenced the appellant to one year's simple imprisonment, expressing the view that in his opinion no grosser, more unwarranted or mischievous libel could have been published, and that the offence had been aggravated by the conduct of the defence as the advocates not only reiterated but added to vituperation contained in the articles, and there was no expression of apology or sorrow for the injury caused to the complainant, even up to the end of the case, and Lord Shaw said—

> "While the plea of veritas was not openly or plainly made, their Lordships regret to observe that surreptitiously it did appear and reappear in the case by way of repeated innuendo."

81. As to the question which has to be tried in such a case, Lord Shaw said—

> "Notwithstanding the elaboration of the arguments and the introduction of much matter affecting the conduct of McCormick and the conduct of Mr. Andrew, it was accordingly this question, and this question only, which the jury charged by Sir Charles Fox had to try, namely, whether in publishing the libels admitted to be false Mr. Arnold did so in good faith because he believed them to be true, having given due care and attention to seeing that they were so. If the jury were satisfied that he did give

> that due care and attention, and that he acted in good faith, then the exception formed a good defence, and the accused would be found not guilty." (Page 1050).

83. As to the conduct of the defendant, Lord Shaw said—

> "Their Lordships make every allowance for the heat of advocacy which, as noted by the Chief Judge, seems to have been in this case great. But when a gross mistake of that kind on a matter of fact—the truth of which, when exposed, would have ruined any administrative or judicial officer's career—was discovered, the libel should not have been adhered to for a moment. The mistake should have been acknowledged, and an apology tendered. This was not done, but, upon the contrary, the case was conducted to its close upon the footing that an unstated defence was the real and good defence, namely, that the libels and all the libels were true. Nobody is to be blamed in these circumstances for thinking that the plea of good faith on the part of Mr. Arnold had sustained a serious shock." (Pages 1061, 1062).

84. This decision brings out four principles:

85. Firstly, that "good faith" means good faith and also the exercise of due care and attention;

86. Secondly, that due care and attention means that the libeller should show that he had taken particular steps to investigate the truth and had satisfied himself from his enquiry, as a reasonable man, that he had come to a true conclusion;

87. Thirdly, that the conduct of the accused, during the course of the proceedings in a Court, is a relevant factor in determining his good faith; and

88. Fourthly, that if there are several imputations, good faith or truth must be proved with respect to every imputation, and, if he fails in substantiating truth or good faith in respect of any one imputation, conviction must stand.

89. In the case before me, the accused has not said a word that he had investigated into the truths of the imputations made by him. In his written statement, he said that he had hardly any time for making an enquiry, not more than 24 hours. His attitude in the trial Court, and as made clear in this Court by his counsel, has been one of complete recalcitrance to the end. Though in clear terms it was stated that reliance was not being placed upon the first exception and the plea of truth had been given up, the appellant expressed no regret or remorse for having published the impugned statement. In the words of his counsel—"My client is not but to tender an apology. It is a matter of principle and personal conviction with him. He stands by what he has said." In the written statement, the libel has been reiterated, and by way of justification, several other calumnious reflections have been indulged in.

90. In ***Queen Empress v. Dhum Singh [I.L.R. 6 All. 220, 222.]***, the accused, who was facing a libel charge, had pleaded that the defamatory statement was protected by the eighth exception, being an accusation made in good faith to a person in law having full authority. Straight, J. said—

> "It will be observed that two ingredients are essential to establishing this protection—
>
> (i) that the accusation must be made to a person in authority over the party accused; and
>
> (ii) that the accusation must be preferred in good faith—that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of his charge, as an ordinary man should be expected to exercise."

91. Referring to the plea that there was a strong suspicion in the mind of the accused of the impugned conduct of the complainant. Straight, J. said—

> "But this was not enough, and he should have exercised greater care and attention in making himself sure of his facts before committing his

> accusations on this point to writing. As to the residue of matters mentioned in the six earlier heads of charge, it is clear to my mind from the evidence and his own statement before the Magistrate that the appellant acted upon mere rumours that were flying about Pilibhit, and as they referred to the cases of other persons, in which he had no direct interest, more stringent tests must be applied in determining the question of his good faith. Even if proof of such rumours was admissible, of which I am by no means clear, it was his duty, before committing them to writing as direct charges against Badrul Hasan, to satisfy himself by all reasonable means at his command that they were well founded in fact, and if he failed in this respect, he published them at his peril, and must take the responsibility for them that the law imposes." (Pages 223, 224).
>
> **92.** Reference may also be made in this connection to the case of ***Shibo Prosad Pandah [I.L.R. 4 Cal. 124],*** where observations have also been made to similar effect.

34. In the present case, the accused No. 2 did not claim that he had made any inquiry into the allegations published in the news item. Calling a person a member of a group of 'Shallow Theatre People', breaching peace and spreading 'Gundaraj' does not protect any public interest. There is no evidence on record that the complainant is a member of the theatre group, had ever breached the public peace, or he had spread Gundaraj. The publication of these facts would have been relevant if the complainant had such a character, and it was necessary to warn

the people about him; however, in the absence of any such evidence, the publication cannot be said to be in good faith or for protecting the public interest.

35. Ms. Devyani Sharma, learned Senior Counsel for respondent No.2, vehemently argued that the news item was published without any *mala fide* intention and without intending any harm to the reputation of the person. The accused No. 2 cannot be held liable in the absence of proof of malice. This submission is not acceptable. Calling a person Gunda spreading Gundaraj, being a member of Shallow Theatre People without any justification, can be with the intent to harm the reputation of a person. The intention can only be gathered by the circumstances of the case, and no direct evidence of the same can be led. When an imputation concerning the reputation of a person is made without any justification, it can lead to an inference that the publication was with the intent to harm the reputation of the person. It was laid down by Kerala High Court in ***Chellappan Pillai vs. Karanjia (30.10.1961 - KERHC): MANU/KE/0157/1961*** that in order to bring the publication within the purview of the penal law, it is not necessary to prove that the publication was made with an ill-will or malice. It is sufficient if

the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant. It was observed:-

> "7.....To bring the publication of a scandalous imputation under the Penal law it is not necessary to prove that it was done outs of any ill will or malice or that the complainant had actually suffered from M. It would be sufficient to show that the accused intended or knew or had reason to believe that the impaction made by him would harm the reputation of the complainant. Every Sane man is presumed to have intended the consequences which normally follow from his act. The accused, a journalist of some standing, can very well be presumed to know or to have reason to believe that the imputation published by him would harm the complainant's reputation.
>
> 8. We may in this connection refer to the decision in ***Ram Narain v. Emperor MANU/UP/0640/1924: A.I.R. 1924 All 566***. In that case, the accused published a pamphlet in Hindi defaming the complainant, by describing him as a Sharif Badmash, which when translated means "gentleman scoundrel". It was contended that it had not lowered his moral or intellectual character, and no offence was committed. Daniels, J., stated:
>
> This argument overlooks the fact that a person commits defamation within the meaning of Section 499 who publishes any imputation concerning any person intending to harm the reputation of that person whether harm is acacia caused Or not A person who publishes defamatory matter against another in a case not covered by any of the exceptions cannot escape nutriment On the ground that the reputation of the person attacked was so good or that of the persons attacking so bad, that serious, injury to the reputation was not, in fact caused.
>
> To the same effect is the decision in V. ***Madanjit v. Emperor 9 I.C. 775*** (Burma) and ***Gobinda Pershad Pandey v. G. L. Garth ILR 28 Cal 63***."

36. It was submitted that the allegations were not set out in the complaint, which is an essential requirement. Reliance was placed upon the judgment of ***Kalyanyam*** (supra). This submission will not help the accused because the reference was made to the news item, and the objectionable words in the complaint; the news item was also annexed to the complaint, and the accused exhibited the same. Therefore, the accused no. 2 was aware of the objectionable words, and the cited judgment does not apply to the present case.

37. Therefore, it was duly proved that the news item was published in the newspaper at the instance of accused No.2, which contained defamatory matter concerning the complainant, which would lower his reputation. There was insufficient evidence that this news item containing the defamatory words was published at the instance of accused No.1 because the present note/affidavit was not proved as per the law, and its original was never produced before the Court.

38. Thus, the learned Trial Court had rightly acquitted the accused No. 1, Ramesh Kumar, for the commission of an offence punishable under Section 500 of the IPC.

2025:HHC:21079

39. Learned Trial Court acquitted accused No.2 on the ground that the news item was published as per the press note; however, it is not material because republication does not provide any defence to the publisher. Learned Trial Court also held that the accused No.2 can only be held liable by proving connivance with the accused No. 1 or an adverse interest against the complainant. Learned Trial Court held that the news item was scandalous qua the complainant; therefore, its mere publication was sufficient and there was no requirement that accused No.2 was interested in getting the news published against the complainant.

40. Learned Trial Court held that it was required to be proved that accused No.2 had malice against the complainant, which is not a requirement, as noticed above. Learned Trial Court further held that the defence of good faith is available to the accused No.2; however, the same is not correct because accused No.2 never claimed that he made inquiries before the publication. Therefore, all the reasons for acquitting accused No.2 are contrary to the legal position and had the correct legal position been brought to the notice of the learned Trial Court, the learned Trial Court would not have acquitted the accused. Therefore, the

judgment passed by the learned Trial Court is not sustainable and is liable to be interfered with even while deciding the appeal against acquittal.

41. In view of the above, the present appeal is partly allowed. The judgment acquitting accused No.2 of the commission of an offence punishable under Section 500 of the IPC is set aside, and he is convicted of the commission of an offence punishable under Section 500 of the IPC.

42. Let the accused No. 2 be produced before the Court for hearing him on the quantum of sentence on 24th July, 2025.

(Rakesh Kainthla)
Judge

3rd July, 2025
(Chander)