

(2012) 07 MAD CK 0027

In the Madras High Court

Case No : Criminal A. No's. 840 and 841 of 2004 and Criminal R.C. No's. 153 and 154 of 2007

The Doveton-Corrie Protestant Schools Association

APPELLANT

Vs

Dr. Prof. Geoffery K. Francis
Dr. Prof. Geoffery K.
Francis Vs The Doveton-Corrie Protestant Schools Association

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248, 313

Evidence Act, 1872 — Section 63, 64, 65, 66, 74

Penal Code, 1860 (IPC) — Section 499, 500, 503, 505(2)

Citation : (2012) 6 CTC 648

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : N.D. Bahety, for the Appellant; Adrian D. Rozario, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The following are the allegations contained in the Complaint laid by the Complainant, namely School Association (in C.C.

No. 7469 of 2002).

1.[A] The Complainant is an Association registered under the Tamil Nadu Societies Registration Act and governing body running, managing and

administrating the schools and properties of the trust of Doveton Institution at Ritherdon Road, Vepery, Chennai-600 007 and that these schools

and institutions are one of the premier, renown, reputed and respected schools and institutions of the City of Chennai and especially in the area of

Vepery in Chennai, that the Accused is the Ex. MLA. (nominated) of Tamil Nadu, the President of the Friends-In-Need Society in No. 29,

Poonamallee High Road, Chennai-600 003, the President-in-Chief of The Anglo-

Indian Association of Southern India and alleged Member of the State Board of Anglo Indian Education, Member of the Senate of the Madras University and a self-styled recognized educationist of 27 years

standing, that the Accused is in no way connected with the Complainant and is also not a member of its Association.

1.[B] Right from 1997 onwards the Accused has, besides others, been deliberately defaming the Complainant by lodging one Complaint after

another against the Complainant, especially regarding the collection of massive donations, amassing of unaccounted money, misappropriation,

corruption of its Board members, various irregularities, etc., that as against these false and fraudulent accusations, the Complainant has already filed

C.S. No. 375 of 2001 in the High Court of Madras for declaration and injunction, and also C.C. No. 9370 of 2011 for defamation, etc. on the file

of the learned II Metropolitan Magistrates Court at Egmore, Chennai, both of which are still pending, that in spite of the pendency of these legal

proceedings, the Accused has once again defamed the Complainant by his Letter dated 22.11.2001 written to the Inspector of Anglo-Indian

Schools with copies thereof marked to various other Statutory Authorities and others including the Complainant, inter alia once again defamatorily

falsely alleging and accusing that the Complainant is unauthorisedly collecting funds, compelling students to donate, etc., which even to the

knowledge of the Accused are totally false, without any basis or supported by any iota of proof or substance, that this has been resorted to by the

Accused without any official authority or authorisation whatsoever from any Board or Committee, and also without any locus standi whatsoever,

that as a result of this, the Accused has been put to gross harm, damage and humiliation thereby per se defaming the Complainant and causing

damage and disrepute to its fair name and reputation not only with the Government bodies and authorities but also in and with the parents and the

public at large, with the MLA and others enquiring into the matter, though finding no basis and substance in the said Complaint of the Accused, that

the Accused has for the second time once again committed the offence punishable u/s 500 of I.P.C. per se defaming the Complainant Section 503

of Criminal intimidation and Section 505(2) Statements creating or promoting enmity, hatred or ill-will between classes, etc. and hence, the

Complaint is filed.

Following are the allegations contained in the Complaint laid by the Complainant, namely School Association (in C.C. No. 9370 of 2002):

2.[A] Apart from the allegations contained in the Complaint laid by the Complainant in C.C. No. 7469 of 2002, it is also alleged that the

Complaints have been lodged with the Government of Tamil Nadu, the Director of School Education, the Inspector of Anglo-Indian Schools, the

Income Tax Department, the Registrar of Societies to and with the press, public platforms, nominated Anglo-Indian Member of Parliament,

nominated Anglo-Indian MLA of Tamil Nadu, etc., though after due inquiry, personal inspection and verification of the records of the

Complainant, by the orders of the Court, that all these allegations and accusations have been proved to be false, fraudulent, futile and naught.

2.[B] Considering the fact that the Accused was a reputed and honoured representative of the Anglo-Indian community, the Complainant had not

taken any steps or measures against the Accused earlier, other than issuing notices through its Advocate, that bolden by the earlier inaction of the

Complainant over the said false, frivolous and futile Complainants earlier filed, the Accused though without any locus standi whatsoever with gross

impunity, continuing to defame the Complainant falsely accusing it of collecting massive donations, amassing unaccounted money, misappropriation

and misapplication of funds and resources, various irregularities, etc. thereby per se defaming the Complainant and causing damage and disrepute

to its fair name and reputation, that first on 7.11.2000 and then again on 16.11.2000, the Headmaster of the Complainant's Boys School had

written letters to the mother and natural guardian of Mr. Sheik Wasim a student studying in STD VIA calling upon her to pay the balance of the

donation payable towards the admission of the said child, that inadvertent use of the word donation became the cause of a Complaint dated

23.1.2001 filed by the Member of Parliament with the Inspector of Anglo-Indian Schools, Chennai who by its Letter dated 25.1.2001 called for

an explanation from the Complainant and to which an explanation dated 29.1.2001 was also given, and where after a personal inspection was also

made by the said inspector, who found that no donations had been actually and factually collected by the Complainant, that the use of the said

word by the Headmaster was only out of inadvertence whereas the balance amount payable was only towards the building fees and not towards donation, that in as much as the fees for Anglo-Indian children is being reimbursed by the Government and in order not to be caught as cheating the Government, the Complainant by its Letter dated 30.1.2001 called upon Mrs. Louisa Fayaz to submit her Marriage Certificate and the copy of which was also submitted by her, that the finding from the said marriage certificate that the said Mrs. Louisa Fayaz had actually converted to Islam and had also changed her name to Suraiya Fayaz and had ceased to even be a Christian much less an Anglo-Indian, the Complainant by its letter dated 9.2.2001 called upon her to give her explanation thereto as to why her son should not be removed from the rolls of the school for having made a false representation for the sake of getting admission, that the said Louisa Fayaz by her letters dated 5.2.2001 & 6.2.2001 pleaded of her having been misguided by the Accused and the Member of Parliament and called upon the Christian charity and benevolence of the Complainant for the continuation of the studies of her son in the school, that surprisingly a reply dated 12.2.2001 was received by the Complainant from the Accused, besides others once again not only interfering with the internal management and affairs of the Complainant further defaming the Complainant of collecting massive donations, amassing unaccounted money, misappropriation and misapplication of funds and resources, various and numerous irregularities, etc. in spite of the fact that the Accused had no locus standi, that to this a reply dated 17.2.2001 was given by the Complainant, and to which a rejoinder dated 7.3.2001 was again given by the Accused, once again not only per se defaming the Complainant of collecting massive donations but also calling and accusing the Complainant's Advocate as being one who ""....hold the school to ransom through his devious and vicious techniques just to milk the school and to continue to drink the blood of the Anglo-Indian community by applying devious tactics..."" and being ""a third rate lawyer"", that the Accused has committed the offence punishable under the I.P.C. Section 500 of per se defaming the Complainant, Section 503 of Criminal intimidation and Section 505(2) statements creating or promoting enmity, hatred or ill-will between classes, etc. and hence, the Complaint is filed.

2. After the Complainant's evidence was over, the Accused was questioned u/s 313, Cr. P.C. as regards incriminating materials available against

him in Complainant's evidence. He denied the complicity to the offences. He did not examine any witness nor had he marked any documents.

3. After analysing the evidence on record, the learned II Metropolitan Magistrate, Egmore, Chennai found the Accused not guilty under Sections

505(2), I.P.C. As far as the charges against the Accused under Sections 503 & 505(2), I.P.C. are concerned, it is held that there are no materials

to show that the Accused committed the offences of intimidation and the mischief done by the Accused has no value at all and he was acquitted u/s

248(1), Cr. P.C. As far as the charge against the Accused u/s 500 IPC, the Accused was found guilty and sentenced to pay a fine of Rs. 1,000/-

in default to undergo Simple Imprisonment for three months in each of the cases. The Accused preferred C.A. Nos. 283 & 284 of 2004 on the file

of the II Metropolitan Magistrate, Egmore, Chennai. The learned Appellate Judge, after considering the materials, confirmed the conviction and

dismissed the Appeals. Hence, the Accused has preferred the Revision in Cr. R.C. No. 153 & 154 of 2007 to set aside the judgment of

conviction dated 14.6.2004 passed in C.C. Nos. 9370 of 2001 & 7469 of 2002. Aggrieved against the acquittal under Sections 503 & 505(2),

I.P.C. and also to enhance the sentence u/s 500, I.P.C. passed by the learned II Metropolitan Magistrate, Egmore, Chennai by order dated

14.6.2004 in C.C. Nos. 9370 of 2001 & 7469 of 2002, the Complainant has preferred Cr. A. Nos. 840 & 841 of 2004 before this Court. Since

all the matters are interconnected, this common judgment is rendered.

4. The points for consideration which has arisen in this case are:

[1] Whether the Accused is guilty u/s 500, I.P.C. as found by the Trial Court and confirmed by the Appellate Court in both Complaints?

[2] Whether the acquittal of the Accused u/s 503, I.P.C. is proper in both Complaints?

Point 1:

4.[A] The Complainant-School is one among the premier, renowned, reputed and respected schools and institutions of the City of Chennai. The

Accused is Ex. MLA (nominated) of Tamil Nadu who is also holding the position as the President of The Friends-in-Need Society, Chennai,

President-in-Chief of The Anglo-Indian Association of Southern India, Chennai and alleged Member of the State Board of Anglo-Indian

Education, Member of the Senate of the Madras University as well. The letter emanated from the Accused on 12.2.2001 marked as Ex. P2 in

which the Accused has questioned the attitude of the School Authority to collect donation/fees from the students which is reportedly not

authorised. It is the contention of the Complainant that this letter contains defamatory remarks against the school. Another letter namely Ex. P3

dated 7.3.2001 purported to have been sent by the Accused in the Complaint is also stated to have contained similar defamatory remarks against

the Complainant-School Authorities. It is urged by the Complainant that these letters contained words of defamatory in nature which would lower

the reputation of the school in the eyes of the authorities and the public and that it is an actionable wrong.

4.[B] As far as document Ex. P3 is concerned, it is stated by PW1, the Complainant in his evidence that it was received in the postal cover Ex. P4

but it is a Xerox copy of the letter allegedly sent by the Accused. The Complainant issued a lawyer's notice on 29.3.2001 to the Accused in which

it is not stated that the letter dated 7.3.2001 is a Xerox copy. Hence, it could be easily understood that Ex. P4-Postal Cover should have

contained the original letter of Ex. P3 but it was not marked by the Complainant. The Accused side assails the filing of Xerox copy of the letter by

stating that unless original is produced, Ex. P3-Letter should not be acted upon since it is secondary evidence and that it does not satisfy the

requirements as contained in Section 65 of the Evidence Act. Section 63, defines secondary evidence. Section 64, contemplates that documents

must be proved by primary evidence except in the cases mentioned in Section 65. Section 65, reads as follows:

65. Cases in which secondary evidence relating to documents may be given.-- Secondary evidence may be given of the existence, condition or

contents of a document in the following cases:

(a) when the original is shown or appears to be in the possession or power--

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned

in Section 66, such persons does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or

by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from

his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of Section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the original consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved

is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document in admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the

examination of such documents.

5. In this case, there is no explanation by the Complainant for having filed the Xerox copy which is admittedly a secondary evidence. Of course,

when this document was marked, it was not objected. Merely since the document was not objected at the time of marking, it cannot be stated that

it is admissible in evidence in view of Section 65.

6. The learned Counsel for the Respondent-Mr. Adrian D. Rozario would contend that in the absence of original and in the absence of explanation

for non-production of the original, by no stretch of imagination, it can be stated that the Xerox copy could be relied upon. In support of his

contention, he placed reliance upon a decision of the Hon"ble Supreme Court in Smt. J. Yashoda Vs. Smt. K. Shobha Rani, wherein their

Lordships have observed thus:

The Rule which is the most universal, namely that the best evidence the nature of the case will admit shall be produced, decides this objection that

Rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior

proof in relation to it. Section 65 deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce

secondary evidence it is necessary for the party to prove existence and execution of the original document. u/s 64, documents are to be provided

by primary evidence. Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the

circumstances mentioned. The conditions laid down in the said Section must be fulfilled before secondary evidence can be admitted. Secondary

evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to

bring it within one or other of the cases provided for in the Section. In *Ashok Dulichand Vs. Madahavlal Dube and Another*, it was inter alia held

as follows:

After hearing the learned Counsel for the parties, we are of the opinion that the order of the High Court in this respect calls for no interference.

According to Clause (a) of Section 65 of Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a

document when the original is shown or appears to be in possession or power of the person against whom the document is sought to be proved or

of any person out of reach of, or not subject to, the process of the Court of any person legally bound to produce it, and when, after the notice

mentioned in Section 66 such person does not produce it. Clauses (b) to (g) of Section 65 specify some other contingencies wherein secondary

evidence relating to a document may be given, but we are not concerned with those clauses as it is the common case of the parties that the present

case is not covered by those clauses. In order to bring his case within the purview of clause (a) of Section 65, the Appellant filed applications on

July 4, 1973, before Respondent No. 1 was examined as a witness, praying that the said Respondent be ordered to produce the original

manuscript of which, according to the Appellant, he had filed Photostat copy. Prayer was also made by the Appellant that in case Respondent No.

1 denied that the said manuscript had been written by him, the Photostat copy might be got examined from a Handwriting Expert. The Appellant

also filed Affidavit in support of his applications. It was however, nowhere stated in the Affidavit that the original document of which the Photostat

copy had been filed by the Appellant was in the possession of Respondent No. 1. There was also no other material on the record to indicate the

original document was in the possession of Respondent No. 1. The Appellant further failed to explain as to what were the circumstances under

which the Photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent

No. 1 in his Affidavit denied being in possession appeared to the High Court to be not above suspicion. In view of all the circumstances, the High

Court came to the conclusion that no foundation had been laid by the Appellant for leading secondary evidence in the shape of the Photostat copy.

We find no infirmity in the above order of the High Court as might justify interference by this Court.

The admitted facts in the present case are that the original was with one P. Srinibas Rao. Only when conditions of Section prescribed in Section 65

are satisfied, documents can be admitted as secondary evidence. In the instant case Clause (a) of Section 65 has not been satisfied. Therefore, the

High Court's order does not suffer from any infirmity to warrant interference.

7. In The Asst. Commissioner of Central Excises (Then Asst. Collector of Central Excise) Vs. Beauty Dyers, this Court has observed that

production of original documents is essential. In view of the above said legal position, it is held that Ex. P3 being the Xerox copy, it is not

admissible in evidence which is a secondary evidence and it could not be acted upon. In so far as Ex. P2 is concerned, it is original letter sent by

the Accused in which he has stated inter alia as follows:

It was clearly found that your school has been indulging in massive collection of donations much against the will of the Government and a resolution

in the State Board of Anglo-Indian Education that Anglo-Indian Schools should not collect donations especially from Anglo-Indian students. This is a

travesty of judgment and gross misuse of position with the sole aim of amassing wealth that is unaccounted for. We have shown in the past that

these donations collected by your school are not properly accounted for and the

fact, in my telephonic conversation with you on 9.2.2001 that you would be placing this matter in the hands of the lawyer, clearly shows that tonns of money is being spent on lawyers fees just to cover up the faults of the management. My humble suggestion is that instead of wasting funds on lawyers, these amounts of money may be spent for poor Anglo-Indian students studying in your school.

8. In the above said passage contained in the Letter, Accused has expressed his hatred against the attitude observed by the School Authorities by stating that ""this is a travesty of judgment and gross misuse of position with the sole aim of amassing wealth that is unaccounted for"" and ""clearly shows that tonns of money is being spent on lawyers fees just to cover up the faults of the Management.

9. In the considered view of this Court, the above said references are per se defamatory. Copies of this Letter have also been marked to-(1) The Inspector of Anglo-Indian Schools, Chennai-600 006, (2) Dr. Mrs. Beatrix D'Souza, Member of Parliament, Chennai-8, and (3) Mrs. Louisa Marsh, 34-A, Somasundaram Street, Agram, Chennai-82. It is obvious that apart from the Complainant, the copies of these letters have been sent to the above said authorities also.

10. Mr. N.D. Bahety learned Counsel appearing for the Complainant would contend that the defamatory remarks made in the above said letter is not made in ""good faith"" by the Accused, that there is no evidence to show that the Accused has made the same for public good nor in good faith, that it does not show that it is a privileged version and that when the defamatory statements are made to be known to another person, then it would also tantamount to defamation and that there is no ground made out to disturb the finding of conviction recorded and confirmed by the Courts below. In support of his contention, he garners support from a decision of Apex Court reported in Chaman Lal Vs. The State of Punjab, , wherein their Lordships while dealing with the exceptions contained in Section 499, I.P.C. have held that in order to avail the benefit of Exceptions, it must be proved by the Accused that the imputations was made for public good. The following are the observations of guidelines rendered by the Apex Court to be followed in the matter of discussing and dealing with the circumstances:

In order to come within the First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed

concerning the Respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely,

truth of the imputation and the publication of the imputation for the public good is on the Appellant. The Appellant totally-failed to establish these

pleas. On the contrary, the evidence is that the imputation concerning the Respondent is not true but is motivated by animus of the Appellant

against the Respondent.

The Eighth Exception to Section 499 of the Indian Penal Code indicates that accusation in good faith against the person to any of those who have

lawful authority over that person with respect to the subject matter or the accusation is not defamation. We have already expressed the view that

there is utter lack of good faith in accusation. The Ninth Exception states that if the imputation is made in good faith for the protection of the

person, making it or for another person or for the public good it is not defamation. There is no evidence whatever to support the plea that the

imputation was for the public good. The accusation was not also made in good faith. Good faith requires care and caution and prudence in the

background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution. Under

the Eighth Exception statement is made by a person to another who has authority to deal with the subject matter of the Complaint whereas the

Ninth Exception deals with the statement for the protection of the interest of the person making it. Interest of the person has to be real and

legitimate when communication is made in protection of the interest of the person making it.

11. When the principles laid down in the above said decisions are followed, it is seen that the Accused did not act in good faith and his accusation

is not for the public good nor it was not in protection of the interests of the Accused.

12. Pertinent it is to state that the Accused did not enter into the box and explain in what way the defamatory references reportedly made in the

letter were made out of good faith and for public good. As per the above said Apex Court decision, it is the duty of the Accused to show and

establish that his act would come within the exceptions as contained in Section 499, I.P.C. It is advantageous to extract herein the provisions u/s

499 and explanations as well with the exceptions thereto.

499. Defamation.-

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning

any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except

in the cases hereinafter expected, to defame that person.

Explanation 1.--It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if

living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

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

Explanation 4.--No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers

the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit

of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception.--Imputation of truth which public good requires to be made or published:--It is not defamation to impute anything which is true

concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a

question of fact.

Second Exception.--Public conduct of Public servants:--It is not defamation to express in a good faith any opinion whatever respecting the

conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and

no further.

Third Exception.--Conduct of any person touching any public question:--It is not defamation to express in good faith any opinion whatever

respecting to conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

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

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

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

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

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

Ninth Exception.--Imputation made in good faith by person for protection of his or other's interests:--It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.--Caution intended for good of person to whom conveyed or for public good:--It is not defamation to convey a caution, in good

faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person

in whom that person is interested, or for the public good.

13. In Harbhajan Singh Vs. The State of Punjab and Another, , the learned Single Judge of the Delhi High Court has observed as follows:

Where the publication is libelous per se the proof of the publication makes a prima facie case, and it is then for the Accused to offer proof to show,

that what was said, was true, or, was published with good motives and for justifiable ends. In cases of Criminal defamation the Accused has not

only to justify the whole of his libel but the plea taken has to be proved as strictly as if the Complainant was being prosecuted for the offence.

14. The term ""good faith"" has also been dealt with in detail in this judgment as ""an honest determination from ascertained facts" and "Good faith"

precludes pretence or deceit and also negligence and recklessness.

15. The Patna High Court in a decision reported in Sardar Amar Singh Vs. K.S. Badalia, , has held that it is enough if communication was made to

at least one person other than person defamed and u/s 499, I.P.C., proof of actual harm not necessary if words are prima facie defamatory. I am

in respectful Agreement with the above said observations rendered by the Delhi High Court and Patna High Court.

16. Even though there is a general principle that an Accused in a Criminal case is entitled to maintain silence, in the cases like this nature, he is

expected to show that he acted in good faith and that his act was for public good. In this case, it is the bounden duty of the Accused to show that

he is entitled to be brought within the exceptions as contained u/s 499, I.P.C. In this case, he has not done so. He did not examine himself. Further,

in the cross-examination of Complainant, nothing is available so as to make him eligible to avail the benefits of exceptions to Section 499, I.P.C.

17. In such view of this matter, I am of the firm view that the remarks made by the Accused in Ex. P2 letter is libelous per se and there is no valid

ground to dislodge the findings of the Trial Court as confirmed by the Appellate Court. The conviction of Accused under Sections 500 & 505(2),

I.P.C. is more appropriate. This point is answered accordingly.

Point 2:

18. As far as the Complaint in C.C. No. 7469 of 2002 is concerned, much assailed

document is Ex. P2-Letter sent by the Accused to the

Complainant. Ex. P2 is Xerox copy of the letter reportedly sent by the Accused. Original has not been produced nor the cover in which it was sent

is also produced. The Complainant in his evidence has not assigned any explanation for non-production of the original of Ex. P2. The Xerox copy

of Ex. P2 is secondary evidence. Detailed discussion has been taken up under point No. 1 as regards the admissibility of secondary evidence.

Only in the circumstances narrated u/s 65, the secondary evidence could be made admissible. In view of the legal position holding the field as

discussed in Point No. 1, it is held that Ex. P2 could not be acted upon and it is observed that it does not serve any purpose for the Complainant

and hence, the contents could not be appreciated by the Court. Further, this Court could not find out any materials of intimidation attracting the

ingredients u/s 503, I.P.C. In such view of this matter, it has to be necessarily observed that the Accused is not liable to be punished u/s 503,

I.P.C. for alleged intimidation. Moreover, Ex. P2-Letter marked in C.C. No. 7369 of 2002 also will not come to the rescue of the Complainant

since it does not contain any element of intimidation against the Complainant. Hence, the findings of the Courts below do not warrant any

interference by this Court which deserve to be confirmed and they are accordingly confirmed. This point is answered as indicated.

19. In the light of the observations, obtained following the principles laid down by the Supreme Court as well as the study of relevant provisions, it

is held that the Accused is liable to be punished u/s 500 and not liable u/s 503, I.P.C. and there is no valid reason to disturb the findings of the

Courts below which deserve to be confirmed and they are accordingly confirmed. The Appeals and Revisions are devoid of merits. In the result,

the Criminal Appeal Nos. 840 & 841 of 2004 and Criminal Revision Nos. 153 & 154 of 2007 are dismissed.