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# Sanjay Kirloskar Vs Badshah Hotel and Resorts

## Criminal Revision No. 13 of 2001

**Court:** Gauhati High Court (Agartala Bench)

**Date of Decision:** April 27, 2001

**Acts Referred:**
Constitution of India, 1950 â€" Article 226, 227#Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 202, 203, 204, 401#Penal Code, 1860 (IPC) â€" Section 120, 120A, 120B, 211, 499

**Citation:** (2001) CriLJ 2714 : (2001) 1 GLT 638

**Hon'ble Judges:** A.K. Patnaik, J

**Bench:** Single Bench

**Advocate:** P.K. Biswas, H.K. Bhowmik, N. Pradhan and S. Singhvi, for the Appellant; A.K. Bhowmik, D. Guha and P. Chakraborty, for the Respondent

**Final Decision:** Allowed

## Judgement

1. This is an application u/s 401 read with section 482 of the Code of Criminal Procedure, 1973, (for short, ""Cr.PC."") for quashing the complaint

case No. CR 1199/2000 and the order dated 30.3.2000 of the learned Chief Judicial Magistrate, West Tripura, in the said CR Case.

2. Complaint case CR. No. 1199/2000 has been filed by the opposite party against the petitioner and two other persons alleging that they have

committed the offences under Sections 500, 501, 211 and 120, Indian Penal Code. The allegations in the complaint are that the petitioner, Sri

Sanjay Kirloskar is the Chairman-cum-Managing Director of the Corporate Human Resources Management & Communication with its Corporate

Office at Pune in the State of Maharashtra. Sri Suhas Palekar and Sri R.K. Srivastava are the Vice-Presidents of the said Corporate Human

Resources Management Communication and the Adult ACCU Service respectively. A letter dated 9.2.2000 was addressed by Sri Suhas Palekar

to the Head of the CID, Maharashtra State, Pune, the Commissioner of Police, Pune and the investigating Officer CR 91/99, CID, Maharashtra

State which contained defamatory remarks against the opposite party, M/s Badshah Hotel & Resorts, Agartala. The defamatory portions of the

said letter written by Sri Suhas Palekar have been reproduced in paragraph - 5 of the complaint and are quoted herein below :

During the course of the day he was informed by his Hotel that the General Manager of the Hotel Badshah, which is located at Agartala and

which known to be a hotbed of insurgents/ abductors/militants, was enquiring about his whereabouts. On the instruction of Mr. R.K. Srivastava,

the Hotel informed the concerned GM that he had checked out of the Hotel and has left for Calcutta. Although, he was residing there, he had to

state as mentioned as he apprehended a danger to his life and to the business cause for which he had arrived.

Again

From the above it is distinctly clear that the tentacles of Mafias are not restricted to business strategies and price wars, but as reiterated to generate

a fear psychosis and/or develop an animal instict which would be a loss to a family to the business community at large.

The opposite party has further stated in the complaint that the entire ten our of the letter dated 9.2.2000 and the imputations against the opposite

party in the said letter are totally false and baseless, and are totally defamatory of the Hotel of the opposite party and also its General Manager and

the Partners of the opposite party-Hotel and the said imputations have caused irreparable damage to the reputation of the opposite party, its

Partners and business. In paragraph-9 of the said complaint, the opposite party has further alleged that the letter dated 9.2.2000 has been drafted,

signed, circulated and published by Sri Suhas Palekar for and on behalf of Sri Sanjay Kirloskar. In paragraph-9 of the complaint the opposite

party has further alleged that the aforesaid defamatory imputations have been incorporated in the said letter on the instruction of Sri R.K

Srivastava. In the said paragraph-9 of the complaint, the opposite party has alleged that all the accused persons have conspired themselves

criminally to defame the reputation of the opposite party, its Partners and the General Manager, and also for causing business loss to the opposite

party. In support of the allegations made in the said complaint, Sri Subhendu Dey, General Manager of the opposite party-Hotel has been

examined u/s 200, Cr.PC. by the Additional Chief Judicial Magistrate, WestTripura, Agartala, After receiving the complaint and examining the said

Sri Subhendu Dey on oath, the learned Additional Chief Judicial Magistrate took cognizance of the offences punishable under Sections 500 and

501, IPC and has directed issue of summons to the accused persons, namely, the petitioner Sri Sanjay Kirloskar, Sri Suhas Palekar and Sri R.K.

Srivastava.

3. Mr. P.K. Biswas. learned counsel appearing for the petitioner, submitted that so far as the petitioner Sri Sanjay Kirloskar is concerned, there is

nothing in the complaint or initial statement of Sri Subhendu Dey, General Manager of the opposite party-Hotel to show that he (Sanjay Kirloskar)

was involved in any manner in the offences under Sections 500 and 501, IPC. Hence, the learned Additional Chief Judicial Magistrate should not

have taken congnizance of the offences u/s 500 and 501, IPC against the petitioner and directed issue of summons against him. Mr. Biswas further

argued that in any case the letter dated 9.2.2000 addressed by Sri Suhas Palekar to different police officials was confidential letter and was not

meant to be circulated. Therefore, the contents of the said letter cannot amount to defamation and no offence at all under Sections 500 and 501,

IPC is made out against any of the accused persons including the petitioner Sri Sanjay Kirloskar. He referred to the provisions of Section 204,

Cr.PC., to show that a Magistrate will take cognizance of the offence alleged in the complaint and direct issue of process only if there is sufficient

ground for proceeding, and not otherwise. According to Mr. Biswas, when a complaint is filed before the Magistrate and initial statement of the

complainant is recorded by him, the Magistrate has to apply his mind to the allegations in the complaint and in the initial statement to find out as to

whether any offence at all is made out against the accused person and only if the Magistrate is prima facie satisfied that an offence is made out

against the accused person he will take cognizance of the offence and direct issue of process to the accused person. But if no such case is made

out against the accused person in the complaint or in the initial statement, the Magistrate is under a duty to dismiss the complaint and not to direct

issue of process against the accused person. Mr. Biswas further argued that since in the complaint and the initial statement no specific act

amounting to offences of defamation under Sections 500 and 501, IPC has been alleged against the petitioner Sri Sanjay Kirloskar, the complaint

as well as the order of the learned Additional Chief Judicial Magistrate taking cognizance of the offence and directing issue of summons is liable to

be quashed. In support of his aforesaid contentions, Mr. Biswas cited the decisions of the Supreme Court in Punjab National Bank and others Vs.

Surendra Prasad Sinha, Shiva Glass Works Co. Ltd. Vs. The Assistant Collector of Central Excise and others, and Pepsi Foods Ltd. and Another

Vs. Special Judicial Magistrate and Others, He also relied on the decision of the Calcutta High Court in Sunilakhya Chowdhury Vs. H.M. Jadwet

and Another, in which a prosecution u/s 500, IPC was held as not maintainable against a person who was merely a Director of a Company.

4. Mr. A.K. Bhowmick, learned counsel appearing for the opposite party, on the other hand submitted that the defamatory letter dated 9.2.2000

though written by Sri Suhas Palekar is in the letter head of the Company, namely, Kirloskar Brothers Limited, (for short, ""the Company"") of which

the petitioner Sri Sanjay Kirloskar is the Chairman-cum-Managing Director. Further, it has been alleged in paragraph - 9 of the complaint that Sri

Suhas Palekar drafted, signed, circulated and published the letter dated 9.2.2000 for and on behalf of the said Company on its letter head and that

all the accused persons including the petitioner Sri Sanjay Kirloskar conspired themselves criminally to defame the reputation of the opposite

party-Hotel, its General Manager and the Partners and for causing business loss to the opposite party. Thus, there are allegations in the complaint

against the petitioner Sri Sanjay Kirloskar. He further argued that the copy of the said defamatory letter dated 9.2.2000 written by Sri Suhas

Palekar was also delivered to the petitioner Sri Sanjay Kirloskar as would be clear from the bottom of the said letter dated 9.2.2000. Sri

Subhendu Dey, General Manager of the opposite party-Hotel in his initial statement has also stated that the said letter dated 9.2.2000 was the

outcome of the conspiracy of the Chairman-cum-Managing Director of the Company Sri Sanjay Kirloskar and the Vice-Presidents Sri Suhas

Palekar and Sri R.K. Srivastava. According to Mr. Bhowmick, if there are some allegations in the complaint as well as the initial statement of the

complainant against the petitioner Sri Sanjay Kirloskar, the complaint and the order of the learned Additional Chief Judicial Magistrate taking

cognizance of the offences and directing issue of summons against him cannot be quashed. In support of this argument, Mr. Bhowmick cited the

decision of the Supreme Court in Kupan Deol Bajaj v. Kanwar Pal Singh GUI (1995) 6 SCC 294 , in which the categories of cases have been

listed where -in powers under Article 226 of the Constitution or Section 482, Cr . PC. can be exercised by the High Court quashing an FIR or a

complaint, and submitted that the present case does not fall in any of the said categories. Mr. Bhowmick further submitted that a reading of Section

202, Cr. PC., would show that it does not require a Magistrate to record any reason and thus if the complaint discloses the allegations against a

particular accused person, the Magistrate can always take cognizance of the offence and direct issue of process against him. In reply to the

argument of Mr. Biswas, learned counsel for the petitioner, that the letter dated 9.2.2000 was only a confidential letter addressed to different

police officials and was not meant to be circulated, Mr. Bhowmick submitted that if the contents of even such a confidential letter are defamatory,

offences under Sections 500 and 501, 1PC, are made out. In support of this contention, Mr. Bhowmick cited the decision of the Supreme Court

in M.C. Verghese Vs. T.J. Poonan and Another, in which it has been held that a person making libellous statement in communication to his wife is

not absolutely protected in a criminal proceeding for defamation. He sought to distinguish the decision of the Calcutta High Court in the case of

Sunilakhya v. H.M. Jadwet (supra) from the facts of the present case. Mr. Bhowmick submitted that this is not a fit case in which the court should

quash the complaint and the impugned order of the learned Additional Chief Judicial Magistrate taking cognizance of the offences and directing

issue of summons to the petitioner Sri Sanjay Kirloskar.

5. Section 203, Cr. PC., is titled ""dismissal of complaint"" and it provides that if, after considering the statements on oath (if any) of the complainant

and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for

proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing. Section 204 Cr.PC., titled ""issue

of process"", and Sub-section (1) thereof states that if in the opinion of a Magistrate taking congnizance of an offence there is sufficient ground for

proceeding, and the case appears to be a summons-case, he shall issue summons for the attendance of the accused. Thus, while the Magistrate is

required to briefly record his reasons for dismissing a complaint u/s 203, Cr.PC., he is not required to record his reasons when he decides to issue

summons for attendance of the accused. But before he decides to issue summons for the attendance of the accused, he has to form an opinion that

there is sufficient ground for proceeding. Where therefore the allegations made in the complaint, even if they are taken at their face value and

accepted in their entirely, do not prima facie constitute any offence or make out any case against the accused, the Magistrate cannot form an

opinion that there is sufficient ground for proceeding. The Supreme Court has therefore held in the decisions cited by Mr. Biswas and Mr.

Bhowmick, learned counsel for both the parties, that in such cases the court can in exercise of its powers under Article 226 of the Constitution of

India, or u/s 482, Cr. PC. Quash the complaint. In this case, therefore, one has to find out as to whether the allegations made in the complaint

prima facie constitute offences under Sections 500. 501 and 120B, IPC against the petitioner.

6. Section 500, IPC, provides that whoever defames another shall be punished with simple imprisonment for a term which may extend to two

years, or with fine, or with both Section 501, IPC, provides that whoever prints or engraves any matter, knowing or having good reasons to

believe that such matter is defamatory of any person. shall be punished with simple imprisonment for a term which may extend to two years, or

with fine, or with both. The word "defamation" has been defined in Section 499, IPC, and it states that 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 to defame that person, except in the cases

mentioned in the said section. To make out any offence against the petitioner Sri Sanjay Kirloskar under Sections 500 or 501, IPC, an allegation

has to be made in the complaint that the petitioner Sri Sanjay Kirloskar by words either spoken or intended to be made, or by signs or by visible

representations, made or published any imputation concerning the opposite party. But no such allegation has been made in the complaint of the

opposite party before the Magistrate that the petitioner Sri Sanjay Kirloskar had either spoken or written any words or had made any signs or by

visible representations or had published any imputation concerning the opposite party. All that has been stated is that the petitioner Sri Sanjay

Kirloskar is the Chairman-cum-Managing Director of the Company in whose letter head, the letter dated 9.2.2000 containing the defamatory

imputations against the opposite party were written by Sri Suhas Palekar and that Sri Suhas Palekar had written the said letter dated 9.2.2000 for

and on behalf of the said Company. Unless it is alleged in the complaint that the accused has done or omitted to be done a specific act which

constitute an offence, the Magistrate cannot form on opinion that there is sufficient ground for proceeding against such accused person.

7. Section 120B, IPC, provides for punishment for criminal conspiracy, and Section 120A, IPC, defines criminal conspiracy. Section 120A, IPC,

stated that when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means, such an

agreement is designated a criminal conspiracy. Thus, to make out a case of criminal conspiracy against the petitioner Sri Sanjay Kirloskar, it must

be alleged in the complaint that there was an agreement between the said Sanjay Kirloskar, Suhas Palekar. and R.K. Srivastava to defame the

opposite party through the letter dated 9.2.2000 written by Sri Suhas Palekar. But in the complaint no such allegation has been made that there

was any agreement between the petitioner Sri Sanjay Kirloskar, Sri Suhas Palekar and Sri R.K. Srivastava to defame the opposite party. Instead,

it has been vaguely alleged that all the aforesaid three persons conspired together to defame the opposite party. Unless an agreement between the

aforesaid three persons to defame the opposite party is specifically alleged in the complaint, the Magistrate cannot form an opinion that there was

sufficient ground for proceeding against the ''accused persons including the petitioner Sri Sanjay Kirloskar for the offence u/s 120B, IPC. Perhaps

it was for this reason that the learned Additional Chief Judicial Magistrate in his impugned order dated 30.3.2000 has not taken cognizance of the

offence punishable u/s 120B, IPC.

8. In M/s Pepsi Food Ltd. v. Special Judicial Magistrate, (supra), the allegation in the complaint was that the complainant had purchased a bottle

of beverage under the brand-name ""Lehar Pepsi"" on September 13, 1993, which was adulterated. After recording the preliminary evidence the

Magistrate passed orders summoning the accused persons including M/s Pepsi Food Ltd. The said order of the Magistrate was challenged by M/s

Pepsi Food Ltd. In a writ petition before the Allahabad High Court, but the High Court refused to entertain the writ petition. M/s Pepsi Foods Ltd.

then moved the Supreme Court, and the Supreme Court held, inter alia, that the allegation in the complaint really showed that M/s Pepsi Food Ltd.

had given their brand-name to Residency Foods and Beverages Ltd. for bottling the beverage ""Lehar Pepsi"", but the complaint did not show what

was the role of M/s Pepsi Foods Ltd. in the manufacture of the beverage which was said to be adulterated. The Supreme Court further observed

that the only allegation in the complaint was that M/s Pepsi Foods Ltd. was the manufacturer of bottle and there was no averment as to how the

complainant could say so and also if M/s Pepsi Food Ltd. manufactured the alleged bottle or its contents. The Supreme Court further found that

the preliminary evidence on which the Special Judicial Magistrate relied in issuing summons to M/s Pepsi Food Limited did not show as to how it

could be said that M/s Pepsi Food Ltd. was the manufacturer of either bottle or beverage or both. On these facts, the Supreme Court held that it

was certainly one of those cases where there was an abuse of the process of the law, and the High Court should hot have shied away in exercising

its jurisdiction. The Supreme Court further held that the provisions of Articles 226 and 227 of the Constitution and Section 482, Cr. PC. are

devised to advance justice and not to frustrate it, and the High Court should not have adopted a rigid approach which had led to miscarriage of

justice in the case.

9. For the aforesaid reasons, I am inclined to hold that there was no sufficient ground for the learned Chief Judicial Magistrate, West Tripura,

Agartala for proceeding against the petitioner Sri Sanjay Kirloskar and that the impugned order dated 30.3.2000 in CR No. 1199/2000 taking

cognizance of the offences under Sections 500 and 501, IPC, against the petitioner and directing issue of summons to the petitioners in the said CR

Case, is liable to be quashed by this court in exercise of its powers u/s 482, Cr. PC. It is not necessary for this reason to examine the contentions

of the learned counsel for the parties on the point as to whether or not the communication of the letter dated 9.2.2000 to different police officials

amounted to defamation as defined in Section 499, IPC, as any opinion of this court expressed at this stage on this point would prejudice the

parties in the trial.

10. In the result, the impugned order dated 30.3.2000 in CR No. 1199/2000 of the learned Addl. Chief Judicial Magistrate, West Tripura,

Agartala, insofar as it takes cognizance of the offences under Sections 500 and 501, IPC, against the petitioner Sri Sanjay Kirloskar and issues

summons to him, as well as the complaint against the said petitioner only, are quashed.

11. The revision is allowed.