

impossible to appreciate the width and contours of that salient jurisdiction.”

The Apex Court also observed that when there is no likelihood of the accused to be convicted of an offence, the court must interfere at the preliminary stage itself under Section 482 Cr.P.C. In **Madhavrao Jiwajirao Schindia v. Sambhajirao Chandrojirao Angre 6 (1988) 1 SCC 692**, the Apex Court had to say this :-

“7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by ~~allowing a criminal prosecution to continue~~, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

“The entire edifice of our justice system rests on the principle of truth! The exercise in a Court is nothing if it is not a pursuit for truth and justice. The common expression in a Court room is “Satyamev Jayate”— Truth shall triumph. Truth is also the best defence in a case of defamation. A truth spoken for public good can never be called defamatory. When the author of the disputed article stated in the article itself, in no ambiguous terms, that what he has stated is true and has been verified from Buckingham University and the Berkeley University that they have no arrangements with IIPM, then the first question the learned Magistrate should have asked the complainant was - “ Do you have the authority to grant this degree from Buckingham University? If yes, show the proof? This was not done. In fact even this Court not once but repeatedly asked this question to the counsel for the respondent Sri Manoj Desai, as to his authority to grant such degree and if they have they must show it to the Court, the petition would then be liable to be dismissed. But no such evidence was shown, even to this Court! The learned counsel kept on repeating that the complainant have

“arrangements” with Buckingham University and that they send their students to Buckingham and that they outsource lecturers from Buckingham, etc., etc., but no proof of their claim that they grant degree from Buckingham University! Yet IIPM in its bold advertisements published in Education Times dated June 22, 2009 in Times of India and annexed as Annexure-J to the writ petition and which has not been denied by the respondent/claimant, states as follows :-

“INDIA’S GLOBAL B-SCHOOL IIPM
 NOW STUDENTS DOING IIPM’S UNIQUE
 PLANNING & ENTREPRENEURSHIP
 PROGRAMME ALSO BECOME ELIGIBLE FOR AN
 MBA & BBA
 DEGREE
 FROM Buckingham Business School, The University of
 Buckingham, UK
 UK’S NO. 1 UNIVERSITY
 for the years 2006, 2007 & 2008 in National Student Survey and
 RATED AS UK’S NO. 1 B-SCHOOL”

This Court has already held that sole reliance on exceptions would mean the matter has to be determined in a trial alone, as these are factual aspects only to be determined in a trial. All the same, the learned Magistrate should have made at least the minimum enquiry as to the foundation of the allegations and must have asked the complainant as to whether they are authorized under the law to grant a degree as it claims. This was not done by the learned Magistrate. The emphasis on ‘truth’ by this Court is not a reference on the exception to Section 499, but generally as a matter of caution, must be examined by the Court before issuing summons.

On these facts, this Court is of the opinion that the criminal proceedings, which are presently pending against the petitioners are nothing but an abuse of process and in order to meet the ends of justice, summoning order dated 12.10.2009 are liable to be set aside and are therefore set aside. The proceedings in Criminal Complaint Case No. 5020 of 2009 which is pending before the A.C.J.M, 3rd Dehradun are also set aside.

The instant C-482 petition is accordingly allowed. No order as to costs.

Registry is directed to send a copy of this order to the court concerned for necessary compliance.

Sd/-
(Sudhanshu Dhulia, J)

8.10.2010
Avneet

Compared by
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True Copy
[Signature]
Section Officer
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High Court of Uttarakhand
NAINITAL
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