

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 903 of 2017

With

I.A No: CRAN 2 of 2017
(Old No:CRAN 1806 of 2017)
CRAN 3 of 2017
(Old No:CRAN 2844 of 2017)
CRAN 5 of 2017
(Old No:CRAN 4730 of 2017)
CRAN 7 of 2018
(Old No:CRAN 981 of 2018)
CRAN 8 of 2018
(Old No:CRAN 1687 of 2018)
CRAN 10 of 2019
(Old No:CRAN 2628 of 2019)

BABUL SUPRIYO

-VS-

STATE OF WEST BENGAL & ANR

For the Petitioner: Mr. Ayan Bhattacharjee,
Mr. Anand Keshari,
Ms. Priyanka Tibrewal,
Mr. Aditya Ratan Tiwary,
Mr. Danish Taslim.

For the State: Mr. Saswata Gopal Mukherjee, Ld. P.P,
Mr. Ranabir Roychowdhury,
Mr. Mainak Gupta.

For O.P No.2: Mr. Sabyasachi Banerjee,
Ms. Minal Palana.

Heard on: September 24, 30 and October 5, 6, 2020.

Judgment on: 14 October, 2020.

BIBEK CHAUDHURI, J. : –

Background:-

1. In the wake of a political turmoil after arrest of a leader of opposition party in Lok Sabha on 3rd January, 2017, a national debate was held and telecast by a national channel, named, NDTV 24 X 7. The said debate was anchored by one Ms. Barkha Dutta and titled as “The Buck Stops Here”.

2. In the said national debate the petitioner, an elected MP and the then ruling party of the Central Government and the opposite party No.2, an elected member of Legislative Assembly of the State of West Bengal and National Spokesperson on behalf of her political party at the relevant point of time took part in the discussion. In course of such debate, when the opposite party No.2 was opposing the petitioner’s contention, he made a comment, “Mohua, are you on Mohua?”

3. According to the opposite party No.2, the said comment was derogatory alluding of the intoxicating liquor called Mohua which is drunk in many tribal areas in India. She also alleged that the petitioner made such comment at the fag-end of the programme. The opposite party could not raise any protest against the said remark. However, the anchor of the programme immediately reprimanded the petitioner and asked him not to make any personal remark in course of debate.

4. According to the opposite party No.2, such remark made by the petitioner against her caused great offence and distress and was clearly a

violation of Section 509 of the Indian Penal Code. The said comment is patently untrue, false and made to maliciously defame her in clear violation of Section 500 of the Indian Penal Code.

5. The opposite party No.2 accordingly lodged an FIR against the petitioner before the officer-in-charge, Alipore P.S. Police registered Alipore P.S Case No.2 dated 4th January, 2017 under Section 509 of the Indian Penal Code and commenced investigation of the case. On completion of investigation the charge-sheet was submitted against the petitioner under Section 509 of the Indian Penal Code. The learned Chief Judicial Magistrate took cognizance of the offence and issued warrant of arrest against the petitioner.

6. It is at this stage, the petitioner has filed an application under Section 482 of the Code of Criminal Procedure praying for quashing of the charge-sheet.

7. Vide order dated 23rd March, 2017, the aforesaid application under Section 482 of the Code of Criminal Procedure which was registered as CRR 903 of 2017 was admitted for hearing and stay of further proceeding of the criminal case being CGR 62 of 2017 was granted for a limited period of time. It is further ascertained from the order dated 28th April, 2017 that the opposite party No.2 made an application prying for vacating the interim order. The said application was directed to be treated as an affidavit of opposition to the revision petition and directed to be disposed of along with the instant revision. Finally the aforesaid criminal revision is heard by this Court on the basis of specific determination allotted to this

Court by the Chief Justice of this Court in terms of the last order passed by the Hon'ble Supreme Court in **Ashwini Kumar Upadhyay vs. Union of India.**

Submission made on behalf of the petitioner:-

8. Mr. Ayan Bhattacharjee, learned Advocate for the petitioner made his submission in support of quashing of the charge-sheet against the petitioner on the following grounds:-

- i. The statement made in the FIR by opposite party No.2 does not disclose an offence under Section 509 of the Indian Penal Code.
- ii. The statement made by the petitioner in course of a debate in the wake of a political turmoil as a result of arrest of the leader of opposition party in Parliament was an "accidental slip" of words. The petitioner had no mens-rea against opposite party No.2 causing insult to her modesty.
- iii. Even assuming that the action of the petitioner was deliberate, the words "Mohua, are you on Mohua?" did not amount to insult modesty of a women.
- iv. Inviting this Court to read out the entire transcription of the programme, it is contended by Mr. Bhattacharjee that the petitioner wanted to mean if the opposite party No.2 was in her senses. He did not want to insult the

modesty of the opposite party No.2 by uttering such words in course of a television programme.

- v. It is further submitted by Mr. Bhattacharya that in order to constitute an offence under this Section the accused must have an intention to insult the modesty of a woman. Second part of the section deals with the purported act by the offender in furtherance to his mens-rea. The specific actions are utterance of any word, making any sound or gesture or exhibiting any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or intruding upon the privacy of such woman. The words, "Mohua, are you on Mohua?" were uttered by the petitioner in course of hot exchange of words in a debate. He had no premeditated intention to insult the modesty of the opposite party No.2.
- vi. It is urged on behalf of the petitioner that in order to establish the offence, it is necessary to show that the modesty of a particular woman has been insulted by a spoken word, gesture or physical act. The word modesty has not been defined anywhere under the statute. In **Sau. Anuradha R. Kshirsagar & Ors. vs. State of Maharashtra & Ors.** reported in **1991 CRI. L.J 410** the Bombay High Court had the occasion to

deal with the scope and extent of the meaning “Modesty of a woman”. Paragraph 6 of the aforesaid report is relevant and quoted below:-

“6...We have now to find out whether these utterances have anything to do with the modesty of the woman. The utterance are (1) catch them by their hair (2) kick them on the waist, (3) pull them out and (4) I will see as to how those lady teachers, who did not leave the hall, stay at Akola. What Mr. Sirpurkar urged before me was that when the accused uttered the words of catching the lady teachers by their hair, it is violative of modesty of a woman and, therefore, these utterances constitute an offence punishable under Section 509 of the Indian Penal Code. It is difficult to accept this proposition. 'Modesty to a woman' is altogether different concept which has a very little to do with the physique of the woman. Modesty of a woman is intimately connected with the femininity including her sex. Bashfulness is another characteristic of this femininity. Any attempt of assault on this aspect may amount to insulting the modesty. Mudholkar

J. in State of Punjab v. Major Singh, observed in paragraph 13 :

"In my judgment when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of this section."

Bachawat, J. in paragraph 16 observed :

"I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses the modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under S. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be

unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section."

- vii. In a subsequent decision in the case of **Aman Kumar & Anr. vs. State of Haryana** reported in **(2004) 4 SCC 379** the Hon'ble Supreme Court observed as hereunder:-

"13...What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this Section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word 'modesty' is not defined in IPC. The Shorter Oxford Dictionary (Third Edn.) defines the word 'modesty' in relation to woman as follows:

"Decorous in manner and conduct; not forward or lowd; Shamefast; Scrupulously chaste."

"14...Modesty can be described as the quality of being modest; and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct." It is the reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions as observed by Justice Patterson in Rex v. James Llyod (1876) 7 C&P 817."

Mr. Bhattacharjee next has placed the historical development of the offence contemplated in Section 509 of the Indian Penal Code. He refers to a copy of the Original Penal Code prepared by the Indian Law Commissioner's and published by Command of the Governor General India in Council in 1838. Under the Original Penal Code Section 590 of the present code was under Section 486. Section 486 of the Penal Code of 1838 runs thus:-

"486. Whoever utters any word, makes any sound, makes any gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by any woman, intending thereby to insult of modesty of

that woman, shall be punished with imprisonment of either description for a term which may extend the two years, or fine, or both.

There is a illustration appended to Section 486 which goes thus:-

“A, intending to outrage the modesty of a woman, exposes his person indecently to her, or uses obscene words that she should hear them, or sends to her obscene drawings by post. A has committed his offence denied in this Clause.

He also refers to 42 report of the Law Commission of India on Indian Penal Code published in June 1961. The following paragraph at page 264 of the said report is relevant for our purpose.

“16.85. Section 354 punishes a person who assaults or uses criminal force to a woman with intent to outrage her modesty. We have earlier referred to a judgment of the Supreme Court in which it was held that even a baby of even and half months old has modesty that can be outraged by use of criminal force within the meaning of this section. In that case, the accused had indecently assaulted the baby and caused injury to its genitals, and the question

arose whether the act amounted to an offence under section 354. The High Court of Punjab acquitted the accused holding that a girl of seven and a half months cannot have a “modesty” which can be outraged. The Supreme Court, by a majority, reversed the High Court’s judgment. Bachawat, J. observed:-

“The essence of a woman’s modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354. The culpable intention of the accused is the crux of the matter.

“The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act, nevertheless, the offender is punishable under the section.”

And Mudholkar J., observed as follows:-

“It speaks of outraging the modesty of a woman and at first blush seems to require that the outrage must be felt by the victim itself. But such an interpretation would leave out of the purview of the section assaults not only on girls of tender age but on even grown up woman when such a woman is sleeping and did not wake up or is under anaesthesia or stupor or is an idiot. It may also, perhaps, under certain

circumstances, exclude a case where the woman is of depraved moral character. Could it be said that the Legislature intended that the doing of any act to or in the presence of any woman which, according to the common notions of mankind, is suggestive of sex, would be outside this section unless the woman herself felt that it outraged her modesty? Again, if the sole test to be applied is the woman's reaction to a particular act, would it not be a variable test depending upon the sensitivity or the upbringing of the woman? These considerations impel me reject the test of a woman's individual reaction to the act of the accused. I must, however, confess that it would not be easy to lay down a comprehensive test; but about this much I feel no difficulty. In my judgment when any act done to, or in the presence of, a woman is clearly suggestive of sex according to the common notions of mankind that act must fall within the mischief of this section."

Sarkar, C.J., however, dissented:-

"To say that every female of whatever age is possessed of modesty capable of being outraged seems to me to be laying down too rigid a rule which may be divorced from reality. There obviously is no universal standard of modesty. If my reading of the section is correct, the question that remains to be decided is, whether a reasonable man would think that the female child on whom the offence was committed had modesty which the respondent intended to outrage by his act or knew it to be the likely result of it. I do not think a reasonable man would say that a female child of seven and a half months

is possessed of womanly modesty. If she had not, there could be no question of the respondent having intended to outrage her modesty or having known that his act was likely to have that result. I would for this reason answer the question in the negative.”

Referring to the Law Commission’s report and the judicial pronouncements stated above it is submitted by Mr. Bhattacharjee that the essence of a woman’s modesty is her sex. Unless any utterance, gesture or act by the accused attributes to sex of a woman, such act will never be an insult on the modesty of a woman or outraging her modesty.

In support of his contention, he also refers to a decision of the Kerala High Court in the case of **Rev. Fr. Mathew Pulimoottil Episcopa vs. State of Kerala** reported in **2014 CRI. L.J. 2394**.

- viii. Referring to another decision of the Hon’ble High Court in the case of **S. Khushboo vs. Kanniammal & Anr** Reported in 2010 5 SCC 600, it is submitted by Mr. Bhattacharjee that obscenity has to be determined in accordance with contemporary community standards reflecting sensibilities as well as tolerance level of average reasonable person. It is not the task of Criminal Law to punish individuals for expressing unpopular views. The threshold for placing reasonable

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restriction on the “freedom of speech and expression” is indeed a very high one and there should be a presumption in favour of the accused in such cases. The petitioner’s remark in a live television show might provoke a controversy; it might so happened that there might be objectionable remarks by the supports of the petitioner against the opposite party following such statement made by the petitioner, but the statement par se is not made to insult the modesty of the opposite party No.2. In order to be an offence there must be criminality of action and secondly such action must be attributable to woman sex. Calling a lady intoxicant or under influence of liquor does not amount to insult her modesty.

- ix. Mr. Bhattacharjee further submits that if two possible and reasonable constructions can be put upon a penal provision, the court must accept the construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. The strict theory suggests that modesty of a woman is her sex raising a question to a lady in course of her conversation as to whether she is

intoxicated or not, cannot be considered to be an utterance to insult her modesty. In support of his contention he refers to a decision of the Hon'ble Supreme Court in the case of **Bijaya Kumar Agarwala vs. State of Orissa : (1996) 5 SCC 1** and also the case of **Shreya Singhal vs. Union of India** reported in **(2015) 5 SCC 1**.

- x. Mr. Bhattacharjee also refers to Section 95 of the Indian Penal Code which says – “**95. Act causing slight harm-** nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.” According to the learned Counsel for the petitioner the particular utterance made by his client did not cause any harm or said statement was not made with the intention to cause harm to the opposite party No.2, far less an offence of insulting the modesty of the opposite party No.2.
- xi.* For the reasons, aforesaid it is submitted by the learned Advocate for the petitioner that further proceeding in CGR case No.62 of 2017 will be sheer abuse of process of law as the alleged act of the

petitioner does not constitute any offence under Section 509 of the Indian Penal Code and the proceeding requires to be quashed.

Submission made on behalf of O.P No.2:-

9. Mr. Sabyasachi Banerjee, learned Advocate for the opposite party No.2, on the other hand, submits that chapter XIX of the Code of Criminal Procedure deals with trial of warrant cases by Magistrates instituted on a police report. Section 239 of the Code clearly states that if, upon considering the police report and the documents under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

10. According to Mr. Banerjee, the Code clearly makes detailed provision for discharging the accused by the Magistrate on consideration of police report and the documents under Section 173 of the Code by the learned Magistrate. The petitioner could have approached the learned Court below with a prayer to discharge him. He could have taken the plea of general exception under Section 95 of the Indian Penal Code before the learned Magistrate and urged that no offence under Section 509 of the Indian Penal Code was made out against him on the basis of the documents under Section 173 of the Code. When there is a clear provision in the Code, the petitioner cannot take recourse of Section 482 of the

Code of Criminal Procedure. Thus, the instant revision, according to the learned Counsel for the opposite party No.2 is misconceived and liable to be dismissed.

11. Secondly, learned Advocate for the opposite party No.2 invites my attention to CRAN 1806 of 2017 which has been treated as an affidavit-in-opposition against the instant revisional application. It is pointed out by him that after the comment made by the petitioner to the opposite party No.2, his twitter account was full of obscene, sexist remark against the petitioner. It is also pointed out by Mr. Banerjee that the transcription of the programme shows that the anchor/moderator immediately interrupted the petitioner asking him not to make any personal comment. If the comment made by the petitioner is viewed from the perspective of Ms. Barkha Dutta, it will prima facie suggest that the petitioner made such comment only to assassinate the personal character of a lady.

12. Thirdly, according to Mr. Banerjee culpable intention of the accused is the crux of the matter to consider as to whether any offence of like nature was committed by the petitioner or not. The petitioner is not only a sitting Member of Parliament, but also a Minister of State. It is presumed that he understood the reparation of his comment. The opposite party No.2 was also at the relevant point of time a member of Legislative Assembly and a National Spokesperson on behalf of her political party. When a lady of political repute who represented majority mass of people of her constituency, was castigated publicly saying that she was under influence of liquor, such utterance, especially to a lady, is according to

Mr. Banerjee, a sexist comment which insulted the modesty of the opposite party No.2. Coming to the question as to what constitutes “modesty of a woman”, or in other words, what is the definition of modesty, Mr. Banerjee refers to paragraph 6A of the decision of the Bombay High Court **Sau. Anuradha R. Kshirsagar & Ors.** (supra) which runs thus:-

“6A. Sarkar, J. dissented with the majority decision, but the dissent was on other point with which we are not concerned in the present case. The dissent was on the point whether the woman must necessarily be conscious of the assault on her modesty. As far as the other position is concerned, there is unanimity of opinion. The concept of 'modesty' concerns with femininity including sex. Wherever there is an assault or insult to this femininity or the like qualities accompanying it, the offence under Section 509 of the Indian Penal Code will be made out.”

13. Thus Mr. Banerjee has pointed out that the minority view of Major Singh's case is that the concept of modesty concerns with the femininity including sex. The above definition means that the concept of “modesty” is not restricted to sex. Whenever there is assault on femininity or like quality accompanying it, it is insult on modesty within the meaning of Section 509 or “outraging modesty” within the meaning of Section 354 of the Indian Penal Code.

14. Mr. Banerjee further relies on paragraph 14 of the decision of the Hon'ble Supreme Court in the case of **Rupan Deol Bajaj (Mrs) & Anr. vs. Kanwar Pal Singh Gill & Anr.** reported in **(1995) 6 SCC 194**. As the word modesty has not been defined in the Indian Penal Code. The Hon'ble Supreme Court proceeded to define modesty taking into account the dictionary meaning of the word. Paragraph 14 of the said report runs thus:

"14... Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the Oxford English Dictionary (1933 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

After taking into account the dictionary meaning of the term "modesty" the Hon'ble Supreme Court came to the following finding-

“From the above dictionary meaning of `modesty' and the interpretation given to that word by this Court in Major Singh's case (supra) it appears to us that the ultimate test for ascertaining whether modesty has been outraged is, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to `outraging of her modesty' for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady - "sexual overtones" or not, notwithstanding.”

15. Thus it is contended by Mr. Banerjee that any act which is capable of shocking the sense of decency of a woman amounts either to outraging modesty or insulting the modesty of a woman depending upon the specific act committed by the accused.

16. According to Mr. Bhattacharjee, time has come to revisit the contemporary idea of the term modesty and redefine it. In order to substantiate his argument, he refers to paragraph 24 at page 56 of Justice J. S Varma committee report on amendments to Criminal Law. Section 24 states:-

“The concept of dignity under Article 21 is also significant and it must be noticed that it is conjoined by the preceding expression ‘right to life’. We are of the opinion that any form

of violence or assault, sexual or otherwise, on women is a violation of the fundamental right to live with dignity. We also are in agreement with the view expressed that substantive due process in State action is mandatory to ensure the right to live with dignity. However, the issue before us is not simply the redrafting of existing laws but also the need to reassert and reaffirm that the State has primary obligations under the Constitution to secure fundamental rights of its citizens. The fundamental rights of women include safety and bodily integrity. The said rights, in turn, include secure spaces where they can exercise autonomy and freewill.”

17. He also refers to the definition of “discrimination against woman under Article 1 of convention on the elimination of all form of discrimination against woman (CEDAW). Article 1 CEDAW defines gender based violence. Article 1 state thus:-

“The definition of discrimination includes gender based violence, i.e., violence that is directed against woman because she is a woman or that affects woman disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention regardless of whether those provisions expressly mention violence...”

18. According to Mr. Banerjee any form of all violence or discrimination against woman writ large to her femininity and when femininity is violated it is an insult on the modesty of a woman.

9. Fourthly, Mr. Banerjee draws a line of difference between outraging modesty or insulting the modesty under Section 354 and Section 509 of the Indian Penal Code and the definition of sexual harassment to a woman and other related offence introduced by Criminal Law Amendment Act, 2013 under Section 354A-254D of the Indian Penal Code and submits that if the term modesty is attributable to only sex, the legislature had no occasion introduce Section 354A-354D. Those are the offences against “modesty of woman” which are attributable to sex. On the other hand, Section 354 and Section 509 speak of modesty i.e. violative of basic womanhood and femininity of a woman.

10. Judging the comment of the petitioner under such perspective, according to Mr. Banerjee is undoubtedly held, prima facie, to be utterance to insult modesty of opposite party No.2.

11. Mr. Saswata Gopal Mukherjee, learned P.P submits that equitable intention of the petitioner must be adjudicated in the light of the fact that both the petitioner and opposite party No.2 are Bengali. They understand the meaning of the term “Mohua”. The Investigating Officer collected the evidence to the effect that Mohua is an intoxicant. It is a fruit of mohua tree and by way of fermentation of mohua fruits the country liquor is made. If the said country liquor is consumed a person becomes drunk and he is in coherent in his behaviour. Thus, if the facts situation is

considered and visualized, prima facie equitable intention of the accused can be found. He further submits that the instant proceeding is not the proper stage to appreciate the intention of the accused. It will be adjudicated on the basis of evidence adduced by the parties. Considering such view of the matter, the instant revision is liable to be dismissed. On the other points, Mr. Mukherjee has adopted the submission made by the learned Advocate for the opposite party No.2.

Finding of the Court:-

12. On careful consideration of the record coupled with the case diary and having regard to the submission made by the learned Counsels the following undisputed facts are found:-

- a) During the month of January, 2017 political turmoil and tension prevailed in national politics with the arrest of a leader of the opposition parliamentary party in a criminal case.
- b) On 3rd January, 2017 a debate under the name and title of “Buck Stops Here” was telecast by NDTV 24 X 7 in its prime slot.
- c) In the said debate, the petitioner represented the ruling political party and the opposite party No.2 represented the party in the opposition in Lok Sabha.
- d) In the said debate the petitioner asked the opposite party No.2, “Mohua, are you on Mohua?”

e) The anchor/moderator of the debate immediately intervened and asked the petitioner not to make any personal comment against the opposite party No.2.

13. Before this Court, the petitioner has taken stand that the said remark was an accidental slip. He never intended to say raise a question as to whether the opposite party No.2 was in drunken condition and thirdly, even assuming that the petitioner made the remark suggesting the opposite party under influence of liquor, such statement does not amount to insulting the modesty of the petitioner as the essence of modesty is her sex.

14. The learned Advocate for the opposite party, on the other hand strenuously argued that the concept of modesty concerns with femininity including sex. Thus, according to him the term “modesty” must have wider connotation that includes all tenets of femininity or womanhood.

15. The Hon’ble Supreme Court time and again in various pronouncements defined the term “modesty”. In the following words “the essence of a woman’s modesty is her sex”. In **Major Singh** (supra) modesty has been defined as sexual dignity of a woman which is acquired by her since the time of her birth. It is a virtue attached to a woman owing to her sex.

16. It is pertinent to mention that Section 354 which is a penal provision for assault or criminal force to woman with intent to outrage her modesty find place in chapter XVI under the heading “Of Offences Affecting the Body Of Offences Affecting Life”. On careful reading of the

judicial pronouncement by the Hon'ble Supreme Court in various cases, it is found that the test for ascertaining if modesty has been outraged or not lies on determination of the question as to whether the act by the accused is capable of shocking the sense of decency of the woman. The sense of decency of the woman, if considered to explain the term "modesty" within the meaning of Section 354 is her sex. In the words of Bachawat, J., "the modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses the modesty capable of being outraged." Similarly, where a woman is made to feel ashamed of her sexual dignity, i.e, lowering the sexual honour of a woman in her own eyes, she feels insulted within the meaning of Section 509 of the Indian Penal Code.

17. Sexual harassment, disrobing a woman, voyeurism and stalking within the meaning of Section 354A-354D deal with specific Act of violation of woman's sex by such act, by the accused.

18. The definition of modesty as laid down in Major Singh was even followed by subsequent decisions including **Ramkripal vs. State of M.P** reported in **AIR 2007 SC 370** (Criminal Appeal No.370 of 2007 in CrI. A. No.178 of 1990 dated 19th March, 2007). In paragraph 9 of the said judgment, it is held by the Hon'ble Supreme Court:-

"The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. The modesty in this section is an attribute

associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex”.

19. The above position was highlighted in **Raju Pandurang Mahale vs. State Of Maharashtra & Anr.** reported in **(2004) 4 SCC 371**. Bearing, the observation made by the Hon’ble Supreme Court with regard to the definition of modesty in mind, let me now deal with the issue raised by the learned Advocate for the opposite party No.2 in the light of the observation of Justice J. S Varma Committee and Article 1 of CEDAW as to whether modesty is synonymous to femininity or womanhood, even not attributable to her sex.

20. Webster defines the word “femininity” as “the quality or nature of the female sex: the quality, state, or degree of being feminine or womanly : The Cambridge Dictionary defines femininity as the fact or quality having characteristics that are traditionally thought to be typical of or suitable for a woman. Therefore, femininity is a set of qualities, behaviour and role generally associated with woman and girls. Feminine characteristics include gentleness, empathy, humility, sensitivity. It is generally used as antonym to masculine. The penal code recognizes assault, criminal force or insult of woman’s modesty as offence. When the essence of modesty has been described as the sex of a woman, by the Hon’ble Supreme Court, by no stretch of imagination the definition can be widened to include an assault or insult on the qualities of goodness, sensitivity, gentleness, empathy etc of a woman.

21. For the reasons stated, I am not in a position to accept the argument advanced by the learned Advocate for the opposite party No.2 and the learned P.P.

22. Now comes to the question as to whether under the facts and circumstances of the case the FIR and the charge-sheet can be quashed.

23. In the case of **State of Haryana vs. Bhajanlal** reported in **AIR 1992 SC 604**, the Apex Court has laid down the following seven categories of cases in which court can quash criminal proceedings :-

(1) where the allegations made in the FIR even if taken at face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer unless a Magistrate has issued an order for the same, as contemplated under Section 155(2) of the Code;

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(5) where the allegations made in the FIR are absurd to the extent that no prudent man can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, under which a criminal proceeding is instituted, with regard to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and/or personal grudge.

24. From the above discussion, I have already come to the conclusion that the allegation in the first information report and other materials, accompanying the FIR do not disclose any cognizable offence under Section 509 of the IPC. Therefore, the charge-sheet being No.27 dated 08.03.2017 filed under Section 509 of the Indian Penal Code is liable to be quashed.

25. Before I part with I am not unmindful to note that both the petitioner and the opposite party No.2 were at the relevant point of time elected representatives of the people. They are the mouth pieces of the general mass of the country. The petitioner was not only an elected Member of Parliament, but also a Minister of State of the Central

Government. It is expected from a representative of the people that he must be courteous in his behavior, dignified in his manners and cautious on his words spoken by him. It is undisputed that in course of a political debate, the petitioner asked the opposite party No.2 as to whether she was intoxicated. The opposite party No.2 was at the relevant point of time an elected member of West Bengal Legislative Assembly and National Spokesperson of rival political party. She was not only a public figure, but is a woman. It is the Constitutional mandate under Fundamental Rights, Fundamental Duties and Directive Principles of state policy that dignity of woman must be protected and freedom of speech and expression enshrined in Article 19(1)(a) is subject to reasonable restrictions and one of such restrictions is penal provision against defamation. The petitioner, it is already stated, at the relevant point of time was a Member of Parliament. He took solemn oath to bear faith and allegiance to the constitution. By making such defamatory statement to a woman, the petitioner prima facie, not only humiliated dignity and honour of a woman, but also violated his constitutional oath. If doubt is raised in the mind of people from the utterances made by the petitioner that at the relevant point of time she was drunken and intoxicated, this would of course be an act of imputation intending to harm the reputation of the opposite party No.2 and such deliberate utterance made by the petitioner was defamatory statement within the meaning of Section 499 of the Indian Penal Code.

26. In this regard, I am not in a position to accept the submission made by the learned counsel for the petitioner that the said statement was an accidental slip of words, not intended to defame the opposite party No 2.

27. However, I am not in a position to direct the trial court to take cognizance of offence against the petitioner under Section 500 of the Indian Penal Code for the reasons stated herein below:-

28. Section 500 of the Indian Penal Code is a non-cognizable offence in **S. Khushboo vs. Kanniammal & Ors** reported in **(2010) 5 SCC 600**, the Hon'ble Supreme Court has observed, "It may be reiterated here that in respect of the offence of defamation, Section 199 Cr.PC mandates that the Magistrate can take cognizance of the offence only upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in given facts of the present case, we are unable to see how the complainants can be properly described as 'persons aggrieved' within the meaning of Section 199(1)(b) Cr.PC. As explained earlier, there was no specific legal injury caused to any of the complainants since the appellant's remarks were not directed at any individual or a readily identifiable group of people".

29. The ratio of the aforesaid decision is that no Court shall take cognizance of an offence punishable under Section 500 of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence.

30. The word complaint is defined in Section 2(D) of the Code of Criminal Procedure which runs thus:-

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

31. Thus cognizance of offence punishable under Section 500 of the IPC cannot be taken in the absence of the complaint in writing specifically filed by the complainant before the Magistrate, on the basis of police report only which is barred under Section 199 of the Code of Criminal procedure.

32. In the instant case, the complainant has not made any complaint before the jurisdictional magistrate. Moreover, even where the FIR contained the allegation under Section 500 of the Code of Criminal Procedure, police did not take permission of investigation of the allegation which discloses a non-cognizable case under Section 500 of the Indian Penal Code of the jurisdictional magistrate.

33. For the reasons aforesaid I have no other alternative but to hold that the charge-sheet does not disclose commission of any offence under Section 509 of the Indian Penal Code against the accused. Secondly, the

allegations in the FIR constitute only a non-cognizable offence under Section 500 of the Code of Criminal Procedure and no investigation is permitted by police officer, unless a Magistrate has issue an order for the same as contemplated under Section 155(2) of the Code of Criminal Procedure. Thirdly, further proceedings of CGR Case No.62 of 2017 on the basis of charge-sheet No.27 dated 08.03.2017 will be abused of the process of the Court.

34. In view of the above discussion the instant criminal revision under Section 482 of the Code of Criminal Procedure is allowed on contest, however without cost. The connected applications are also disposed of.

35. However the opposite party No 2 is at liberty to take any action, according to law, if available to her against the petitioner before the appropriate forum and in such case, the learned Court below will take appropriate steps without being influenced or swayed over by any observation made by this Court in this judgment.

(Bibek Chaudhuri, J.)