

Chapter - XXI

OF DEFAMATION

499. Defamation.—Whoever by words either spoken or intended to be read, or by sign 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 excepted, to defame that person.

[Proviso x x x x x x x x x x] omitted.¹

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 loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says - "Z is an honest man he never stole B's watch": Intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

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 good faith any opinion whatever respecting the conduct of any person 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 the conduct of any person touching any public question, and respecting his character, so far as his character, appears in that conduct, and no further.

¹ [Provided that the exception in this section, other than the fourth exception, shall not apply in cases in which the imputation is published in a "book" "news-sheet" or "newspaper" as defined in West Pakistan Press and Publication Ordinance, 1963 (W.P. Ordinance No. XXX of 1963)] Ins. by Ordinance LXVIII of 1979 omitted by Act IV of 1986 (PLD 1986 Cent. St. 16).

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in publishing Government on a public question, in signing a requisition for a meeting on public question, in presiding or attending at such meeting, in forming or joining any society which invites the public to assist, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

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

Explanation. A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception. Merits of case decided in Court or conduct of witness 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.

Illustrations

(a) A says "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says "I do not believe what Z asserted at that trial because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Six 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.

Explanation. A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book, to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within this exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

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.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his order; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for omission in service, a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth 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.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father — A is within this exception.

Ninth Exception. Imputation made in good faith to 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 interest of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer casts an imputation on the character of Z. Here, if the imputation is made in good faith, for the public good, A is within the exception.

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.

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1. Defamation. Section 499 of the Code defines 'defamation' so as to postulate that whoever by words either spoken or intended to be read, or by sign 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 excepted, to defame that person. The exceptions are an imputation is not defamation:-

- i) If it is in the public good;
- ii) If it is made in good faith respecting the conduct of a public servant in the discharge of his public functions or respecting his character; and
- iii) If opinion is expressed in good faith respecting the conduct of any person touching any public question respecting his character so far as the character appear in that conduct and no further.

All these exceptions are questions of fact and are to be proved by accused claiming all or any one of such exceptions. [1987 P.Cr.L.J. 1439]

Defamation is a false statement about a man to his discredit. According to Black Law, "Defamation is that which tends to inure reputation; to diminish the esteem, respect, good will or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy". Salmond has defined it as a wrong that consists in the publication of false and defamatory statement respecting another without lawful justification. In the words of Author of the Code, the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. [Note R, p. 175]

In order to prove offence under this section the prosecution is required to prove the following essentials:-

- i) Making or publishing any imputation in respect of any person;
- ii) Such imputation must be made:-
 - a) By words, either spoken or intended to be read; or
 - b) By signs; or
 - c) By visible representations.
- iii) Such imputation must have been made with the intention of harming, or with knowledge or having reason to believe that it will harm the reputation of the person concerning whom it is made. [AIR 1970 S.C. 1876]

Existence of an imputation or a defamatory statement; that such imputation emanated from the accused; that accused made or published same or communicated to a third party; and that the accused intended thereby to harm the reputation of the complainant or that he knew or had reason to believe that he would do so are the ingredients of the offence under this section. [2000 P.Cr.L.J. 1847]

Publication is a necessary ingredient to the offence of defamation and once it is found missing the offence cannot be complete. [PLD 1966 Kar. 337] Making of imputation or defamatory statement, communication to a third party or publication; and intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. [2000 P.Cr.L.J. 1847] Acts and statements which per se are not defamatory may become so in the context of circumstances of a particular case. False claims of marriage by a person with a widow on account of bad blood between the parties would be malicious in every respect. [PLD 1990 S.C. 28]

Section 499 of the Code is exhaustive and if a defamatory statement does not fall within the specified exceptions it is not privilege and it is not protected from the mischief of s. 500, P.P.C. [PLD 1960 Dacca 736] The criminal law of Pakistan with regard to defamation depends on the constitution of s. 499, P.P.C. The provisions as to defamation in S. 499 of the Code are exhaustive and Courts cannot travel outside such provisions in dealing with the

offence of defamation. The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person. [AIR 1970 S.C. 1876] The essence of the offence of defamation consists in the tendency to cause that description of mental pain which is felt by a person who knows himself to be the object of unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed. [AIR 1952 Mys 123] The test whether the words amount to defamation is "would the words tend to lower the complainant in the estimation of right thinking members of the society generally." [(1936) 52 TLR 669] An imputation which, by itself, harms the reputation of any person is per se defamatory and if it is made by the accused intending to harm or knowing or having reason to believe that harm to the reputation will be caused to any person, he would be guilty of an offence under this section unless he can show that he comes within any of the exceptions to the section. [AIR 1938 Rang 394 (DB)] The offence under Ss. 500 and 504 can co-exist. They are district offences committed in the course of same transaction. [(1996) 1 Mad LW (Cri) 18] Prosecution for defamation is not bared merely because the same transaction could also constitute an offence of giving false evidence before a Court knowing it to be false and covered by S. 193. [1987 Cri LJ 1785] The Defamation Ordinance, 2002 has also defined Defamation classifying it into two forms:-

- i) Slander; and
- ii) Libel.

Any false oral statements or representation that amounts to defamation has been declared as actionable as slander. Any false written, documentary or visual statement or representation made either by ordinary form or expression or by electronic or other modern means or devices that amounts to defamation shall be actionable as libel. However, the promulgation of Defamation Ordinance, 2002 has not repealed s. 499 of the Penal Code which is still in force. Defamation Ordinance, 2002 provides civil remedy keeping ss. 499/500 alive for dealing criminal liabilities.

2. Charge. The charge should set out the precise words alleged to have been uttered by each of the accused. [AIR 1952 Orissa 351] The words used by different accused cannot be clubbed together in a joint trial. [AIR 1952 Orissa 351] It is not necessary that the charge should state that the accused was not entitled to the exceptions under the section. [(1872) 9 Bom HCR 451] A plea that though there was publication of the statement, there was no publication to person mentioned in the charge is highly technical plea and the defect in the charge is curable u/s 537, Cr.P.C. [AIR 1929 All 1] Where the news item which was inadmissible in evidence was made the basis of charge without taking into consideration the intention, circumstances and the content in which imputations were made, order framing charge against the accused is liable to be quashed. [1992 Cri LJ 3788]

A man's reputation to his property is, more valuable than any other. It is a *jus-in-rem*, a right, good against all world, this right has been protected by provisions of S. 499, P.P.C. [1994 Jab LJ 780 (MP)] Publication of imputation intended to safeguard interest of maker thereof and also for public good without any malicious motive. Does not amount to defamation. [PLD 1976 Kar. 706; PLD 1967 S.C. 32 ref.] Before arriving at a decision whether contents of a particular letter are defamatory, Court has to examine character of defamatory words, [1982 PLC (C.S) 61] mere abuse not tending to lower a man in estimation of others or to bring him in contempt or ridicule, held, may not be actionable but if language used with intention to lower prestige and dignity of a person, in estimation of people or to bring him in ridicule and injure his reputation or profession, cause of action, will arise. [1982 PLC (C.S.) 61] Dissemination of harmful imputation is a condition precedent for constituting offence of defamation. [PLD 1982 Kar. 302]

3. "Whoever". The use of the word "whoever" directly connotes the wrongdoer with the defamatory words spoken or intended to be read the word "whoever" if read with the who makes clearly shows that it refers to the originator of the imputation. A client is not liable for defamatory questions put by his counsel in cross-examination of a witness for the opposite side unless it is definitely established that the questions were put on instructions. [AIR 1948 Pat 56] Client cannot be prosecuted by proxy for statements made by his counsel in his reply

notice to the opposite party. [AIR 1959 Ker 342] A postman who delivers in the course of his official duty parcels containing libelous matters is not liable if he is ignorant of the contents. [(1837) 174 ER 212] Only the person defamed can make a complaint under Ss. 499, 500. His father cannot complain in his place. [PLD 1966 Kar. 337]

3.1 Editor of newspaper. Where the Editor of a Newspaper was absent from duty at the time of the publication of the libel in the paper and at that time, the publication and editing of the paper was entrusted to the Sub-Editor, the Editor cannot escape liability under this section when absence or entrusting was not *bona fide*. [1968 Cri LJ 836 (Mys)] Another view is that Editor cannot be held guilty under this section. [AIR 1961 Madh Pra 12]

3.2 Partnership firm. Defamatory letter alleged to be issued on pad of partnership firm. One of the partners signed the letter. Complainant in examination before Court did not say on oath anything against rest of the partners who did not sign the letter. There cannot be vicarious liability on rest of the partners who did not sign the letter. [1998 Cri LJ 1863]

4. "By words spoken or intended to be read or by signs, etc." The phrase used in S. 499 is "by words either spoken or intended to be read". When words are spoken, they necessarily reach a third person, but words reduced to writing, may remain in custody of author without any person having knowledge thereof. [1986 Cri LJ 1181] Where the words, read with the whole document have a vulgar import the accused must be brought to trial and asked to show that what was meant was something other than the vulgar import. [1972 Ker LT 619]

5. "Intending to harm will harm". In order to attract the offence of defamation u/s 499, *mens rea* is required. Mere publication of an imputation concerning any person without the intention to harm the reputation of the person does not of itself constitute defamation. [AIR 1968 Cal 266] The intention on the part of the accused is a paramount consideration for making the offence u/s 499 complete. [1994 Mad LJ Cri 273] Where the complainant alleged that she was the girl described in the biography of the poet published by the accused, depicting a beautiful girl, the source of inspiration to the poet, but there was no direct reference of the complainant nor was there any material to connect her with that girl in the book, and the accused not intending to harm the reputation of the complainant, he was not guilty of offence u/s 500. [1987 Cri LJ 1295 (DB)] Where the accused persons sent alleged defamatory letter to the complainant by post in a cover and did not make any publication of that letter, it could not be said that they made imputation in letter but it could only be said that they intended that anybody else to read it or intended to harm or knew or had reason to believe that the imputation will harm the reputation of complainant. Mere fact that some persons out of curiosity read out contents of letter would not make accused persons liable to offence under S. 500. [1994 Mad LJ (Cri) 216] Where the complaint did not state that the news item was published with an intention to harm the reputation of the complainant and complainant was not directly or indirectly referred to in the news item in which allegations were made against, father of complainant as trustee of temple, no offence of defamation u/s 499 is made out. [(2000) 2 Mah LJ 90 (Bom)] It is not necessary that harm or injury must have been actually caused to the person against whom the imputation is made or published. [AIR 1966 Orissa 15] When a harmful imputation is made to the reputation of a person with necessary *mens rea*, held it constitutes defamation. [1984 Cri LJ 1790] Whether there was any intention of harming the reputation of a person or knowledge that such imputation will cause such harm or reason to believe that such imputation will cause such harm is a question of fact depending upon the actual words used, considered in the context in which they were used. In considering this question, the whole of the statement must be considered and not merely certain passages picked out therefrom. [1974 Cri LJ 1209 (Mad)]

6. "Makes". The word "makes" connotes "to make public" "to make known to persons in general". It means "to bring into being", "to cause to exist" "to create". It, therefore, refers to the originator of the imputation. [AIR 1968 Cal 266] The gist of the offence is the dissemination of the harmful imputation and it is in this context that the word "makes" must be understood. Communication of the imputation to persons other than the complainant is necessary. [1964 (1) Cri LJ 367 (DB) (Cal)] An imputation made by words spoken in a language unintelligible to the auditors cannot be said to be 'made'. [78 ER 747] The mechanic or the compositor or the press not being the originator of the imputation cannot be said to make or publish the matter.

Mad 572] A letter would be deemed to be published both where the letter is posted and also where it is received. [AIR 1967 Punj 403] The venue of the trial (in case of newspapers) can be either the Court within whose jurisdiction the publication is made or the Court in whose jurisdiction the defamatory matter is posted, circulated or distributed. [1978 All Cri R 434] When a case instituted at one place is sought to be transferred to a different place, the Court should bear in mind that the accused cannot dictate in which forum he is to be tried but at the same time the process of justice should not cause harassment to the parties. [AIR 1979 S.C. 468]

46. Duty of Court. Where a complaint is made on oath before a Magistrate, he cannot dismiss it merely on the ground that there is a possibility that the accused might have some defence if the allegations are true. The Magistrate must direct his attention to see if there is any reason for disbelieving the complaint. [AIR 1940 Pat 179] Where a prima facie case is made out the accused must be found guilty unless he is able to bring himself within any of the exceptions. [AIR 1943 Cal 478] The alleged defamatory passage must be read as a whole and it should be seen whether reasonable men would consider it capable of the construction put upon it by the prosecution. [(1896) 1 Cal WN 466] It is the duty of the Court to see that accused is not prejudiced and the complainant not harassed. [AIR 1950 All 455]

47. Power of High Court. High Court has unabridged and unqualified powers to interfere in any appropriate case where it is found that any particular proceeding would tantamount to abuse of process of law and that of the Court. [2000 P.Cr.L.J. 1847]

500. Punishment of defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

[Proviso x x x x x x x x x x x x x x x x]²

SYNOPSIS

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|---------------------|---|
| 1. Scope. | 6. Publication of defamatory matter in newspaper—Liability of Editor. |
| 2. Charge. | 7. Right to file complaint. |
| 3. Procedure. | 8. Publication necessary. |
| 4. Trial. | 9. Registration of false case. |
| 5. Act of an agent. | |

1. Scope. Section 500, P.P.C., provides punishment for the person who defames another. The punishment as provided in this section is simply imprisonment for a term extended to two years or with fine or both. Imputations made in respect of any person amount to defamation for the purposes of S. 499, P.P.C., only if such imputations are published and the person publishing the same intends to harm or has reasons to believe that such imputations will harm the reputation of the person in respect of whom the imputation are made and published. If the imputations are per se defamatory, such as to attribute dishonest, improper or immoral conduct to the petitioner, or any other action which plainly would have the tendency to lower him in the estimation of his relations, friends and acquaintances, it can be reasonably presumed that the petitioner either had the intention or at least had the knowledge or reasons to believe that such imputation would harm the reputation of the petitioner, but where they are a complaint before a person in authority seeking legal redress, such as that action be taken u/s 323/34, P.P.C., cannot be considered to be per se defamatory. [1975 P.Cr.L.J. 1448] Where an imputation is made regarding moral character of a female who is living in the shelter of the father, brother or husband, a complaint can be brought undoubtedly by such male person, because in that eventuality the male kith and kin in whose abode she is residing is also

2 [Provided that, where the imputation is punished in the manner referred to in the proviso to section 499, this section shall have effect as if for the words "two years" therein the words "five years" were substituted]. Ins. by Ord. LXVIII of 1973. Omitted by Cr. L. Amendment Act IV of 1986. S. 2(6). PLD 1988 Cent. St. 16.

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indirectly by such imputation. [PLD 2001 Lah. 98] Allegations as to petitioner having never got peace of mind and his better-half being of 'loose tongue' by no stretch of imagination come within purview of S. 500, P.P.C. [PLD 1982 Lah. 60] Before issuance of process under this section the Magistrate must satisfy himself:-

- a) That the complaint or the report before him does disclose that the objectionable material is of a defamatory nature;
- b) The *prima facie* the defamatory statement is not made *bona fide*;
- c) That the alleged defamatory statement *prima facie* does not meant to protect the interest of the maker or any other person and that it was not meant for public good.
- d) That the concerned Court before whom the objectionable statement was made found the same false or irrelevant or malicious. [PLD 1976 Lah. 1548]

Police may investigate into an offence under section 500, P.P.C on the direction of Magistrate and not on police report under section 173, Cr.P.C. [1997 P.Cr.L.J. 1128] Offence u/s 500, P.P.C. on date of its alleged commission by respondents inclusive of date on which complaint was filed was not only cognizable but was also non-compoundable. [PLJ 1998 Cr. C. (Quetta) 77] Whether abuse or insult can found a prosecution for defamation? Depends upon language having tendency of impairing reputation of a person and subject to just exceptions available. [1973 P.Cr.L.J. 819] Remarks made by offender insinuating that proceeding taken by Controller by fraud. Controller not convicting offender himself but making complaint to Magistrate u/s 228, P.P.C. Such proceeding being not sustainable, Controller himself failing to examine before Magistrate, prosecution also not taken up u/s 500, P.P.C., and case not proceeded with u/s 190, Cr.P.C., conviction under this section not sustainable. [1972 P.Cr.L.J. 96]

- 1.1 **Aggrieved person.** In case of defamation an aggrieved person in addition to the person defamed includes mother of unmarried daughter, defamed and scandalized. Mother entitled to initiate proceeding for defamation. [1972 P.Cr.L.J. 1175]
- 1.2 **Mens rea.** *Mens rea* or intention is essential ingredient for constituting an offence of defamation. Article published must be libelous lowering down the reputation of the person. [PLD 2001 Kar. 115]
- 1.3 **Onus to prove.** Direct nexus between the author or originator of the imputation and its publication or communication, is required to be established by independent evidence, by prosecution in order to succeed in case of defamation. [2000 P.Cr.L.J. 1847] Defamatory statement not falling within exceptions mentioned in s. 499. Not privileged. [PLD 1960 Dacca 736]

2. Charge. I (name and office of the Court of Sessions) hereby charge you (name of the accused) as follows:-

That you, on about the _____ day of _____ at _____ defamed XY by making (or publishing the following imputation concerning the said XY to AB _____ (set out the defamatory matter) intending to harm (or knowing) (or having reason to believe) that such imputation would harm the reputation of the said XY; and thereby you committed an offence punishable under section 500 of the Pakistan Penal Code and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

- 2.1 **Previous sanction.** Words "previous sanction" would demonstrate that before filing of complaint sanction required under S. 198-A, Cr.P.C., would be obtained by Public Prosecutor which would mean that sanction must precede filing of complaint. [2000 P.Cr.L.J. 1919] Repeal of criminal procedure (Amendment Act, 1974) by Federal Laws (Revision and Declaration) Ordinance (XXVII of 1981) had no impact on S. 198-A, Cr.P.C., which was alive and available on statute book with its full force. [PLD 1997 Pesh. 180]
- 2.2 **Complaint on behalf of a company.** Managing Director of the Company is competent to lodge complaint on behalf of a company. [PLD 1967 S.C. 32]

3. **Procedure.** Not cognizable, Bailable, Compoundable, Imprisonment for 2 years, or both and in case of originator the imprisonment of either description for 5 years, or fine, or both, Court of Session

4. **Trial.** Police may investigate into an offence u/s 500, P.P.C., on the direction of a Magistrate but the trial Magistrate cannot competently take cognizance of the said offence in pursuance of the report submitted by the police u/s 173, Cr.P.C., the same having been specifically barred u/s 198, Cr.P.C., which can only be taken on a complaint made by the aggrieved person. [1997 P.Cr.L.J. 1128] It is necessary that statements of the complainant and his witnesses are recorded by the Magistrate himself such statement recorded by the Reader of the Court is of no avail and not curative. [1994 P.Cr.L.J. 433]

4.1 **Cognizance.** Cognizance of offence u/s 500, P.P.C., can be taken only on private complaint and the same taken on police report is an illegality which is not curable u/s 537, Cr.P.C. [1997 P.Cr.L.J. 1128]

5. **Act of an agent.** Agent and principal might be equally liable under civil tort of defamation but in criminal law, it has to be proved by independent evidence by the prosecution or complainant that the counsel or agent has acted and the imputation which was subsequently published or communicated was issued or sent under the specific instructions of principal. Mere presumption that the same must have been done under principal's instruction is not enough. Unless it is shown that agent of an accused had acted specifically on his instructions in a particular manner, the accused cannot be saddled with the liability for making the imputation or convicted for offence under S. 500, P.P.C. [2000 P.Cr.L.J. 1847]

6. **Publication of defamatory matter in newspaper—Liability of Editor.** When a defamatory matter is published in a newspaper the Editor of the newspaper is liable for defamation and the fact that he had not seen the matter or that it was printed without his knowledge is no defence. It would however be sufficient answer to the charge if the editor proves that the libel was published in his absence and without his knowledge and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. But if he does so, he is bound to give evidence as to who the actual printer of the paper in his absence was. [PLD 1963 Lah. 323]

7. **Right to file complaint.** Law does not restrict the right to file a complaint to the person actually defamed but it allows complaint to be filed by any person aggrieved by the imputation. The word 'aggrieved' has not been defined. It must be taken in its ordinary sense. The parents can be treated to be the persons aggrieved if unmarried daughters who are living with them are defamed. [PLD 1971 Kar. 266] Where defamatory remarks were made by a party to proceedings before a Rent Controller who made a complaint to a Magistrate. Held, although the provisions of sections 195 and 476, Cr.P.C., are treated as inapplicable yet the fact remains that the Controller, made a complaint to the Magistrate, and the Magistrate under section 190, Cr.P.C., was competent to take cognizance of it. The complaint filed by the Collector, as an individual (as distinguished from a Court) put at its best, is that the petitioners, defamed the Controller, insinuating that the proceedings, taken by him were "fraud". The offence, if any, was punishable under section 500 of the Code. Assuming that the Controller made a complaint in his individual capacity, it is remarkable that he did not examine himself in support of it. In any case, the trial Court, did not try the petitioners for an offence under section 500, P.P.C. In the instant case, the complaint was proceeded with not as one made under section 190, Cr.P.C., but as if it had been made under section 476 read with section 195, Cr.P.C. The conviction, is therefore, not sustainable. [1972 P.Cr.L.J. 96 (Lah)] Only the person defamed can make a complaint under Ss. 499, 500. His father cannot complain in his place. [PLD 1966 Kar. 337] Where defamatory words are use in complaint, independent complaint is competent no need to come through the Court concerned. [1971 P.Cr.L.J. 1103]

7.1 **Complaint on behalf of company.** A complaint on behalf of a company has, of necessity, to be filed by some person authorized by the company to do so, either specially or generally and normally a Managing Director does possess such powers. In the absence, therefore, of any proof that the Articles of Association of the company did not vest the Managing Director with such powers one was unable to accept the contention that the complainant did not possess such powers as the Managing Director of the company. [PLD 1967 S.C. 32]

7.2 Quashment. The High Court possess inherent powers u/s 561-A, Cr.P.C., to quash a frivolous proceeding but this power is not meant for the purposes of thwarting the criminal proceedings pending in the lower Courts, and ordinarily the High Court does not interfere at intermediate stage of criminal proceedings in a subordinate Court. However, in certain cases in which apparently a miscarriage of justice has occurred and there is no probability of any kind of conviction and that apparently the continuation of the proceedings amount to abuse of process of law, High Court in order to prevent the abuse of process of law must interfere and if the prosecution on the face of it is illegal the proceedings in such case can be rightly quashed even though those may be at the initial stage without having recourse to the provisions of S. 249-A, Cr.P.C. [2001 P.Cr.R. 1794] Mother of the complainant can bring the complaint through another person after taking leave of the Court and his father could file the complaint directly. Complainant not an aggrieved person by the impugned imputation he has no locus standi to file the complaint and no action under the law could be taken on the same by the Magistrate, quashed. [PLD 2001 Lah. 98] Assertion of words 'Ishiq-e-Haqiq' with married woman—Disrepute. [PLD 1991 FSC 71] Statement of the complainant and his witnesses not recorded by Magistrate himself but by his clerk—Illegality incurable. [1994 P.Cr.L.J. 430; 1993 MLD 2045]

8. Publication necessary. Publication is necessary ingredient to the offence of defamation and once it is found missing the offence cannot be complete. [PLD 1966 Kar. 337]

9. Registration of false case. Provisions of S. 499, P.P.C., are not attracted to prosecute a person who instigates another person for registration of a false case. Accused had not by words either spoken or written or by signs or by visible representation made any act falling within the purview of S. 499, P.P.C. No case for defamation was consequently made out against accused and he was acquitted accordingly. [1993 P.Cr.L.J. 764]

501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason 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.

SYNOPSIS

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| 1. Scope. | 4. Quashment—Act of sodomy allegedly committed by warder of jail. |
| 2. Charge. | 5. Liability of printer. |
| 3. Procedure. | |

1. Scope. Section 501 of the Code provides punishment for printing or engraving any matter knowing or having good reason to believe that such matter is defamatory. The previous section *i.e.*, s. 500 provided punishment for simple act of defamation whereas the present section takes care of an aggravated form of defamation *i.e.*, punishes a person who knowingly prints or engraves any defamatory matter. As such s. 501 is a distinct. [(1889) PR No. 18 of 1889] It provides, 'whoever prints or engraves any matter, knowing or having good reason 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 with fine or both'. A perusal of the section would shows that it requires two things:-

- i) Printing or engraving of any matter;
 - ii) Knowledge or reason to believe that such matter is defamatory.
- In order to prove the offence under this section prosecution is required to prove:-
- i) That the matter in question is defamatory in terms of s. 499;
 - ii) That the accused printed or engraved it;
 - iii) That the accused knew or had reason to believe that the matter so printed was defamatory as to fall within the ambit of s. 499.