

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

...

CRMC no.27/2011

Reserved on: 08.06.2020

Pronounced on: 15.06.2020

Nayeem Akhtar Andrabi

.....Petitioner(s)

Through: Mr Jahangir Iqbal Ganai, Senior
Advocate with Ms Humaira Shafi, Advocate

Versus

The Public Prosecutor and another

.....Respondent(s)

Through: Mr B. A. Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. A complaint under Section 499 and 500 of the Ranbir Penal Code, 1932 AD, of erstwhile State of J&K (which is *pari materia* to Section 499 and 500 of the Indian Penal Code) was filed by Public Prosecutor, Srinagar – respondent no.1 herein, against petitioner no.1 and respondent no.2, before the court of Principal District and Sessions Judge, Srinagar (for short “*Trial Court*”) on the grounds detailed therein. The Trial Court, while taking into account the allegations made in the complaint and the record concomitant therewith, took cognizance of the complaint and issued process vide order dated 29th September 2010, and bailable warrant in the amount of Rs.20,000/- each was issued for securing presence of the accused.

2. Petitioner, feeling aggrieved of aforesaid complaint and the proceedings initiated thereon by the Trial Court, seeks quashment thereof on the edifice of case set up and grounds taken in petition on hand.
3. I have heard Mr Jahangir Iqbal Ganai, learned senior counsel appearing on behalf of petitioner and Mr B. A. Dar, learned Sr.AAG, appearing for respondent no.1. I have gone through the record on the file.
4. As is discernible from the file, a complaint has been moved by respondent no.1 before the Trial Court under Section 499, 500 RPC/IPC. While giving introduction of Mr Omar Abdullah, the then Chief Minister of erstwhile State of Jammu and Kashmir, it is stated in the complaint that on 25th August 2010, a Press Conference was held by petitioner and respondent no.2, at the office of J&K Peoples Democratic Party, No.2, Circuit House, Emporium Lane, Residency Road, Srinagar, which was attended by several other members of the Party, including legislators of the State Legislature as well as members of public and media persons. It is alleged that during aforesaid Press Conference, both petitioner and respondent no.2 have levelled false and defamatory allegations against Mr Omar Abdullah, in presence of journalists and reporters from print and electronic media, and several other persons. The complainant/respondent no.1 has also averred that all such allegations were not only defamatory but were made with an intention to defame Mr Omar Abdullah. The details of defamatory allegations levelled against Mr Omar Abdullah have been enumerated by complainant/respondent no.1 in the complaint. A number of

contentious and triable facts and issues have been made in the complaint.

5. While ingeminating averments of the petition, it is the submission of learned senior counsel appearing for petitioner that the complaint filed by respondent no.1, has led to serious abuse of process of court as allegations contained therein or evidence placed on record in support thereof, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against petitioner and that whatever petitioner averred, was asserted in good faith which squarely falls under Eighth Exception of Section 499. Petitioner is alleged to have committed an offence under Section 499 and 500 RPC, by making defamatory allegations of kickbacks in the award of Rattle Power Project by the then Chief Minister. Petitioner is also alleged to have made a defamatory allegation regarding exorbitant expenditure incurred on the construction of official residence of the Chief Minister and is also alleged to have made a defamatory allegation against the Chief Minister regarding pilferage of certain priceless antiques from the State *Toshakhana*. Petitioner is alleged to have made defamatory allegations qua withdrawal of secret funds by the Chief Minister and in this regard respondent no.1/complainant has extensively relied upon and quoted the news item carried by Daily Newspaper Greater Kashmir in its Issue dated 26th August 2010. According to learned senior counsel, the said news item does not at all mention or disclose that any of the statements referred to as defamatory statements were made by petitioner and it is only a person, making or

publishing a defamatory statement, who can be brought under Section 499 RPC and there is no evidence placed on record by respondent no.1 to indicate or establish that petitioner has made any defamatory imputations. In absence of any evidence, worth the name available on record, respondent no.1 has abused the process of law by instituting the complaint and as a consequence whereof, the proceedings pending before the Trial Court are liable to be quashed. He has further contended that criminal proceedings launched on complaint of respondent no.1 are attended with *mala fide* as the complaint has been filed maliciously for ulterior motives, for wreaking vengeance on petitioner. The newspaper constituting foundation of complaint does not at all indicate by any stretch of imagination that petitioner has made any statement to be construed as defamatory by respondent no.1. He lastly states that instant petition may be allowed, and complaint and the proceedings initiated thereon quashed.

6. *Per contra*, learned Sr. AAG, has stated that complainant has made out a triable case and at this juncture veracity of evidence cannot be gone into. It is his further contention that making of defamatory allegations/ imputations in a press conference in which legislators, print and media persons were present and its subsequent publication shows manifestly an effort to bring down the reputation of Mr Omar Abdullah. He has also insisted that whether the petitioner was having any intention of defaming or not, is a matter which has to be gone into at the time of trial. The publication of press conference of petitioner and respondent no.2 in newspaper reflects and portrays defamation and under such

circumstances, petitioner cannot contend that there is no material to bring home the guilt of the accused. It is his further submission that to prove good faith for protection of interest of a person making it, it is he, who makes or contends good faith has to prove and this is a premature stage to consider the material placed by complainant. He has also stated that accused no.1, Shri Nizam ud din Bhat, (respondent no.2 herein) against whom process has also been issued, has not challenged the order nor has he joined petitioner herein. On these grounds, he has prayed to dismiss the petition.

7. First and foremost, in the present case, there is no denial to the fact of publication of news item in a number of newspapers of Jammu and Kashmir, containing certain imputations and it is in view of the said publication that complainant/respondent no.1 has filed a complaint under Section 499 and 500 RPC before the Trial Court. It is, however, contention of petitioner that he has not committed any offence as contemplated under Section 499 and 500 RPC/IPC.
8. Section 499 RPC provides 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. It would be advantageous, for facility of reference, to reproduce Section 499 infra:

“Section 499.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

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

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

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

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 fall 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 fall 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 fall within one of the exceptions.

d) 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 fall 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 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.

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

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

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

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.

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.

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

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

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”

9. It is pertinent to mention here that the allegations made against any person if found to be false it can affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, defamation is injurious to reputation. Reputation has been defined in dictionary as “*to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report*”. Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. So, it has been held to be an essential component vis-à-vis right to life of a citizen under Article 21 of the Constitution.

International Covenant on Civil and Political Rights, 1966, recognizes the right to have opinions and the right of freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is “not only a salt of life but the purest treasure and the most precious perfume of life”. [See: *Smt. Kiran Bedi and Jinder Singh v. The Committee of Inquiry and another*, AIR 1989 SC 714; *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others*, AIR 1983 SC 109; *Nilgiris Bar Association v. TK Mahalingam and another*, AIR 1998 SC 398; *Dr. Mehmood Nayyar Azam v. State of Chattisgarh and others*, AIR 2012 SC 2573; *Vishwanath Sitaram Agrawal v. Sau Sarla Vishwanath Agrawal*, AIR 2012 SC 586; and *Kishore Samrite v. State of U.P. and others*, (2013) 2 SCC 398].

10. In the above *milieu*, it may be mentioned here that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Code, to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceedings against accused and the court cannot look into materials, acceptability of which is essentially a matter for trial.

11. Law does not prohibit entertaining a petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject an application merely on the ground that accused can argue legal and factual issues at the time of framing of the charge. However, inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. (Vide: *Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate and others*, AIR 1998 SC 128; *Ashok Chaturvedi and others v. Shitulh Chanchani and another*, AIR 1998 SC 2796; *G. Sagar Suri and another v. State of U.P. and others*, AIR 2000 SC 754; and *Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy and others*, (2011) 12 SCC 437).
12. The judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C., if answer to all the steps, as enumerated herein after, is in affirmative, has been so said by the Supreme Court in *Rajiv Thapar v Madan Lal Kapoor*, 2013 (3) SCC 330:

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

- i. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

ii. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

iii. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

iv. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

13. The case in hand, if analyzed on the hallmark of above steps as laid down by the Supreme Court, does not at all persuade this Court to vouchsafe all that petitioner implores in petition hand. It is well settled law that Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of inherent power to quash proceedings is called for only in cases where complaint does not disclose any offence or is frivolous, vexatious or oppressive. If allegations set out in complaint do not constitute offence, of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the

complaint is *mala fide*, frivolous or vexatious in that event there would be no justification for interference by the High Court. Reference in this regard may be made to *Mrs. Dhanalakshmi v. R. Prasanna Kumar*, *AIR 1990 SC 494*.

14. It may be added here that the issue of *mala fides* loses its significance if there is a substance in the allegation made in complaint moved with malice. It is a well-established proposition of law as has been held by the Supreme Court in *Sheo Nandan Paswan v. State of Bihar and others*, *AIR 1987 SC 877*, that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of *mala fides* or political vendetta of the first informant or complainant. Again in *Parkash Singh Badal v. State of Punjab & Ors.*, *AIR 2007 SC 1274*, the Supreme Court has held that ultimate test is whether allegations have any substance and an investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence and therefore, the plea of *mala fides* as raised cannot be maintained.

15. The Supreme Court in *State of A.P. v. Goloconda Linga Swamy and another*, *AIR 2004 SC 3967* as also in *K. Karunakaran v. State of Kerala*, *(2007) 1 SCC 59*, has held that it is the material collected during investigation and evidence led in court which decides the fate of accused person. The allegations of *mala fides* against informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.

16. Thus, from the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with *mala fides* to wreak vengeance or to achieve an ulterior goal.

17. The question as to what constitutes defamation came up before the Supreme Court in the case of *Mohammed Abdulla Khan v. Prakash K, AIR 2017, SC 5608*. The Supreme Court has in clear terms said that whether the content of a complaint disclose the facts necessary to establish commission of offence of one or all of the offences mentioned in the complaint and whether there is sufficient evidence to establish guilt of accused person for any one of the offences, is a matter that can be examined only after recording evidence at the time of trial and that can never be a subject matter of a proceeding under Section 482 Cr.P.C. While saying so, the contours of jurisdiction of the High Court under Section 482 Cr.P.C. is no longer *res integra*. It is suffice to advert to the judgment of the Supreme Court in *State of Haryana vs Ch. Bhajan Lal, AIR 1992 SC 604*. The Supreme Court held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their 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 FIR 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 uncontroverted allegations made in the FIR or complaint 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 without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person 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) 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 personal grudge.

103. We also *give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.* (Emphasis supplied)

18. As to what is the scope of the expression “rarest of rare cases” as indicated in above quoted paragraph 103, I may only refer to the judgment of the Supreme Court in *Jeffrey J. Diermeier and another v. State of West Bengal and another*, (2010) 6 SCC 242, in which the law laid down by a Bench of a Three Judges of the Supreme Court in the

case of *Som Mittal v. Govt. of Karnataka, (2008) 3 SCC 574*, has been referred to:

“23. The purport of the expression "rarest of rare cases", to which reference was made by Shri Venugopal, has been explained recently in *Som Mittal (2) v. Govt. of Karnataka [(2008) 3 SCC 574 : (2008) 1 SCC (L&S) 910 : (2008) 2 SCC (Cri) 1]*. Speaking for a Bench of three Judges, the Hon'ble the Chief Justice said:

"9. When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression 'rarest of rare cases' is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

19.If aforesaid principles are applied to the present case, the question that would emerge for consideration is as to whether petitioner has made out a case to bestow him the relief as beseeched for by him in exercise of inherent powers under Section 482 Cr.P.C. The answer thereto would be in 'negative'. Insofar as the offence of defamation is concerned, even though the offence under Section 500 is non-cognizable under the First Schedule to the Cr.P.C., yet the matter would not be governed by and fall within the categories of cases catalogued in *Bhajan Lal's* case (supra). As a corollary thereof, I do not think that it is a case where I could hold that the proceeding is manifestly attended with *mala fide* and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on petitioner with a view to spite him due to private and personal grudge.

20. The inherent powers cannot naturally be invoked with respect to any matter covered by specific provisions of the Code of Criminal Procedure. It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that ends of justice would not be secured, that the High Court can and must exercise its inherent powers under Section 482 of the Code. This power can be invoked only in an event when aggrieved party is being unnecessarily harassed. The power under Section 482 Cr.P.C., is not intended to scuttle justice at threshold but to secure justice.

21. Needless to say, that when exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation thereof, accusation would not be sustained. That is the function of the trial Judge. The scope of exercise of power under Section 482 Cr.P.C. and the categories of cases, where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure ends of justice were set out in detail in the case of *Bhajan Lal* (supra). The powers possessed by the High Court under Section 482 Cr.P.C. are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

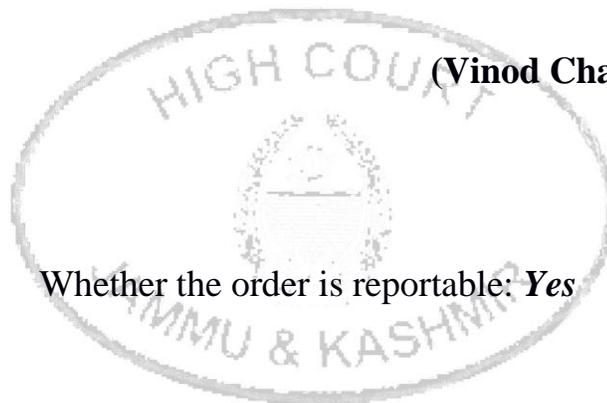
22. Applying the aforesaid test, the petition on hand is bereft of any merit, *for*, petitioner has failed to make out a case for exercise of inherent powers under Section 561-A Cr. P.C. (Section 482 of the Central Cr.P.C.) to quash the complaint or for that matter the proceedings initiated thereon by the Trial Court. Having said so, petition on hand is **dismissed**. Interim direction, if any, shall stand vacated.

23. Trial Court record be sent down along with copy of this order.

24. Parties to appear before Trial Court on 20th July 2020.

25. Registry to transmit copy of this order to learned counsel so that they inform their parties to appear before the Trial Court.

Srinagar
15.06.2020
Ajaz Ahmad, PS



(Vinod Chatterji Koul)
Judge

Whether the order is reportable: **Yes**