REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1079 OF 2010
(Arising out of S.L.P. (Criminal) No. 898 of 2009)

JEFFREY J. DIERMEIER & ANR. — APPELLANTS

VERSUS

STATE OF WEST BENGAL & ANR. — RESPONDENTS

J U D G M E N T

D.K. JAIN, J.:

Leave granted.

2. This appeal, by special leave, arises from the judgment dated 18th November 2008 rendered by a learned Single Judge of the High Court of Calcutta in C.R.R. No. 523 of 2008. By the impugned judgment, the learned Judge has dismissed the petition preferred by the appellants under

Section 482 of the of the Code of Criminal Procedure, 1973 (for short "the Code") seeking quashing of a private complaint filed by respondent No.2 in this appeal, for an offence under Section 500 read with Section 34 of the Indian Penal Code, 1860 (for short "the IPC").

3. The facts, material for the purpose of disposal of this appeal, may be stated thus:

Appellant No.1 is the President and Chief Executive Officer of the Chartered Financial Analysts Institute (hereinafter referred to as "CFA Institute"), incorporated under the laws of the State of Virginia, United States. Appellant No.2 is the President of the Indian Association of Investment Professionals, who is a member of the society of CFA Institute. CFA Institute is a non stock corporation and confers the designation of Chief Financial Analyst ("CFA" for short) upon its members who fulfil a minimum professional criterion. CFA certification is considered to be a definitive standard for professional competence.

4. In the year 1985, on being approached by the Institute of Chartered Financial Analysts of India (for short "ICFAI"), respondent No.2 herein, a registered society, having its office at Kolkata, CFA Institute entered

into a licence agreement with them to conduct its CFA program in India. The agreed arrangement continued for quite some time. However, realising that respondent No.2 was not adhering to the required standards and quality in the said program, CFA Institute decided to wean off its arrangement with ICFAI - respondent No.2. Since, in the meanwhile, respondent No.2 was attempting to get the trademarks of CFA Institute registered in India, in the year 1997, CFA Institute issued a notice of termination of its licence with the said respondent. On receipt of the said notice, respondent No.2 filed a declaratory suit before the District Courts in Hyderabad, seeking a declaration regarding the change of their name "ICFAI" and their use of the designation "CFA". However, they did not succeed in getting any interim or final relief in the said suit. In the year 2004, CFA Institute filed a Civil Suit [C.S.(OS) No.210 of 2004] in the High Court of Delhi for permanent injunction restraining respondent No.2 from using the trade marks, services, service marks or trade name CFA, Chartered Financial Analyst, The Institute of Chartered Financial Analysts of India, ICFA and ICFAI or any other name or mark which may be identical or deceptively similar to these marks and passing off CFA Institute Programs or business as that of CFA Institute. Vide Order

dated 4th August 2006, the High Court passed the following order by way of interim relief:

> "30. In view of the above, I allow the application under Order XXXIX Rules 1 & 2 CPC and restrain the defendants, during the pendency of the suit from using any of the trademarks or service marks CFA, Chartered Financial Analyst, The Institute of Chartered Financial Analysts of India, ICFA and ICFAI or any other name or mark which may be identical or deceptively similar to these marks and from passing off their programmes or business as that of the plaintiffs. However, this order of injunction will not come into effect till the end of current academic session of the CFA Programme run by the defendants. Nor will anything said herein will mean final expression of opinion of this Court."
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> [Emphasis supplied]

5. On 30th January 2007, respondent No.2, through its sponsored University in Tripura – The Institute of Chartered Financial Analysts of India University, Tripura (hereinafter referred to as "the University"), issued an advertisement inviting applications for fresh enrolments for award of "CFA" certification. According to CFA Institute, since the programmes which were current at the time of passing of the order of interim injunction by the High Court of Delhi on 4th August 2006 had come to an end in January 2007, the invitation for fresh enrolment in terms of the advertisement issued on 30th January 2007 was for subsequent

programmes, which were not current at the time of the interim injunction order and, therefore, it was in breach of the said interim injunction. Accordingly, on 12th February 2007, CFA Institute issued a public notice under the caption "A Word of Caution to the Indian Investment Community", (hereinafter referred to as "Word of Caution"). The relevant extract of the said publication reads thus:

> "There is confusion over the "CFA" name in India, and you deserve to know the facts. The Chartered Financial Analyst (CFA(R)) designation from CFA Institute is the only globally recognized CFA designation for financial professionals.
>
> However, the Institute of Chartered Financial Analysts of India (Icfai) offers an educational program specializing in finance, which they term the "CFA Program", and awards a title called the "CFA".
> On 4th August 2006, the Delhi High Court recognized that CFA Institute owns the exclusive rights to the CFA trademarks and that continued use by Icfai causes irreparable harm. The court ordered an interim injunction requiring Icfai to stop using the "Chartered Financial Analyst" and "CFA" brands and to change its corporate and "CFA" title names. Unfortunately, Icfai has continued its unauthorized use of our trademarks by running advertisements from an Icfai-sponsored university.
>
> .....
> .....
>
> If you are planning to either hire an investment professional or obtain a designation, you need to make informed decision that benefit your future. Visit www.cfainstitute.org/India for more information about enrolling in the CFA Program, Scholarships,

joining the IAIP, and the latest updates about our efforts to end this confusion and support the Indian Investment Community."
(Emphasis added by us)

6. Alleging that the said public notice was defamatory within the meaning of Section 499 of the IPC, respondent No.2 filed a private complaint against the appellants. The trial court took cognizance of the complaint and issued summons to the appellants. Feeling aggrieved by the summoning order, the appellants preferred the afore-noted petition before the High Court of Calcutta. As already stated, by the impugned judgment, the High Court has dismissed the said petition. Hence, the present appeal by the accused.

7. Shri Shanti Bhushan, learned senior counsel appearing on behalf of the appellants strenuously urged that the High Court gravely erred in declining to exercise its jurisdiction under Section 482 of the Code in a case where the complaint *ex facie* lacks basic ingredients of Section 499 of the IPC. Learned counsel submitted that by offering a prospectus for a new session beginning in the year 2007, which would be of 12-18 months duration, the University, a sponsored University of ICFAI had violated the injunction order issued by the High Court of Delhi on 4th August 2006

and, therefore, in the wake of a misleading advertisement, the appellants were compelled to issue a "Word of Caution".

8. Learned counsel contended that from the provisions of the Institute of Chartered Financial Analysts of India University, Tripura Act, 2004 (for short "the Act"), it was clear that the University was nothing but an alter ego of respondent No.2. In support of the contention, learned counsel referred to certain provisions of the Act showing that it is respondent No.2 who appoints the Chancellor of the University and in turn the Chancellor appoints the Vice-Chancellor; under Section 20 of the Act, the Board of Governors consists of Chancellor, Vice-Chancellor and three other persons nominated by respondent No.2; under Section 21 of the Act, the Board of Management consists of 9 persons of whom as many as 7 persons are to be the nominees of respondent No.2. It was, thus, submitted that all the acts of the University were really the acts of respondent No.2 itself and, therefore, the advertisement issued for fresh admission by the University was clearly in breach of the order passed by the Delhi High Court. According to the learned counsel, the effect of the advertisement dated 30th January 2007 would have been to induce prospective students to believe that joining the new course offered by the

University in the year 2007 would entitle them to get CFA designation from CFA Institute. It was argued that it was in these circumstances and keeping in mind the public interest that the appellants had issued a "Word of Caution" to the students who wished to obtain CFA certification. Learned counsel asserted that the prosecution of the appellants on account of publication of the said "Word of Caution" is an abuse of the process of the Court inasmuch as the said "Word of Caution" published by them was a public duty and thus, a legitimate expression. It was also absolutely necessary and in public interest and was singularly covered by the Tenth Exception to Section 499 of IPC.

9. It was also the assertion of the learned counsel that the contents of the "Word of Caution" did not in any way lower or cast a reflection on the moral or intellectual character of respondent No.2 and, therefore, Explanation 4 to Section 499 of the IPC, which imposes restrictions in the law of defamation, is clearly attracted in favour of the appellants. It was thus, pleaded that in the light of Explanation 4 as well as Tenth Exception to Section 499 IPC, the allegations in the complaint did not constitute an offence of defamation punishable under Section 500 IPC and, therefore, the High Court ought to have quashed the complaint. In

support of the proposition, learned counsel placed reliance on the decisions of this Court in the case of ***State of Haryana*** *Vs.* ***Bhajan Lal***[1] and ***Shatrughna Prasad Sinha*** *Vs.* ***Rajbhau Surajmal Rathi & Ors.***[2]. Relying on ***Rajendra Kumar Sitaram Pande & Ors.*** *Vs.* ***Uttam & Anr.***[3], learned counsel argued that under the given circumstances, requiring the appellants to undergo trial would be travesty of justice.

10. *Per contra,* Shri K.K. Venugopal, learned senior counsel appearing on behalf of respondent No.2 supported the impugned judgment and submitted that all the grounds urged on behalf of the appellants for quashing the complaint involve determination of disputed questions of fact for which the matter has to go to trial and, therefore, the High Court was justified in not analyzing and returning a finding on the truthfulness or otherwise of the allegations in the complaint. Heavily relying on the majority view expressed by a Bench of three Judges in ***Sewakram Sobhani*** *Vs.* ***R.K. Karanjia, Chief Editor, Weekly Blitz & Ors.***[4], learned counsel argued that answers to the questions whether the appellants were entitled to protection under Explanation 4 or that the advertisement was

[1] 1992 Supp. (1) SCC 335
[2] (1996) 6 SCC 263
[3] (1999) 3 SCC 134
[4] (1981) 3 SCC 208

issued in "good faith" and for "public good" as contemplated in the Tenth Exception are questions of fact and matters for evidence and, therefore, trial in the complaint must continue. In this behalf, reliance was also placed on the decisions of this Court in ***M.N. Damani*** *Vs.* ***S.K. Sinha & Ors.***[5] and ***Shriram Refrigeration Industries*** *Vs.* ***Hon'ble Addl. Industrial Tribunal-Cum-Addl. Labour Court, Hyderabad & Ors.***[6]

11. Learned counsel argued that a reading of the offending publication as a whole would show that omission of the sentence "However, this order of injunction will not come into effect till the end of current academic session of CFA programme run by the defendants nor will anything said herein will mean final expression of opinion of this Court" was a conscious and deliberate suppression intended to portray ICFAI as a wrong doer, which has violated an injunction order passed by the High Court and in the process is in contempt of the said order. According to the learned counsel, suppression of the fact that the interim injunction did not apply to the "current academic session of the CFA Programme", which was to conclude only in May 2009; had subjected the students who were undergoing the three year course to fear and anxiety that three years

[5] (2001) 5 SCC 156
[6] (2002) 9 SCC 708

of their lives would be wasted, giving the impression that respondent No.2 had cheated them. It was contended that the conscious and deliberate omission of the last sentence of the order of interim injunction was with the sole objective to deter the students from enrolling in the CFA Programme offered by the four Universities in the State of Uttarakhand, Meghalaya, Tripura and Mizoram by creating a fear psychosis amongst the aspirants and, therefore, the offending publication was not in "good faith" and "public interest" as is being pleaded by learned counsel for the appellants.

12. Placing reliance on the decision of this Court in ***Chand Dhawan (Smt)*** *Vs.* ***Jawahar Lal & Ors.***[7], learned counsel submitted that since the High Court had observed that the allegations in the complaint *prima facie* constituted an offence under Section 499 IPC, it did not err in refusing to interfere in the matter. Reliance was also placed on the decisions of this Court in ***Som Mittal*** *Vs.* ***Government of Karnataka***[8] and ***Som Mittal*** *Vs.* ***Government of Karnataka***[9] to contend that power to quash criminal proceedings is to be exercised in the rarest of rare cases.

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[7] (1992) 3 SCC 317
[8] (2008) 3 SCC 574
[9] (2008) 3 SCC 753

13. Shri Venugopal also contended that the University at Tripura, not being a party to the suit at the time of passing of the order by the High Court was not bound by the said order, yet the statement in the advertisement that the continued unauthorized use of appellant's trademark through the sponsored Universities is *per se* defamatory and has caused immense harm to the image and reputation of respondent No.2 in the eyes of the Indian Investment Community as also the student community at large.

14. Learned senior counsel strenuously urged that since the stand of the appellants before the High Court was that they were entitled to the protection of Fourth and Fifth Exceptions to Section 499 IPC, they cannot now be permitted to rely upon Explanation 4 and Tenth Exception to Section 499 IPC so as to build up a totally new case before this Court. In support of the proposition that a new plea, which is essentially a plea of fact, cannot be allowed to be urged for the first time at the hearing of appeal under Article 136 of the Constitution before this Court, learned counsel placed reliance on the decisions of this Court in ***Jagir Kaur & Anr.*** *Vs.* ***Jaswant Singh***[10], ***State of Bihar & Ors.*** *Vs.* ***Shyam Yadav & Ors.***[11] and ***D.S. Parvathamma*** *Vs.* ***A. Srinivasan***[12].

[10] [1964] 2 S.C.R. 73
[11] (1997) 2 SCC 507
[12] (2003) 4 SCC 705

15. Thus, the question for consideration is whether or not in the light of the allegations as projected in the complaint against the appellants, it was a fit case where the High Court in exercise of its jurisdiction under Section 482 of the Code should have quashed the complaint against the appellants?

16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court under Section 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power

on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

17. In one of the earlier cases, in ***R.P. Kapur*** *Vs.* ***State of Punjab***[13] this Court had summarized some of the categories of cases where inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

18. In ***Dinesh Dutt Joshi*** *Vs.* ***State of Rajasthan***[14], while dealing with the inherent powers of the High Court, this Court has observed thus:

> *"*....The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur*

[13] AIR 1960 SC 866
[14] (2001) 8 SCC 570

et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

19. The purport of the expression "rarest of rare cases", to which reference was made by Shri Venugopal, has been explained recently in ***Som Mittal*** *Vs.* ***Government of Karnataka*** (supra). Speaking for a bench of three Judges, Hon'ble the Chief Justice said:

"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 emphasize 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 emphasize that the power under Section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

20. Bearing in mind the afore-stated legal position in regard to the scope and width of the power of the High Court under Section 482 of the Code, we shall now advert to the facts at hand.

21. As noted above, the gravamen of the allegations made against the appellants in the complaint under Section 500 of the IPC is that when on 30th January 2007, respondent No.2 through its sponsored University at Tripura issued advertisement for fresh enrolments for award of CFA Certification, CFA Institute, through its President and CEO, appellant No.1, in this appeal, issued the offending "Word of Caution" wherein they: (1) deliberately and consciously did not publish the full text of the interim injunction granted by the High Court against respondent No.2 vide order dated 4th August 2006. They did not mention that order dated 4th August 2006 was with a rider that the said order will not come into effect till the end of the current academic session of CFA programme run by the society and (2) the defamatory advertisement portrays that the designation given by CFA Institute is the only valid designation and the CFA certificate given by the society is not valid. According to the complainant, all this was a malicious act on the part of appellant No.1, with the intention to harm their reputation in the estimation of the public

in general and its present and past students in particular and, therefore, they are liable to be punished under Section 500 read with Section 34 of the IPC. For the sake of ready reference, the relevant portion of the complaint is extracted below:

> "That in the defamatory advertisement, the accused persons have stated inter alia as follows—
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> "The Chartered Financial Analyst (CFA) designation from CFA Institute is the only globally recognized CFA designation for financial professional. However, the Institute of Chartered Financial Analysts of India (Icfai) offers an educational programme specializing in finance, which they term the 'CFA Programme' and awards a title called the CFA".
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> That in the aforesaid advertisement, the American Association has falsely claimed sole global recognition of its 'CFA' designation even though the same is not recognized by any Government and/or Statutory authority either in USA or in any other country including India. The sole purpose of using the word 'Charter' by the accused is purely with an intention to defraud and/or mislead the public to convey statutory recognition. The said advertisement does not disclose that unlike the "CFA' degree granted by the Society, the so called "CFA Charter is not recognized by any University in India or outside and the students who obtain such "Charter" cannot pursue further studies based on the "CFA Charter" so awarded by the CFA Institute. The tenor of the above statements in the defamatory advertisement portrays an image that the designation, given by the CFA Institute, is the only valid designation and the 'CFA' degree given by the Society is not a valid one. However, the situation is to the contrary and the Society is a body recognized by the various statutory authorities of India to be entitled to grant the "CFA" degree. The sole purpose is to defame and scandalize and thereby lower the

image of the Society in the eyes of the general public as also in the eyes of its present students as also potential students and thereby harm the image of the Society, so that the organization of the accused persons can benefit therefrom.

That in the defamatory advertisement dated 12.02.2007, the accused persons have further stated as follows:-

"On 4th August, 2006, the Delhi High Court recognized that CFA Institute owns the exclusive rights to the CFA trademarks and that continued use by ICFAI causes irreparable harm. The court ordered an interim injunction requiring Icfai to stop using the "Chartered Financial Analyst" and "CFA" brands and to change its corporate and "CFA" titles names. Unfortunately, Icfai has continued its unauthorized use of our trademarks by running advertisements from an Icfai-sponsored university".

The said statements are patently false and defamatory in nature. The accused persons deliberately, wilfully and with malafide intention have not mentioned in the advertisement that the order dated 4.8.2006 passed by the Hon'ble High Court of Delhi, granting temporary injunction, has been made with a rider that the said "order of injunction will not come into effect till the end of the current academic session of the CFA program run by the Society." It is well within the knowledge of the accused that the current academic session of the CFA programme of the Society has not come to an end and as such it cannot be said that there has been unauthorized use of the alleged trade marks of the CFA Institute. Continuance of the current academic session from a University, sponsored by the Society, cannot be said to be in violation of the order of injunction passed by the Hon'ble High Court of Delhi. Moreover, the defamatory advertisement does not mention the fact (which is within the knowledge of the accused) that against the above interim order of injunction, an appeal is pending in the Hon'ble High Court of Delhi. The tenor of the said defamatory statement makes it clear that the accused, with malafide intent to injure and harm the Society, had misquoted

the order passed by the Hon'ble High Court of Delhi on 4.8.2006."

(Emphasis added)

22. Since the factum of publication of the "Word of Caution" is not in dispute, the question for determination is whether the afore-extracted allegations in the complaint constitute an offence of "defamation" as defined in Section 499 of the IPC and would attract the penal consequences envisaged in Section 500 of the IPC?

23. "Defamation" is defined under Section 499 of the IPC. It reads as under:

> "**499. Defamation.**—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."

24. To constitute "defamation" under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to

believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

25. However, as per Explanation 4 to the Section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly 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, in the estimation of others 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.

26. As stated above, the thrust of the argument of learned counsel for the appellants was that since the "Word of Caution" was issued in "good faith" for the benefit of those who were planning to acquire CFA Certificate, and the same being for the "public good", the case falls within the ambit of Tenth Exception to Section 499 of the IPC and, therefore, the appellants cannot be held liable for defamation.

27. Tenth Exception to Section 499 of the IPC reads as follows:

> "*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."

28. It is plain that in order to bring a case within the scope of the Tenth Exception, it must be proved that statement/publication was intended in "good faith" to convey a caution to one person against another; that such caution was intended for the good of the person to whom it was conveyed, or of such person in whom that person was interested, or for the "public good".

29. Before dealing with the question whether or not the Tenth Exception would be attracted in the instant case, it would be appropriate at this juncture, to deal with the objection raised by learned senior counsel appearing for respondent No.2, that no plea regarding applicability of the Tenth Exception having been urged before the High Court, the appellants are estopped from raising such a plea at this stage. Ground IV in the petition before the High Court was in the following terms:

> "Ground IV – For that the publication dated February 12, 2007 was essential and in public interest and thus made to protect the interest of the general public who might otherwise have been induced to join the course offered by the complainant/opposite party no.2 in the belief that it was entitled to conduct the same.

> The language of the publication is a fact and there is no question of there being any defamation involved in the same."

30. It is clear from the above that in their defence, the appellants had pressed into service the Tenth Exception to Section 499 of the IPC. It was their case that the publication in question was in public interest as it was made to protect the interests of those who were planning to join the CFA course announced by the University. In our view, the appellants are not seeking to raise a new ground and, therefore, respondents' objection on that account deserves to be rejected.

31. Now, reverting back to the main issue, as afore-stated, the appellants issued the offending "Word of Caution" ostensibly in order to warn those who were either planning to hire an investment professional or to obtain a CFA designation that there was an interim injunction against respondent No.2 from using their afore-noted trademarks. It is claimed by the appellants that the said notice was aimed at that group of people who were interested in acquiring a definitive standard for professional competence or for those who wanted to hire such professionals and not for the general public as such. According to them, this is clear from the text of the "Word of Caution", which says that "If you are planning to

either hire an investment professional or obtain a designation, you need to make informed decisions that benefit your future." However, it cannot be denied that while the publication refers to the interim order passed by the Delhi High Court, it omits to mention that the said injunction will not come into effect till the end of current academic session of the CFA programme, which, according to respondent No.2, was to conclude in May 2009, and that the order would not mean expression of final opinion on the matter. According to respondent No.2, the omission of last two sentences of the interim order was a conscious and deliberate suppression to somehow project ICFAI in a bad light in order to harm its reputation in the eyes of the professional community and, therefore, the offending publication was neither in "good faith" nor in "public interest".

32. It is trite that where to the charge of defamation under Section 500 IPC, the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him. The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that

burden by leading evidence to prove his case beyond a reasonable doubt. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with a degree of proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which it came to be made and the status of the person who makes the imputation as also the status of the person against whom imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding appellants' plea of "good faith" and "public interest". Unfortunately, all these are questions of fact and matters for evidence.

33. In the instant case, the stage for recording of evidence had not reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied

the requirements of "good faith" and "public good" so as to fall within the ambit of the Tenth Exception to Section 499 IPC. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by respondent No.2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties.

34. For the afore-going reasons, we are of the opinion that the High Court was right in refusing to quash the complaint under Section 500 IPC. The appeal, being devoid of any merit, is dismissed accordingly. Nothing said by the High Court or by us hereinabove shall be construed as expression of final opinion on the merits of the complaint.

……J.
(D.K. JAIN)

……J.
(H.L. DATTU)

NEW DELHI;
MAY 14, 2010.