

# IN THE HIGH COURT OF SIKKIM

## ORDER SHEET

Criminal Revision Petition .....No. 4 of 2004

M. CHANDRAN ..... Petitioner / Appellant

Versus

A. MOULIK ..... Respondent

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	16.6.2004	<p>This revision is directed against the order dated 3.4.2004 passed by the learned Judicial Magistrate, (East) Gangtok in P.C.Case No.05/2004 rejecting the petitioner's complaint filed against one advocate A. Moulik.</p> <p>2. The case of the petitioner is that he had filed a criminal complaint against one Fanthome in the Court of CJM (E&amp;N) at Gangtok. The advocate, A.Moulik was the counsel for the said Fanthome in the said case. In course of hearing of that case, the concerned advocate while arguing the case instead of reading out paragraph 16 read out paragraph 9 of the judgment of this Court rendered in Civil First Appeal No.1 of 1997 which was not relevant in the case against Fanthome, and by such reading in the Court, injury to his wife as well as to his reputation was caused and thereby the concerned advocate defamed them. The petitioner's further allegation is that the concerned advocate bore ill-will and personal enmity against him since 1994 and he did not act in good faith in reading out paragraph 16 of the judgment of this Court rendered in the First Appeal.</p> <p>The learned Magistrate after hearing the petitioner, dismissed the complaint holding that, reading out paragraph 9 of the judgment in a</p>	



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judicial proceeding between the same parties did not amount to defamation inasmuch as, a lawyer conducting a case on behalf of his client enjoys certain privileges and latitudes and reading out a particular portion of judgment being in the interest of his client, he is protected under ninth exception to Section 499 IPC.

3. I have heard the petitioner who has argued the case in person. He submitted that the learned Magistrate committed illegality in rejecting the complaint because at the time of considering prima facie case, she should not have taken into consideration as to what would be the probable defence plea of the accused. In this connection he has referred to the judgments of the Supreme Court in ***Sewakram versus R. K. Karanjiya - 1981 Criminal Law Journal 894, Smt. Nagawwa versus V. S. Konjalgi - AIR 1976 SC 1947, Chaman Lal versus State of Punjab - AIR 1970 SC 1372 and judgment of Kerala High Court in G. Chandrasekhara Pillai versus Karthikeyan - AIR 1964 Kerala 277.***

4. I have carefully considered the submissions made by the petitioner. Perusal of the impugned order would show that the learned Magistrate did not find a prima facie case of commission of offence of defamation by the advocate because of his reading out paragraph 9 of the judgment of this Court rendered in the Civil First Appeal No.1 of 1997. The said judgment was between the same parties and reading a portion of it in a judicial proceeding by an advocate appearing for a particular party does not amount to defamation. Before a Magistrate



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		<p>takes cognizance of an offence, he has to see whether the complaint constitutes an offence. By referring or reading out a portion of judgment without reading another portion as suggested by the petitioner, in a Court proceeding, <del>it</del> cannot be held that by such act the concerned advocate defamed the petitioner or his wife. A lawyer appearing in a case has his own way of presenting his client's case. He might have considered that particular part of the judgment which he was said to have placed in the Court would be relevant in defending his client's case. The petitioner's submission is that the concerned advocate should have placed in the Court paragraph 16 before placing paragraph 9 of the judgment delivered by this Court in the First Appeal. This can hardly be accepted as a valid proposition. A lawyer has his own choice or way of presenting his client's case in a Court. He cannot be coerced that he should present the case in the manner in which his opponent wants it to be done.</p> <p>5. For the aforesaid reasons, I do not find any valid or cogent reason to interfere with the impugned order</p> <p>6. I may also note that the ratio of judgments referred to by the petitioner has no application to the facts and circumstances of this case.</p> <p>7. In the result, I do not find any merit in this revision which is accordingly dismissed.</p> <p style="text-align: right;">   <b>( R. K. Patra )</b>  <u>Chief Justice</u> </p>	