

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1248/2006 & CrI M A 2131/2006

Reserved on : January 29, 2009

Date of decision : March 20, 2009

DR.ANIL BANSAL

..... Petitioner

Through Mr. Praveen Khattar, Advocate

versus

KALPANA SHREE AGGARWAL & ORS Respondents

Through Mr. N. Prabhakar, Advocate
for R-1.

Mr. S.R. Sharma, proxy counsel for Mr. S.C.
Singhal, Advocate for R-4 & 5.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|--|-----|
| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

J U D G E M E N T

1. The prayer in this petition under Section 482 Code of Criminal Procedure (Cr.PC) is for quashing of Complaint Case No. 527/1/2004 titled “*Kalpana Shree Agarwal v. Dr. Anil Bansal & Others*” under Section 500/384/120B/34 IPC, pending in the court of the learned Metropolitan Magistrate (MM), New Delhi, and all proceedings consequent thereto insofar as it concerns the petitioner Dr. Anil Bansal.

2. The complaint stated that complainant had been married to accused No.4 Dr. Deepak Agarwal on 22nd May, 1997 and a male child was

born to the couple. Unfortunately, the relationship between the husband and wife broke down and there was a litigation under Section 406/498A IPC instituted by the complainant against accused No.4 in FIR No. 50/2004 registered at Police Station Paschim Vihar. It is further alleged that accused No.4 and his elder brother Rajeev Agarwal committed an offence under Section 341 IPC for which FIR No. 497/1995 was registered at Police Station Paschim Vihar. It is alleged that accused No.2 S. Charanjit Singh, Editor of Rustam-E-Hind (weekly), in connivance with accused No.1 (petitioner herein) who is described in the complaint as the Ex-President of the Delhi Medical Association, connived with the remaining accused, i.e. A.S. Ahluwalia, Deepak Agarwal and Mrs. Kanta Aggarwal (Mother-in-law of the complainant) and had published an article in Hindi weekly newspaper Rustam-E-Hind , Year-8, Edition No.14 on page 5 under the title “**Asamaji Charitraheen Nalki Doctron Savdhan – Anil Bansal**” carrying a photograph of the complainant and making false, misleading and defamatory statements therein against the complainant.

3. The said complaint was filed in 2005. Four witnesses, including the complainant and her mother, were examined at the pre-summoning stage. On 16.5.2005, the learned MM passed the following order:

“Arguments heard. It has been averred that the complainant is a Dr. by profession and is having reputation in the society and he is having strained relationship with her husband

accused no.4. It has been alleged that there was a publication in the newspaper Rustam e Hind dated 13.3.2004 wherein her chastity was undermined by stating that she is living with one dalal namely Rajesh Raghav and is unsocial, characterless false doctor and the same is stated to have been published by one Dr. Anil Bansal. It has been averred that the accused no.1 to 5 have committed an offence u/s 500/384/120-B/34 IPC and prayed for summoning the accused persons. There are no averments qua section 384 IPC in the complaint. Hence the deposition to that effect in statement cannot be appreciated. It has been deposited by CW3 and CW4 who are the mother of the complainant and complainant respectively that accused no. 4 & 5 have given the published articles in the court in the present of general public and thereby the complainant has been defamed. CW5 have stated that he is President of Delhi Medical Association and have sought the reply on the complaint of the complainant against Dr. Anil Bansal Ex. CW 1/A regarding the published matter and he had sought the comments from Dr. Anil Bansal and the same was not received by them.

I have perused the file. Accused No.2 is stated to be alleged editor of Rustame Hind as stated in para 10. There is nothing against accused No.3 at this stage showing his involvement. Hence, as per the statement of CW 5, when no explanation is given by Dr. Anil Bansal to Delhi Medical Association. It is presumed at this stage that he has got the matter published

without going through the veracity of the same. Undoubtedly, the matter is published one and the newspaper contains defamatory allegations against complainant and accused no.4 & 5 have defamed the complainant by further circulating the same. Accused No.2 is editor. Hence there are sufficient grounds against accused no.1, 2, 4 & 5 u/s 500 IPC and they be summoned accordingly on taking steps 7.11.2005.”

4. It is submitted by the counsel for the petitioner that a perusal of article as a whole would show that the petitioner has nothing to do with it at all. He was asked perhaps by the crime reporter of the newspaper concerned about the status of quack doctors practising in Delhi. The first two paragraphs of the article in fact refer to that aspect. From the third paragraph onwards, it is clear that the article thereafter is not based on any statement made by the petitioner but the crime reporter’s own investigation. It is submitted that the petitioner has no personal knowledge of the complainant at all and merely because the title of the article contains the name of the petitioner, it cannot be said that he was responsible for any alleged imputation made in the article against the complainant.

5. Learned counsel for the respondent, on the other hand, questions the maintainability of the present petition stating that it raises disputed questions of facts. According to him, the contents of the complaint do bring out a prima facie case against the petitioner for the offence under Section 500 IPC. Reliance is placed upon the judgment in *Crl.M.C. 1248/2006*

Hamida v. Rashid Alias Rasheed and Others (2008) 1 SCC 474, in which it is held that at the interlocutory stage, this court should not interfere. Reference is also made to the decision of the Bombay High Court in *Ashok Mehta v. State of Maharashtra and Others, 2005 CRI.L.J. 3321*.

6. The article in question, when translated, reads “*Antisocial Characterless, Quack Doctors Beware: Anil Bansal*” and the first two paragraphs read as under:

“New Delhi: Recently Delhi Medical Association’s former President Anil Bansal has taken a tough step against the quack doctors. He wants legal action to be taken against them. He said that there are 20 to 25 thousand quack doctors practicing in Delhi who are making fool of the people of Delhi by indulging in every kind of medical practice. Mainly they are making fool of others by practicing as Sexologists or in Herbal medicines, Naturopathy. He said that he would wipe out the quack doctors from the roots because the quack doctors are harming the people of the country and their only aim is to make money. Dr. Bansal has given a list of quack doctors who are running their illegal trade in Delhi.

We will publish the illegal activities done by some quack doctors in our forthcoming editions. We are making a beginning by publishing from this edition.”

7. There is no doubt that following the above two paragraphs, the article proceeds to discuss the complainant. It ends with the statement by the said crime reporter that “*we are investigating this issue in detail and after complete investigation, we will publish the further*

story in detail. Continued”. Clearly, the details pertaining to the complainant were the product of the so called investigation by the crime reporter. Therefore, the source of the crime reporter’s information about the complainant is clearly not Dr. Anil Bansal. Only the first two paragraphs of the article can, if at all, be attributed to the conversation that took place between the crime reporter and Dr. Anil Bansal. Dr. Anil Bansal was clearly not responsible for the title of the article. In fact, even the title does not refer to the complainant as such but the statement of the petitioner in respect of the quack doctors in general.

8. On 15th July, 2004, in response to the query of the President of the Delhi Medical Association, the petitioner denied the charges leveled by the complainant. He suggested that the portion of the news story after the first two paragraphs was written by the crime reporter himself.

9. The facts in *Ashok Mehta* (supra) and *Hamida* (supra) are distinguishable and therefore, those decisions really do not assist the case of the respondent. It can be safely concluded in the instant case that on a perusal of the complaint and the pre summoning evidence as a whole, not even a prima facie case is made out for proceeding against the petitioner Dr. Anil Bansal for the offence under Section 500 IPC.

10. Accordingly, the petitioner will stand discharged in Complaint Case No. 527/1/2004 titled ***Kalpana Shree Agarwal v. Dr. Anil Bansal***. A copy of this order be sent to the learned MM forthwith. It is made clear that the complaint will continue as far as the remaining accused are concerned.

11. The petition and application stand disposed of accordingly.

S. MURALIDHAR, J.

MARCH 20, 2009
pk