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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 03, 2010

Date of Order: September 14, 2010

+ CrI. M.C. No.4073/2009

% **D.K. Pandey** **14.09.2010**
...Petitioner

Versus

State & Anr. **...Respondents**

AND

+ CrI. M.C. No.4074/2009

% **D.K. Pandey** **14.09.2010**
...Petitioner

Versus

State & Anr. **...Respondents**

Counsels:

Ms. Anjali Jha for petitioner.

Mr. Neeraj Jain for respondent.

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By this common order, I shall dispose of the above two petitions preferred by the petitioner against the summoning order dated 26th February, 2009 passed by learned Metropolitan Magistrate in two complaints made by two complainants against the petitioner.

2. The complainants filed a complaint each under Section 499,500 IPC against the petitioner since the petitioner had issued a Circular to its all agents and customers. The circular reads as under:-

"Date: 12.11.2008

CIRCULAR
TO WHOM IT MAY CONCERN

*This is to inform that **M/s Gupta Brothers/ M/s R.P. Gupta & Sons, 3676, Gali Shahtara, G.B. Road, Delhi-110 006** are **Not our Authorized Dealer.***

*It has come to our notice that "**MIRANDA**" make items are being sold at **Higher Discounts** for which we will not be responsible for **Genuineness & Quality** complaint of material.*

Thanks,

*For **M/s. MIRANDA TOOLS PVT. LTD.***

sd/-

D.K.PANDEY

REGIONAL MANAGER"

3. It is not in dispute that neither Gupta Brothers nor M/s R.P. Gupta & Sons are authorized dealers of the petitioner. However, respondents/complainants in their complaint contended that the respondents were very reputed dealers in the market and this circular harmed their reputation because the circular gave an impression that the tools being sold by the complainants /respondents were not genuine or of good quality.

4. Section 499 IPC Explanation 10 reads as under:

"Section 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 expected, to defame that person.

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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."

5. The first part of circular being truthful thus cannot be considered as a publication for harming the reputation of the respondents. The second part of the circular is a caution issued by the petitioner to the customers that they would not be responsible for genuineness and quality of the items sold at higher discounts. It is obvious that the petitioner wanted to convey to the public that if anybody was giving higher discount, there was probability that the material sold was not of genuine quality and the petitioner company would not be responsible for the quality.

6. The learned MM while passing summoning order had only discussed that the complainant was a company of repute. He did not discuss how the issuance of circular amounted to defamation of the complainants company. While passing summoning order, it is obligatory on the part of learned MM to consider the material and evidence placed on record in the light of offence allegedly committed

and analyze it so as to come to a conclusion whether the commission of offence in terms of provisions of law was disclosed or not. Just reproducing a part of the evidence and stating that he was satisfied that there was sufficient material on record to summon the accused, only shows non-application of mind. Such an order is a mechanical order since the trial court did not apply mind whether the ingredients of the offence were prima facie satisfied or not in view of the explanations given in the section itself. It is the duty of the court to consider if the alleged act falls under any of the explanation or not. The learned MM in this case abdicated this obligation of analyzing the material in the light of provisions of Section 499 IPC.

7. I find that the complaints were a gross misuse of judicial process and the petitioner was within its right to issue a caution notice /circular to the customers and general public and to inform them that the complainants/ respondents were not their authorized dealers and then to caution that if their brand of tools were being sold at higher discounts then public should take caution about the genuineness and quality.

8. In the result, the petitions are allowed and the summoning order dated 26th February, 2009 passed by learned Metropolitan Magistrate in two complaints made by two complainants against the petitioner are hereby set aside.

9. The petitions stand allowed.

September 14, 2010
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SHIV NARAYAN DHINGRA, J