

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: January 09, 2013
Pronounced on: January 10, 2013

+ **Crl. Revision Petition No.283/2004**

AARTI JAIN Petitioner
Through: Mr. Manish Gandhi, Advocate

versus

UMA SHANKER VYAS & ORS. Respondents
Through: Mr. R.K. Tewari, Advocate for
Respondent No. 1
Mr. Sunil Sharma, Additional
Public Prosecutor for State –
Respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. Order of 6th February, 2001 of trial Court, summoning respondents - *Uma Shankar Vyas and Surender Mohan* in a complaint case for the offence under Section 500/34 of the IPC was challenged by respondents/accused by way of a revision petition, which stands allowed vide impugned order of 8th March, 2004 while holding as under:-

“On perusal of the entire complaints, it is revealed that the total complaints are directed to conduct investigation into the matter. These complaints are made to the police official and PS to Lt. Governor and are in the nature of brining the facts to their notice by the revisionist. Per-se these letters are addressed to the officers in their official capacity requesting therein to conduct proper investigation into the matter.

On perusal of the entire testimony, it is nowhere revealed that the said letters were transmitted with a view to making it

public or so to say sent with the intention of putting forth the facts either to the public in general or the friends or relatives. The said letters per-se are made to move the machinery of the police so that they may look into the matter and conduct investigation into the matter. If we can choose the portions of the letters, which are allegedly defamatory, the real intention of the party cannot be gathered. The real intention can only be gauged by reading the said complaints in extensio and in piece-meal or reading the same by dissecting it.”

2. The penultimate finding returned in the impugned order is as under:-

“On perusal of the said letters, it is evident that they are in the nature of making the complaint so that the matter can be investigated properly and the allegations made therein are in the nature of protecting the interest of the revisionist and I see no mala-fide intention on the part of the revisionist while making the said allegation contained therein.

On perusal of the entire record, I am of the considered opinion that keeping in view the circumstances under which the said complaints were made where all three FIRs were registered by the complainant against the revisionist, the allegations made in the said letters cannot be read in isolation which will never cull out the real intention of the revisionist. Taking into consideration the uncontroverted allegations made therein, no prima facie case is made out against the revisionist.”

3. At the hearing, learned counsel for petitioner assails the impugned order on the ground that the defence of respondents/accused has been accepted without the complaint case being put to trial, which is contrary to law. Reliance is placed upon decision in *Jeffrey J. Diermeier v. State of West Bengal*, (2010) 6 SCC 243.

4. Learned counsel for respondents/ accused supports the impugned order and submits that the case of respondents/ accused is covered by explanation 4 as well as exception No. 8 & 9 to Section 499 of IPC and so, impugned order is well merited.

5. Upon hearing learned counsel for the parties, on perusal of impugned order, the material on record and decision cited, I find that on a bare perusal of the alleged defamatory letter of 15th May, 1997 (*Annexure-A*), it cannot be said that its contents are not *per se* defamatory. Whether respondents/ accused are covered by any exception/explanation or not is a matter which cannot be pre-judged at the stage of summoning and is required to be seen at the trial of this case. To so conclude, reference is made to paragraphs No. 37 to 40 of the Apex Court decision in *Jeffrey (Supra)*, which read as under:-

“37. 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.

38. 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 the 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.

39. 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 the imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding the appellants' plea of “good faith” and “public interest”. Unfortunately, all these are questions of fact and matters for evidence.

40. In the instant case, the stage for recording of evidence had not been 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 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.”

6. In light of the aforesaid, the impugned order is rendered indefensible, as it suffers from material irregularity and the question whether case of respondents/accused is covered by any of the explanation/exceptions to Section 499 of the IPC, is required to be determined at the trial.

7. Resultantly, this revision petition is allowed and the impugned

order of 8th March, 2004 is set aside and order of 6th February, 2001 is restored for proceeding in accordance with the law.

8. This petition is disposed of with aforesaid observations.

(SUNIL GAUR)
Judge

January 10, 2013

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