

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.L.P. No. 529 of 2012
(converted into Crl. A. No. _____ of 2014)

Reserved on: July 23, 2014

Decision on: July 28, 2014

PROF. RAM PRAKASH Appellant-in-person.

versus

D N SRIVASTAVA & ANR. Respondents
Through: Mr. Santosh Kumar, Advocate
with Respondents 1 and 2 in person.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
28.07.2014

1. The Petitioner Prof. Ram Prakash seeks leave to appeal against the judgment dated 1st June 2012 passed by the learned Metropolitan Magistrate-04 (South) [MM], Saket Courts Complex, New Delhi, acquitting the Respondents of the offences under Section 500 read with Section 34 of the Indian Penal Code (IPC).

2. Mr. Santosh Kumar, learned counsel for the Respondents raised a preliminary objection that the criminal leave petition was time-barred and that an application for condonation of delay ought to have been filed.

3. It is seen that the impugned judgment of the learned trial Court is

dated 1st June 2012. The Petitioner filed a criminal revision petition before the learned Additional Sessions Judge. By an order dated 29th September 2012, the learned ASJ dismissed the criminal revision petition on the ground of maintainability. Within thirty days of obtaining a certified the copy of the said order, the present criminal leave petition was filed on 30th October 2012. The Court, in these circumstances, does not find any merit in the submission of learned counsel for the Respondent as regards the limitation.

4. Having heard the Petitioner in person and learned counsel for Respondents, the Court is of the view that there are sufficient grounds made out for grant of leave to appeal.

5. The petition is allowed and the case is directed to be registered as a regular criminal appeal.

Crl. A. No. _____ of 2014 (to be registered and numbered by the Registry)

The complaint

6. The Appellant Prof. Ram Prakash filed a complaint on 27th November 2008 against Respondent No. 1, Assistant Editor, 'Jan Vikas' and Respondent No. 2, Editor, 'Jan Vikas' under Sections 500 and 501 IPC stating that the Respondents had knowingly published a defamatory news item titled 'Adaalat ke aadesh par bhi Nagar Nigam Maun' (Despite Court Orders, Municipal Corporation Silent) in the 3rd

to 9th December 2007 issue of 'Jan Vikas', a Hindi newspaper published in South Delhi.

7. The Appellant, *inter alia*, stated in his complaint that he was the owner of the property at B-48 South Extension Part-I, New Delhi-110049 (hereinafter the property in question). He was a retired professor enjoying a good reputation. Respondent No. 1 was a tenant occupying a room with an attached toilet cum bath in the property in question. He had defaulted in payment of rent and occupied a certain portion not let out to him without authorisation. Prof. Ram Prakash had been compelled to initiate litigation against Respondent No. 1 which lasted nearly fourteen years before the trial courts and appellate courts and this had led to unpleasantness between the parties. At the time of filing of the complaint Respondent No. 1 owed Rs. 90,000 to Prof. Ram Prakash as the decretal amount and in another case (443 of 2002) despite the trial Court issuing five warrants of arrest, and despite filing nineteen contempt applications, there had been no compliance by Respondent No. 1 with the orders of the court.

8. Prof. Ram Prakash in his complaint listed out the defamatory portions of the news item. *Inter alia*, the news item made a specific reference to the property in question and alleged that despite having been served with a notice by the Municipal Corporation of Delhi (MCD) and despite notice by a Local Commissioner (LC) appointed by the Delhi High Court, Prof. Ram Prakash had, as a result of some 'extra ordinary setting' and influence, prevented the MCD from taking

action. The news item further alleged that the ground floor of the property in question had been used by Bengali Sweet Centre for a kitchen and godown and about 10-12 servants were living there. The said news item further alleged that the property in question which was a residential property, was being misused for commercial purposes.

9. Prof. Ram Prakash, in his complaint, averred that the news item was published “without verification of truth and with wilful blindness and malafide intention....”; and that it was published by the Respondent with malicious motive. Prof. Ram Prakash further stated that in Suit No. 436 of 2006 filed by him against his previous tenant for the recovery of property tax and damages which was pending in the Court of the Additional District and Sessions Judge, Delhi, the tenant while cross-examining Prof. Ram Prakash on 20th August 2008 confronted him with the said issue of the ‘Jan Vikas’ containing the defamatory news item in support of his allegation that Prof. Ram Prakash was manipulative and a habitual defaulter with a doubtful reputation. Prof. Ram Prakash, in his complaint, therefore stated that on account of the publication of the said defamatory news item his reputation and goodwill had suffered. He underwent severe mental pain and agony. Further, he was required to clarify his position before local authorities several times in view of the false allegations of the Respondents. He claimed that he was entitled to recover a fine of Rs.20,000 from the Respondents and reserved his right to claim damages against the Respondents in civil proceedings.

The trial

10. By an order dated 19th March 2009 both the Respondents were summoned for the offences punishable under Sections 500 and 501 IPC. Notice for the offence under Section 500/34 IPC against both the Respondents was framed on 20th November 2010. They pleaded not guilty and claimed trial.

The Evidence

11. Prof. Ram Prakash examined himself as CW-1. The Respondents examined five witnesses. Maheshwar Sharma (DW-1) was a resident and neighbour of the property in question. In his examination-in-chief, he stated that the premises were being used for commercial purpose by Bengali Sweets Centre but in his cross-examination he stated that he had not actually seen the basement being used for preparation of sweets. DW-1 claimed to have seen the employees of Bengali Sweets in their uniform but he himself never went inside the ground floor of the property in question.

12. Mr. Shamsheer Singh (DW-2), Senior Town Planner (L), Town Planning Department, MCD stated that he had brought the original letter dated 26th September 2008 written by the MCD in response to an application filed by Respondent No. 1 under the Right to Information Act, 2003 (RTI Act). Two queries raised in the application pertained to hostel and paying guest accommodation being provided in the property in question. The said letter of the MCD stated that use of the premises as hostel is permitted in the residential use

zone. He claimed in his cross-examination that he had given only a general statement about the definition of 'hostel' as per the Master Plan and nothing specific to the property. He stated "I cannot say anything what is going on in the premises B-48, South Extension Part-1, New Delhi. I do not know anything about the aforesaid property".

13. DW-3 was Charan Singh, a UDC in the Property Tax Department, MCD. He brought the certified copy of the reply dated 17th March 2010 to the RTI application dated 24th February 2010. This reply was marked as Ex. DW3/A. A perusal of the said document shows that the MCD had clarified that "As per available record, as per report of the then area Inspector dated 16.05.2001, the basement and Ground floor in the property were found occupied by CMCS, tenanted for office use; First floor (1 room) was found rented to Subham International; First floor rented to Mr. Bindra and Second floor were found locked".

14. DW-4 was Ravi Kant Gupta, an Assistant Engineer in the Building Department, MCD. He brought attested copies of the replies dated 3rd April 2008 (Ex.DW4/A and Ex.DW4/B), reply dated 3rd September 2008 (Ex.DW4/C), reply dated 26th October 2009 (Ex.DW4/D), reply dated 4th September 2008 (Ex.DW4/E) and reply 22nd December 2008 (Ex.DW4/F) in response to various RTI applications filed by the Respondent No. 1 on 27th February 2008; 5th August 2008 and 6th October 2009 respectively. These replies showed that no girl hostel was running in the premises in question. However, the first floor was being used as a paying guest accommodation. The

property was booked on 12th June 2002 “for action u/s 344(1) and 343” of the DMC Act on account of unauthorized construction. No fine had been imposed on the building owner and that despite several attempts, demolition actions could not be taken “due to non-availability of police on all occasions”. Only two refusal letters of the police force dated 15th and 28th January 2003 were on record. The Department had never attempted to stop commercial use of the property in question and even at present it was not being used for commercial use and that although 72 letters were written for requisition of the police force for taking action for the period 12th June 2002 to 5th August 2008, no action was taken.

The trial Court judgment

15. The trial Court has, in the impugned judgment, discussed the evidence in detail. The trial Court concluded that the imputations in the article in question “would definitely harm the reputation of any person, in the estimation of the right thinking members of the society”.

16. The trial Court next proceeded to examine whether the action of the Respondents gave them the benefit of the First and Ninth Exceptions to Section 499 IPC. The trial Court concluded that the property in question had indeed been booked for unauthorised construction and despite several attempts the MCD did not take steps to demolish the said unauthorised construction. Further, the evidence of DW-3 and Ex.DW3/A proved that the Complainant did let out his

property for commercial purpose. It was concluded that on a wholesome reading of the news item “it appears that the article does not specifically target any individual although it refers to the Complainant by name”. There was no material on record to show that the news item had been written by the Respondents out of malice and therefore they were entitled to the benefit of First and Ninth Exceptions to Section 499 IPC as well.

Analysis of the news item

17. The news item is titled '*Adalat Ke Aadesh Par Bhi Nagar Nigam Maun*' which when loosely translated reads 'Despite Court Orders MCD Silent '. A translated copy thereof has been placed on record by the Appellant and its correctness is not contested by the Respondents. The first para of the news item talks generally about the failure by the MCD to take action despite orders of the Court. It states that the MCD takes actions according to its whims and fancies, even at the cost of violation of the orders of the Court, if the owner of the property is from a political background or belongs to the land mafia or is a reputed property dealer.

18. The next para begins by saying that there have been numerous instances in Delhi where construction of residential houses is not according to the sanctioned plan. It mentions that residents of these areas state that no action has been taken despite repeated complaints to the MCD at every level. The actions of the demolition squad of the MCD are an eye-wash and illegal encroachers do not suffer. The news

item then proceeds to state that the MCD demolition squad does not even enter those streets where persons with good connections (*Unchhi pahunch wale log*) have made illegal encroachments.

19. Soon after the above statement, as an illustration, the article proceeds to draw the attention of the reader to the property in question by mentioning specifically the address and the owner. It alleges that after the building plan was sanctioned, drastic alterations and additions were made (*jabardast tarike se avedh addition evam alternation kiya gya hai*). The article further alleges that the ground and the first floor of the property was being used illegally for the last two decades but the MCD proved fully incapable to stop it.

20. It then proceeds to allege that it is learnt that the owner of the property, Ram Prakash is a man with high level connections (*ek bahut pahunch wala vyakti hai*). He has 'setting' or is in collusion with the officers of the MCD and the electricity supply company (*Uski Nigam, bijli company ke adhikario ke sath saant-gaant hai*). It then alleges that due to that reason, despite repeated complaints being filed, the officials failed to take action.

21. The news item then dwells at great length on the property in question. It states that on the one hand for the last two decades, the premises continues to be misused for commercial purposes and on the other the plan of the entire premises had changed. It alleges that despite the local commissioner ('LC') appointed by the Court for

inspecting the house and issuing notice to the landlord for sealing of the house, on account of the Petitioner's connection and collusion with the officials, the MCD has been unable to take action against him (*Makan Malik Ram Prakash ki setting ki dad dani hogi – nigam uska bal bhi baka nahi kar pai*).

22. The news item then states that the ground floor is being used for the kitchen and godown of a well-known sweet shop 'Bengal Sweet Centre' which has its business in South Extension Part-I Market and 10-12 servants reside there and frequent up to 2 am in the night, which has disturbed the peace of the neighbours. The news item then states that despite the notice being issued by the LC appointed by the Delhi High Court, no action was taken by the MCD. This portion of the news item ends by stating that the failure of the MCD to act is for the reason best known to it "but one thing is evident that if you are a person of higher links and have contacts with senior officers, then you can make encroachment as much as you like, contravention and infringement and undertake illegal construction as per your desire, no action will be taken against you" (*per ek baat to saaf hai ki yadi aap rasukwale hai aur aapki upar tak acchi pahunch hai to chahe jitney avadh kabje aur atikraman kar lai ya phir apni marji sa avadh nirman kare aap par koi aanch yahi aaigi*).

23. The news item then proceeds to discuss certain other properties in respect of which there were complaints regarding unauthorised construction and encroachment. The new item, under the by-line of

Respondent No.1 ends by stating “Our correspondent enquired from Municipal Corporation of Delhi under Right to Information Act that for what reason the Corporation are not taking action against such misdeeds. If any reply is received, you will be informed in the next edition of Janvikas.” (*Hamare Sanvaaddata Ne Dilli Nagar Nigam Se Soochna K Adhikar K Tehat Ye Jaankari Maangi Hai Ki Akhir Wo Kaunsi Wajah Hai Jiske Karan Aisi Andhergardi Per Nigam Ki Taraf Se Koi Rok Tok Nahi Hai. Yadi Jawab Mila To Aapko Janvikas K Agley Ank Mai Aapko Avashyay Avgat Karaya Jayega*)

No enquiry prior to publication

24. From the evidence on record it is plain that all the applications filed by Respondent No.1 under the RTI Act were subsequent to the publication of the news item. The Appellant has, from the documents exhibited by the Respondents, culled out relevant information concerning the dates of the RTI applications and the replies as under:

Date of Application	Date of Reply
5-9-2008	26-9-2008
27-2-2008	3-4-2008
27-2-2008	3-4-2008
27-2-2008	3-4-2008
5-8-2008	3-9-2008
5-8-2008	4-9-2008
5-8-2008	22-12-2008
6-10-2009	26-10-2009
24-2-2010	17-3-2010

25. It is plain, therefore, that the statement made at the foot of the news item that Respondent No.1 had already made applications under CRL.L.P. No.529 of 2012 [now converted into Crl. A. _____ of 14]

the RTI Act to the MCD and was awaiting the replies is not borne out by the evidence placed on record since the news item was published with the date 3rd December 2007, whereas the earliest of the applications made by Respondent No.1 under the RTI Act is dated 27th February 2008.

26. Mr. Santosh Kumar, learned counsel for the Respondents, submitted that Respondent No.1 had generally made inquiries in the area and learnt of the unauthorised construction, and on that basis, proceeded to write the news article. He urged that the information gathered from the MCD pursuant to the applications made under the RTI substantiated what Respondent No.1 had stated in the news item. He laid particular emphasis on Ex. DW4/B being the reply dated 3rd April 2008 of the MCD Building Department which showed that the property in question was booked on 12th June 2002 on account of unauthorised construction. The replies dated 3rd September 2008 (Ex. DW4/C) and 22nd December 2008 (Ex. DW4/F) showed that the action for removal of unauthorised construction could not be taken despite several requests made by the MCD to the Police. He submitted that the only inference that could be drawn from these documents was that the Appellant was well connected with the officials of the MCD and, therefore, he managed to avoid any further action being taken by the MCD. Reliance was placed on the reply dated 17th March 2010 of the MCD (Ex. DW3/A), which showed that a report dated 16th May 2001 of the Area Inspector of the MCD showed that the basement and the ground floor were occupied by CMCS for office use; the first floor

was found rented to Shubham International and first floor rented to Mr. Bindra and second floor were found locked. According to Mr. Santosh Kumar, the above document, read together with the evidence of DW1, substantiated the statements made in the news item that the property in question was being misused for commercial purposes and yet no action was being taken against it.

27. Prof. Ram Prakash submitted that when the misuse of the property by CMCS was brought to his attention, he immediately initiated eviction proceedings. As far as the Bengali Sweets Centre was concerned the evidence of DW-1 showed that the employees were only residing in the premises. It was not being used for commercial purposes. Prof. Ram Prakash submitted that the entire news item is activated by malice inasmuch as the Respondent No. 1 was himself the tenant in one room in the property in question. Prof. Ram Prakash had himself instituted eviction proceedings against Respondent No. 1 in which he ultimately succeeded up to the Supreme Court of India. Respondent No. 1 had himself constructed a kitchen on the terrace and was later ordered to remove the construction by the Court hearing Suit No. 259 of 2009 and to pay compensation to Prof. Ram Prakash. Rs. 90,000 of the decretal amount was yet to be paid. He pointed out that the notice of unauthorised construction dated 8th April 2002 issued by the MCD was a cyclostyled document addressed to (i) Mr. Rajan Chaudhary (ii) Prof. Ram Prakash and (iii) Mr. D.N. Shrivastava. If no action was taken by the MCD then the blame should be equally shared by those who had raised the unauthorised construction. He

pointed out that what transpired between the date of that notice and the publication of the article in December 2007 was not enquired into or even disclosed by Respondent No.1. He also failed to disclose in his article that he had himself a tenant in the property in question and had received notice for unauthorised construction.

Publication not in good faith

28. The Court finds merit in the submissions of Prof. Ram Prakash. The trial Court has simply concluded that the notices for unauthorised construction and demolition action proved that the case fell within the First Exception to Section 499 IPC which states that “It is defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published”. What the trial Court appears to have missed completely is the fact that the notice of unauthorised construction was addressed to Respondent No. 1 himself and this fact was not disclosed in the news item.

29. As regards the renting out of the premises for commercial purposes, the evidence of DW-1 shows that he himself did not see any part of the premises being used for the making of sweets. It appears to have been used as residence by the employees of Bengali Sweets. As far as the CMCS is concerned, the Appellant placed on record the documents concerning the eviction proceedings instituted against them by him for misuse of the premises.

30. The *bonafides* of the Respondent No. 1 in publishing the news article had certainly to be examined in order to determine whether the imputation was made, in terms of the Ninth Exception to Section 499 IPC “in good faith for the protection of the interests of the person making it, or of any other person, or for the public good”. The failure of Respondent No. 1 to disclose that he himself was a tenant in the premises in question, and was facing eviction proceedings, clearly pointed to the publication lacking ‘good faith’. If indeed he himself was a party to the unauthorised construction and was therefore a recipient of the notice of the MCD, the failure to disclose that fact was also certainly an action not in good faith.

31. The trial Court also does not appear to have noticed the law governing the Ninth Exception Section 499 IPC. The requirement of the person making imputations having to make an enquiry prior to making them has been emphasised by the Supreme Court in *Sukra Mahto v. Basudev Kumar Mahto AIR 1971 SC 1567*. There the Court relied on its earlier decision in *Harbhajan Singh v. State of Punjab 1966 Cri LJ 82* where it held as under:

“In dealing with the Ninth Exception to Section 499 of the Indian Penal Code said that it would have to be found out whether a person acted with due care and attention. This Court said there “Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is where the element of due care and attention plays an important role”. The person alleging good faith has to establish as a fact that he made enquiry before he made the

imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to Section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true. The accent is on the enquiry, care and objective and not subjective satisfaction.”

32. If the news item drew the attention of the reader that there were unauthorised constructions against which no action was being taken and made no further imputations against any individual by name, it is possible that Respondents may have been able to take the benefit of the First and Ninth Exceptions to Section 499 IPC. However, the news item in the present case makes an unmistakable imputation that the Appellant has connections or ‘setting’ with the officers of the MCD and has exerted influence to prevent the taking of any demolition action. There is no evidence placed on record to show that prior to the publication of the news item any enquiry was made by Respondent No. 1 which would substantiate the above imputations. All his applications under the RTI Act appear to have been made subsequent to the publication. The mere fact that the police did not provide assistance for the purposes of demolition, cannot straightway lead to the inference that it was the Appellant who exerted his influence to prevent such demolition action. That would clearly be an exaggeration not borne out by any material.

33. It appears to this Court that the case would be covered by the decision of the Bombay High Court in ***Maroti Sadashiv v. Godubai Naryanrao* AIR 1959 Bom 443** where the evidence showed that the statements made by the Defendants in that case were to their knowledge untrue. The Court there held that “when no serious attempt was made to prove these reckless statements, I should think that these statements were made by these defendants having been actuated by the malice which is necessary to be proved before the plaintiff can say that the defendants are not entitled to the qualified privilege”. In ***Radheyshyam Tiwari v. Eknath* AIR 1985 Bom 285**, a plea of justification raised by the Defendant was negatived since he could not prove the imputations made in the series of articles published in a Marathi weekly.

34. The publication in question had circulation in South Delhi where the property in question was situated. It was used by a party facing eviction in a suit instituted by the Appellant to confront him in his cross-examination about his reputation. Clearly therefore it had the direct effect of adversely impacting the Appellant’s reputation. In this context the following observations of the Supreme Court in ***Sahib Singh Mehra v. State of Uttar Pradesh* AIR 1965 SC 1451** are relevant:

“The Press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided. When one is prove to

have made defamatory comments with an ulterior motive and without the least justification motivated by self-interest, he deserves a deterrent sentence.”

35. In light of the law explained by the Supreme Court, the court is of the view that while it concurs with the trial Court’s finding that the imputations in the news article “.....would definitely harm the reputation of any person, in the estimation of the right thinking members of the society”, it disagrees with the trial Court on its conclusion that the news item is covered by the First and Ninth Exceptions to Section 499 IPC. The news item while it purports to begin with speaking in general terms about the inaction of the MCD despite the court orders, turns its focus to the owner of the property in question. For the reasons discussed, the Court is of the view that the publication of the news item was not in good faith and attracted the offence under Section 500 IPC.

36. The Court accordingly sets aside the impugned judgment dated 1st June 2012 of the learned MM and convicts Respondent Nos. 1 and 2 for the offence under Section 500 read with Section 34 IPC.

Sentence

37. On the question of the sentence, it is pointed out that the Respondent No. 2 was the Editor of the newspaper in question which has since closed down its business. Respondent No. 2 is stated to be over seventy years of age. It is pleaded that he is not himself the

author of the news article and therefore his liability is not in the same degree as Respondent No. 1.

38. Respondent No. 1 has, as a result of the court orders up to the Supreme Court, been evicted from the premises. Although Prof. Ram Prakash urged that the Respondent No. 1 is yet to comply with the court orders in those proceedings, that is not the concern of the Court in these proceedings.

39. Keeping in view the above factors, the Court directs that Respondent No. 1 shall be sentenced till the rising of the Court and a fine of Rs. 10,000 which will be paid by him to the Appellant within ten days failing which he will undergo a simple imprisonment of one week. Respondent No. 2 is sentenced to a fine of Rs. 10,000 which will be paid by him to the Appellant within ten days failing which he will undergo a simple imprisonment of one week.

40. The appeal is disposed of in the above terms. The trial Court record be sent back forthwith along with a certified copy of this judgment. *Dasti* to the parties.

S. MURALIDHAR, J.

JULY 28, 2014
akg/tp