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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 30 OF 2018

Uttam Manulal Kale

Age : 78 Years, Occu. : Retired

Police Officer, R/o. : 802/10, L. N. Road,
Bullet Building, Hindu Colony, Dadar (E),
Mumbai : 400 014.

...Applicant

vs.

1. State of Maharashtra

[Through Senior Police Inspector,
Police Station, Matunga, Mumbai]

2. Sudhakar Shankar Suradkar

Age : 74 Years, Occu. : Retired

R/o. : 802/10, L. N. Road,
Bullet Building, Hindu Colony,
Dadar (E), Mumbai : 400 014.

...Respondents

Mr.Prashant Gurav – Advocate for the Applicant.

Mr.H.J.Dedhia – APP for the Respondent No.1-State.

Mr.Sudhakar Shankar Suradkar – Respondent No.2 – In Person.

CORAM : S. M. MODAK, J.

DATE : 19th APRIL, 2023

JUDGMENT. :-

1. Heard learned Advocate Shri.Prashant Gurav for the Applicant and learned – Complainant and Respondent Shri.Sudhakar Suradkar–Respondent No.2–In Person and learned APP Shri.H.J.Dedhia for Respondent No.1-State.

2. The Court of Metropolitan Magistrate, 61st Court, Kurla, Mumbai as per the judgment dated 9th January, 2018 was pleased to acquit the Respondent No.2 – Sudhakar Suradkar for the offence punishable under Section 500 of Indian Penal Code, 1860 [“IPC”]. The present Applicant is the Original-Complainant and he wants to challenge the correctness of the judgment and that is why, Special Leave is sought. So, the issue involved at present stage is whether Special Leave can be granted or not.

3. The law on this point is well settled. It is true that scope of an enquiry for grant of Special Leave and scope of an enquiry when the Appeal is finally heard after admission are different. When the Appeal is finally heard after admission, the Court is supposed to go into deeper enquiry on the basis of available evidence as to ascertain whether interference in the judgment is warranted or not. That exercise is supposed to be done after considering the accepted principles of the Evidence Act, 1872, the substantial provisions and the pronouncements made by this Court as well as by the Hon’ble Supreme Court.

Scope of enquiry

4. However, this deeper enquiry is not expected when prayer for Special Leave is to be considered. So, what is expected is

whether there is manifest error in the findings recorded by the trial Court, whether the conclusion is arrived at by total disregard to the principles of appreciation of evidence and whether the evidence adduced on record was neglected or omitted. Keeping these principles in mind, I have perused the record.

Submissions for Applicant / Complainant

5. According to learned Advocate Shri.Prashant Gurav, it is not necessary that actual defamatory words has to be mentioned. What is expected is the Complainant must mention those words which suggest of defamatory allegations. He wants to suggest that each and every word uttered by the Respondent No.2 need not be mentioned and need not be deposed. Ultimately, after considering those words, the Court has to draw an inference whether in nutshell they can be considered to be defamatory allegations.

Judgments relied upon by Applicant

6. In support of the said contention, he relied upon the following two judgments :-

- (i) Balraj Khanna and others V/s. Moti Ram¹
- (ii) Pyarelal Maganlal Jaiswal V/s. State of Maharashtra and others ²

7. I have perused the observations therein. The material

¹ AIR 1971 SUPREME COURT 1389

² 1996 CRI. L. J. 989

observation is in Para No.26 of ***Balraj Khanna (supra)*** judgment. It is observed :-

“.....The actual words used or the statements made may be reproduced verbatim by the complainant and *if the words are few and statement is very brief*. But, in cases where the words spoken are *too many* or the statements made are *too long*, in our opinion, *it will be the height of technicality to insist that the actual words and the entire statements should be reproduced verbatim*. The object of having, if possible, the actual words or the statements before the Court is *to enable it to consider whether those words or the statements are defamatory in nature*”.

8. The said ratio is reiterated in a judgment in case of ***Pyarelal (supra)***. That was an Appeal against the acquittal by the trial Magistrate for the offence punishable under Section 500 of IPC. Four witnesses were examined by the Complainant. Trial Court noticed variance in their testimonies. When the matter reaches to this Court, the evidence was appreciated. In that case, presence of the Accused was not disputed. It is observed that “the trial Court acted on the height of technicality in rejecting their testimonies”. The Accused uttered in that meeting that the Complainant and one Sahebrao Wani do not care for leaders and for their work they offer money to the officers and Sahebs and they are corrupt persons. (Para No.10 and Para No.7). Accordingly, the acquittal was set aside.

Facts of this case

9. If facts of this case are considered, we may find that the Applicant and Respondent No.2 have served the Police force at higher rank and both are the members of Gazetted Police Officers Co-operative Housing Society Ltd., and the said society owns a building by name Bullet Building situated at Dadar (East) Mumbai. At the same point of time, both of them were the office bearers of the Society. At the material time, when special general meeting was conducted on 15th April, 2012, the present Applicant was the president, whereas, the witness Shri.Malgaund Patil was a treasurer. The Respondent No.2 was also a member of the Managing Committee of the Society at Mumbai.

10. There were lifts installed in that building and special general meeting was called on 15th February, 2012. There were two subjects on the agenda. The relevant subject is that the lift is not operating properly and discussion was arranged. The second subject is not relevant for our discussion. The present Applicant and the Respondent No.2 have attended the meeting along with other members. The issue was also discussed. Nicolas Elevators were given a contract to maintain those lifts and this contract was approved in the earlier meeting held on 10th April, 2011. The meeting was

organized as the lift has stopped functioning in between and there was grievance that number of members were stalled in between the floors.

Allegations

11. The allegation of the Complainant – Applicant is that while raising grievance about functioning of that lift, the Respondent No.2 made defamatory allegations against the Applicant. In Para No.7 of the Complaint, the Applicant has alleged :-

“Shri S.S. Suradkar the accused while taking part in discussion with intend to defame the Managing Committee and particularly the complainant being the Chairman, alleged that, *there is corruption in that deal of lift.*”

These utterances have defamed the reputation of the Applicant and that is why, a private complaint was filed.

Evidence

12. The Respondent No.2 has denied commission of the offence. Trial was conducted. Apart from him, the Applicant examined following witnesses :-

- (a) Malgaund Appasaheb Patil–Witness No.2–Treasuer
- (b) Sydney Murzalo–Witness No.3–Representative of Nicolas Elevators
- (c) Sandip Meshtram Pale–Witness No.4–Videographer / Person who has videographed the meeting

Documentary Evidence

13. Apart from this, the Complainant relied upon the following documentary evidence. It consists of ;

- (a) Minutes of the meeting dated 10th April, 2011 (in which, contract was granted)
- (b) Minutes of the meeting dated 15th April, 2010 (relevant meeting)
- (c) Minutes of the meeting dated 26th May, 2012 (resolution to file a case was passed)

Apart from that, there is transcription made by the witness No.4 – Sandeep Pale about whatever has been videographed by him on 15th April, 2012.

14. Learned Metropolitan Magistrate who has recorded the evidence has taken notes. Prior to disposal of the case, he was transferred. Those notes were exhibited by his successor at Exhibit-63. There is a noting to that effect in the roznama dated 9th January, 2018.

15. The Respondent-Accused have also entered into the witness box.

Judgment of the trial Court

16. The trial Court was pleased to acquit the Respondent predominantly for following reasons :-

- (i) There was inconsistency noticed in between

testimony of PW No.3 and PW No.4 on one hand and minutes of the meeting dated 15th April, 2012 on the other hand (Para No.18).

(ii) The minutes dated 26th May, 2012 were not written by an independent person but by the Committee members. Minutes are required to be written by the independent person. (Para No.19).

(iii) There is inconsistency in between the verbal script on one hand and note-sheet prepared by the learned Metropolitan Magistrate at Exhibit-63 on the other hand (Page No.21).

(iv) Publication of this defamatory allegation was not there (Para No.23).

(v) The witness Sydney cannot be believed because he is beneficiary (Para No.24).

(vi) No independent witness “that the image of Complainant was tarnished” was examined (Para No.25).

(vii) The complaint is filed for the society and not in an independent capacity. However, there is no resolution (Para No.27).

(viii) The evidence was not trustworthy and believable (Para No.30).

Submissions of Applicant

17. During arguments, learned Advocate Shri.Gurav pointed

out that the learned Metropolitan Magistrate has described the provisions of Indian Evidence Act about appreciation. As said above, he relied upon the observations in above two referred judgments. According to him, there is no rule in Maharashtra Co-operative Society Rules, 1961 that minutes are to be written by an independent person. He quoted Rule 137 of the Regulations. Alternatively, he also submitted that as per the provisions of Section 280 of the Code of Criminal Procedure, 1973 [“Cr.PC.”], a judge who records the evidence can also record the remarks about the demeanor of such witness whilst under examination. He tried to support the note-sheet prepared by then learned Metropolitan Magistrate at Exhibit – 63. He fairly admits that so far as recording is concerned, that C.D., was not produced and there is no certificate under Section 65-B of Indian Evidence Act.

Submission by Respondent / Accused

18. As against this, Respondent No.2 – In Person submitted that whatever he has said in the relevant meeting is for the benefit of members of the Society and he has never alleged about corruption by the Applicant. He criticized the conduct of the Applicant in filing cases after cases. According to him, even though he has withdrawn the cases as assured in a matter before the Division Bench by this

Court, he has withdrawn all the cases, but this case is not withdrawn by the Applicant. What are the expectations of the judiciary about the police officers, he just referred views expressed in the article under title “EXPECTATIONS OF THE JUDICIARY FROM SENIOR POLICE OFFICERS TOWARDS GREATER COORDINATION” and more specifically, there are some remarks on Page No.34 about this Respondent. It reads like thus :-

“Here we have two roles of police – condemnable on one hand and praiseworthy on the other. But for an officer like DIG Suradkar, guilty could not have been punished.”

19. He relied upon the observations of Delhi High Court in case of ***Sanjeev Kumar Mittal V/s. The State***³ and specifically Para No.9. Therein there is observation why there is over-flowing of dockets. There is critical comment about the litigants who are having habit of filing cases after cases.

Consideration

20. As said above, the scope of the enquiry at this stage is very limited. After perusing the evidence, what I find is that there is oral evidence but there is documentary evidence as well and there is also evidence in digital form though not produced by way of C.D., but there is transcription made by the videographer Shri.Pale. This

³ TEST.CAS.NO.19/2004 : 1st June, 2010 : Delhi High court

transcription was produced by him at the insistence of the Respondent No.2. At that time, said witness was under cross-examination and he was cross-examined after the transcription was produced on record.

21. It is true that in a case of defamation or in any other case, documentary evidence is not required every time. If there is a documentary evidence, Court looks at it for the purpose of corroboration. Though video recording was done, C.D., was not produced.

22. It is true that as held in above two referred judgments relied upon by the Applicant, each and every words uttered is not required to be pleaded and deposed. But, those words must be sufficient enough to say that the Court can draw an inference that utterances / allegations are defamatory in nature. When the oral testimonies of three witnesses i.e. Complainant, his witness Malgaund Patil and Sydeny Murzalo on one hand and the documentary evidence in the form of minutes dated 15th April, 2012 on the other hand are perused, what we find is that the members present there raised various grievances about the functioning of the lift. Apart from this Respondent, one member Mr.Ingale has also echoed his grievance. The relevant utterances find place on **Page**

No.89 wherein there is a reference that the Respondent No.2 said

“यांत पैशाचा गैरव्यवहार झाल्याचा त्यांना संशय आहे.”

23. During oral evidence, Complainant has deposed :-

“At that time the accused while taking part in the meeting said that there was corruption in giving contract of lift maintenance.”

24. The treasurer Patil has deposed that :-

“आरोपी हे ‘निकोलस’ कंपनीचे बाबतीत भरपूर गैरव्यवहार झालेला आहे. लाखो रूपयांचा गैरव्यवहार झालेला आहे असे वक्तव्य करत होते.

25. The third witness Sydeny Murzalo has deposed the

Respondent Accused uttered :-

“सकाळी ११:३० च्या सुमारास मला आरोपींनी ‘तुम्ही चायनिज आयटम बसविलेले आहे, पैशाची अफरातफर झालेली आहे, करप्शन झालेले आहे’ असे म्हणाले.”.

26. On this background, when we have perused the transcription produced by the videographer Pale on Page No.108, there is recording of the discussion about functioning of the lift and grievance raised by the members about stopping of the lift. The relevant utterances find place at the bottom of Page No.109, that is :-

“श्री.सुराडकर म्हणाले, दुसरे एक माला पहायला पाहिजे. यांचे जे व्यवहार झाले त्यात पारदर्शकता नाही. पैशाची गडबड होण्याची शक्यता नाकारता येत नाही. त्यामुळे सर्व गोष्टी बघितल्या पाहिजेत व या सर्व गोष्टी रेकॉर्डवर घ्यायला पाहिजेत.”

27. If we consider all this evidence, we will find that the oral testimonies given by these three witnesses is on the basis of what

they have heard in that meeting. A reference in the minutes of the meeting is also on the basis of what the concerned members have heard and then what they have noted down in the minutes. As against this, the transcription is about what is videographed by the witness No.4. It is true that C.D., is not produced. There is no Section 65-B certificate under Indian Evidence Act. So, it is difficult to read that transcription. But, the Applicant could have certainly taken that efforts to prove that digital evidence in a manner laid down as per the Indian Evidence Act. But, he has made half-attempt. So, this Court finds that whatever utterances the witnesses have deposed is on the basis of what the witnesses have understood the utterances. Because, it is something to say that the corruption has taken place and another thing to say that corruption is suspected. (पैशाचा गैरव्यवहार झाल्याचा संशय आहे.) The preparation of minutes is earlier and giving deposition on the background of pleadings in complaint is latter in point of time. Minutes is to be given predominance rather than oral evidence.

28. The ratio laid down in above two judgments cannot be disputed. All the words and exact words are not required. But, it is one thing to say that all words need not be pleaded and it is another thing to say that the opinion / inferences are drawn by the witnesses

on the basis of those utterances. This case falls under second category. Hence, observations are not useful to the Applicant.

Conclusion

29. This Court feels that the trial Court has not committed any wrong in acquitting the Respondent No.2. I do not think that the appreciation has been done by disregarding the accepted principles of Indian Evidence Act. When there is an Appeal against the judgment of acquittal, there is minimum scope for interference. The presumption of innocence is reinforced unless the findings are so perverse which are against established principles of appreciation of evidence, no interference is warranted. In view of that, I have not gone into other findings relating to publication, non examination of an independent witness, not writing the minutes by the independent witness.

Use of note-sheet

30. However, the situation compels me to make an observation about an attempt made by the learned Metropolitan Magistrate in the impugned judgment while considering the note-sheet at Exhibit – 63. He has compared that note-sheet with verbal script prepared by the witness. Whether this comparison is possible. The answer is no. For what purpose, note-sheet was prepared by

then Metropolitan Magistrate, it is for the purpose of his understanding and for his refreshing. It has no evidentiary value.

However, learned Metropolitan Magistrate while delivering the judgment has committed a mistake in considering that note-sheet as piece of evidence.

31. I do not agree with learned Advocate Shri.Gurav that it can be considered as recording of demeanor by the learned Metropolitan Magistrate as per Section 280 of Cr.PC. That has to be done when the witness is under examination and not afterwards.

32. So, for the above discussion, I do not think that case for grant of Special Leave is made out. The conclusions drawn by the trial Court are proper and on the basis of proper appreciation of evidence. So, no case is made out. Hence, Leave is refused. As leave is refused, there is no question of admitting the Appeal against the judgment of acquittal. That proceeding also stand disposed of.

[S. M. MODAK, J.]