

Neutral Citation No. - 2023:AHC-LKO:85813

Reserved on:- 20.12.2023

Delivered on:- 22.12.2023

Court No. - 12

Case :- APPLICATION U/S 482 No. - 6220 of 2019

Applicant :- India Today Dot In Thru. Dr. Puneet Jain

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Imran Ullah, Kumar Ayush, Mariya Fatima, Nadeem

Murtaza, Sheeran Mohiuddin Alavi

Counsel for Opposite Party :- Govt. Advocate, Deo Kant Tripathi, Pranshu Agrawal

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant, learned counsel for the private respondent and perused the record.

2. The present application is moved by applicant with the following prayer:-

*"To quash the entire proceedings of Complaint Case No. 2577 of 2017 (**Rajendra Singh Vs. India Today and others**) pending in the court of learned Special Judge, Pollution, Lucknow pending in pursuance of summoning order dated 22.02.2018 under Sections 500, 501, 502 I.P.C.*

*It is further prayed during the pendency of this petition, to kindly stay the further proceeding of Complaint Case No. 2577 of 2017 (**Rajendra Singh Vs. India Today and others**) pending in the court of learned Special Judge, Pollution, Lucknow in pursuance of summoning order dated 22.02.2018 under Sections 500, 501, 502 I.P.C., otherwise the applicant shall suffer an irreparable loss and injury."*

3. Learned counsel for the applicant submitted that the Living Media India Limited is a registered company under the provisions of Companies Act, 1956 which was working in print and electronic media. In the year 1998, the news portal India Today was also launched at the social media platform.

4. On 19.06.2017, a news item was published that a high level probe initiated by the Allahabad High Court with the issue that former

U.P. Minister, namely, Gayatri Prajapati paid sum of rupees Ten Crores to get bail for himself in a rape case and the said bail was part of a deep rooted conspiracy, involving some Judges and Advocates. It was also reported that an FIR was registered against Mr. Gayatri Prajapati who was then a Minister in the Government of Samajwadi Party in Uttar Pradesh. Mr. Prajapati had approached Hon'ble Supreme Court to get stay on his arrest, but Hon'ble Apex Court directed him to approach the Court concerned. It has further been submitted that there is no imputation against the private respondent in the aforesaid news item. A notice was given by the private respondent on 15.09.2017 mentioning several facts which were not a part of the news item. Reply was given to the private respondent and on the objection of the private respondent, the news item was deleted from the platform. The complaint of case in question was filed for summoning the applicant under Sections 500, 501 and 502 I.P.C. It has further been submitted that the news item was published on the basis of report of Times of India without verifying the contents of the said news items published in the Times of India. Thereafter, statements U/s 200 & 202 Cr.P.C. were recorded, in which, general allegations were made that the alleged news article was defamatory. It has also been submitted that a summoning order was passed by the learned trial court on 22.02.2018 in the most mechanical manner with the observation that in the news item dated 19.06.2017, the complainant was dragged in the corruption.

5. Further submission of the learned Senior Counsel is that applicant was doing investigative journalism and without any *mens rea*, only in good faith, published the said news item on the basis of authentic information based on one communication of this Court to the Hon'ble Supreme Court dated 3rd May, 2017. It has further been submitted that the communication between two constitutional authorities is of sensitive nature and, therefore, it has not been made part of the record of the present case, however, a copy of the said communication was provided to the learned counsel appearing for

private respondent on 24th January, 2018 in pursuance of the order of this Court in Application u/s 482 No. 80 of 2018. It has vehemently been submitted that neither the genuineness of the aforesaid letter nor its contents are challenged by the private respondent.

6. It has further been submitted that the contents of the aforesaid communication reveals that under the direction of the then Hon'ble Chief Justice, some discreet inquiry was conducted and thereafter, communication was done between two Constitutional Authorities. It has also been submitted by learned Senior Counsel that in the present era, media has a very important role to play in the democracy by highlighting the deeds and misdeeds of the Government as well as Public authorities and in the present case.

7. It was further submitted that between Allahabad High Court and Hon'ble Supreme Court, the contents of the communication is not denied and in reply, the complainant has stated in Petition No. 80 of 2018 (supra) that the publisher was liable to be prosecuted under the provisions of The Official Secrets Act.

It was further submitted that the word 'defamation' derived from the Latin term 'Diffamare', which means 'Spreading evil report about someone. He also relied on the decision of Queens Bench in the case of **Scot Vs. Sampson, 1882 9 QB 491** and submitted that defamation is simplest way as 'a false statement to a man to his discredit'. This definition is smaller yet it encompasses everything about the concept. It has also been submitted that to constitute 'defamation under Section 499 I.P.C., there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of complainant, irrespective of whether complainant actually suffered directly or indirectly from the imputation. Further relying on the decision of the Gujarat High Court in the case of

Narottamdas L. Shah Vs. Patel Maganbhai Revabhai & Anr., 1984 Crl.L.J. 1790, learned counsel for the applicant submitted that the term 'reputation' means, "What us generally said or believed about the persons' or things' character". The two terms 'character' and 'reputation' are prone to be confused. Character, in the context, would mean, fortitude or morals constitution or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore, character is what a person "actually is", while reputation is what neighbours and others say "what he is". The man may have, in fact, a good character and yet suffer from bad reputation or vice versa. In short, 'reputation' is, what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is held by others and not the opinion which he himself may have about himself. It may be said that 'reputation' is a composite hearsay, being the community's opinion which implies the definite and final formation of belief by the community. By no stretch of reasoning the term 'reputation' can imply one's belief about himself.

8. Learned counsel for the applicant vehemently submitted that the object of the inquiry under Section 202 of the Code is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need to be taken. The Section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. It has lastly been submitted that the case of the applicant is squarely covered by Exception 1 and 3rd to Section 499 I.P.C. It has, thus, been submitted that the impugned proceedings are liable to be quashed.

9. On the other hand, learned counsel for the private respondent vehemently opposed the prayer of the applicant and submitted that the news item was published by the applicant and other persons without getting it verified and while doing so, they failed to comply the norms of Code of Ethics & Broadcasting Standards prepared by the News

Broadcasters & Digital Association, New Delhi. The applicant also failed to comply the guidelines of Press Council of India. It has further been submitted that the respondent no. 2 applied for the alleged privileged communication between this Court and Hon'ble Supreme Court dated 3 May, 2017 but he could not succeed. However, he did not dispute the fact vide order dated 24 January, 2018, photocopy of the aforesaid document was provided to him and the content of privileged communication is also not disputed.

10. Learned counsel for the private respondent also submitted that the applicant is liable to be prosecuted under the provisions of Official Secrets Act. While, all these arguments raised by the learned counsel for the applicant may be placed before the court below at appropriate stage, it has been submitted that the present application is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for the applicant, learned counsel for the respondent and gone through the contents of the application, counter affidavit, rejoinder affidavit, F.I.R., statements recorded under Section 200 and 202 Cr.P.C. as well as other relevant documents and the copy of letter dated 03.05.2017 placed by Senior Registrar of this Court.

12. It is undisputed by learned counsel for the private respondent that the photocopy of aforesaid privileged communication placed by the applicant, was received by the private respondent on 24.01.2018.

13. While considering all the arguments raised by the learned counsel for the parties as well as going through the complaint, the letter dated 03.05.2017 (supra); the only question is whether any defamatory act was committed by the applicant. 'Defamation' is defined in Section 499 I.P.C., which clearly provides that 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 except in the cases mentioned in the explanation clauses.

14. Admittedly, in the present case, the news item was published relied on the news report published by Times of India, which was based on the communication between the Hon'ble High Court and Hon'ble Supreme Court dated 03.05.2017 and the copy of the privileged communication was provided to the respondent in Application under Section 482 no. 80 of 2018 vide order dated 24.01.2018 but the same has not been denied as the office copy of the said letter was also placed by Senior Registrar of this Court, the contents of letter provided to complainant on 24.01.2018 are same to the copy of letter placed by office of this Court.

15. Hon'ble Apex Court in the case of **Jawaharlal Dadra & Ors. Vs. Manoharrao Ganpatrao Kapsikar & Anr., (1998) 4 SCC 112**, held that in the case of accurate and true reporting published in good faith, it cannot be said that the accused Intended to harm the reputation of the complainant. Para 5 (relevant) of the said decision is as under:

"It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court."

16. Indisputably, the privileged correspondence between the High Court and Hon'ble Supreme Court is not denied by respondent no. 2.

17. In view of above facts and discussions, this Court is of the view that the action of the applicant is squarely covered in the Explanation (1) & (3) of Section 499 I.P.C. Section 499 along with Explanation (1) & (3) is reproduced hereunder:

"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 excepted, to defame that person.

Explanation 1-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.-An imputation in the form of an alternative or expressed ironically, may amount to defamation."

18. Hence, this Court is of the view that the complaint in question is nothing but a sheer abuse of the legal provisions and no offense, as alleged, is said to be made out.

19. With the above observations, the present application U/s 482 Cr.P.C. is **allowed** and the entire proceedings of Complaint Case No. 2577 of 2017 pending in the court of learned Special Judge, Pollution, Lucknow in pursuance of summoning order dated 22.02.2018 are hereby **quashed**.

Order Date:- 22.12.2023

Vipul/Arpan