

GAHC010192012013



2024:GAU-AS:7981

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./122/2013

SMT. MONITA BORGOHAIN
PROJECT DIRECTOR, DISTRICT RURAL DEVELOPMENT AGENCY DRDA,
BONGAIGAON, OFFICE OF THE DEPUTY COMMISSIONER, BONGAIGAON.

VERSUS

SUBHASH BANIK
S/O SRI BHAGABAT PRASANNA BANIK, PROPRIETOR, M/S S. BANIK and
CO. CHARTERED ACCOUNTANTS, B.K. KAKATI ROAD, ULUBARI,
GUWAHATI-781007.

2:THE STATE OF ASSA

Advocate for the Petitioner : MR.S K DEKA, MR.A SARMA,MR.J DEKA,MR.T K
BHUYAN,MR.S SARMA

Advocate for the Respondent : PP, ASSAM, ,,,MR.A K JAIN

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. S. Sarma, Senior Advocate.
For the Respondents	:	None appeared for Respondent No.1.
		Mr. P. Borthakur, Addl. P.P., Assam for Respondent No.2.

Date of Hearing : 08.08.2024.

Date of Judgment : 16.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Sarma, the learned senior counsel appearing for the petitioner. Also heard Mr. P. Borthakur, learned Addl. Public Prosecutor representing the State of Assam (Respondent No.2). None appeared for the Respondent No.1.

2. This is an application under Section 482 of the CrPC praying for quashing the proceedings of Complaint Case No.1895^C/2012 pending in the court of Judicial Magistrate, First Class, Kamrup, Guwahati.

3. At the time of filing of the complaint case by the Respondent No.1, the present petitioner was serving as the In-Charge Project Director of District Rural Development Agency (DRDA), Bongaigaon.

4. At the relevant time, the Respondent No.1 was working as a Chartered Accountant having his chamber and residence at Ulubari, Guwahati.

5. The case of the Respondent No.1, in a nutshell is like this– the then Commissioner, Panchayat & Rural Development, Assam engaged the Respondent No.1 for conducting statutory audit of Panchayat & Rural Development Programmes for the year 2010-2011 under Zila Parishad/ DRDAs/ Blocks, Anchalik Panchayat and Gaon Panchayat offices in the district of Bongaigaon.

6. On 18.04.2012, the present petitioner being the Project Director (In-Charge), DRDA, wrote a letter to the Commissioner, Panchayat & Rural Development, Guwahati informing him that the performance of the Respondent No.1 was not at all satisfactory.

7. The Respondent No.1 claimed that the said letter was defamatory and

was made with an evil purpose to malign his good name.

8. The Respondent No.1 filed a Complaint Case before the Magistrate who took cognizance of the offences under Sections 499/500 and 501 of the Indian Penal Code and issued summons to the present petitioner.

9. *Per contra*, the petitioner has claimed that on the basis of inputs received from several official sources, she wrote the aforesaid letter on genuine belief and good faith.

10. I have considered the submissions made by the learned counsel of both sides.

11. At this stage, the settled legal position regarding the offence of defamation as contained in the Indian Penal Code requires a discussion.

12. Black's Law Dictionary has defined the meaning of the word "defamation" as an act of harming the reputation of another by making a false statement to a third party.

13. Reputation is a *jus in rem*, a right absolute and against the world and a person's reputation is his/ her property. Thus, no one can defame a person i.e. use his freedom of speech or expression so as to injure another's reputation. The essence of defamation is its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavorable sentiments of his fellow- mates and those inconveniences to which a person who is the object of such unfavorable sentiments is exposed. In general, there are four requirements for liability for defamation to arise. A false and defamatory statement must be made about another's reputation or business. What is necessary in a case of defamation is that the statement made is understood by others to be "of or concerning" the complainant. If the individual who is the subject of defamation is deceased, no cause of action

lies for defamation. The publication should be made out to a third party. Generally, there is no liability if the defendant did not intend the publication to be viewed by anyone other than the complainant. However, most defamatory material on the internet is accessible to millions worldwide. Therefore, it is unlikely that a defendant would be able to argue that he or she did not intend that others should view the statements. The complainant must establish some extent of fault or negligence on the part of the defendant in publishing the statements. Thus, a complainant who is a public figure will have to show that the statements were made out of malice. The burden of proof is less demanding in case of a private individual. The statements must result in actual or presumed damage. The permanent nature of libel coupled with the ability to distribute it widely especially through the internet have led courts to allow for recovering damages for libel without actually proving damage caused. Thus, for material to be defamatory, one of the tests should be satisfied.

14. The criminal law in India with regard to defamation depends on the construction of S. 499 and S.500. In India, it does not matter whether the words were published or they were uttered, or heard by people, as long as those defamatory words were intended to harm the reputation of another person. Thus, in the Indian context, the following are various ingredients which constitute defamation-

Making or publishing of an imputation concerning a person

Such imputation should have been made-

By words either spoken or written - Words are powerful vehicles which convey the thoughts of a person. Thus, a misapplied and misapprehended term can give rise to a dispute. However, insulting a person is not defamation as it was uttered in a fit of anger; or

By signs or visible representation: any sign or possible form of defamation that a

person can think of is covered under this type of imputation. Hence, a statute, a caricature, an effigy, chalk marks on a wall or a display of photographs etc. are all signs and visible representation.

15. This imputation should have been made with intent to harm or knowing or having reason to believe that it will harm the reputation of such person or harm him. Thus, the person passing the remark should know that it will harm the reputation of the person.

16. Thus, a defamatory statement is one which would tend to lower the reputation of the claimant in the eyes of right-thinking members of society and which would result in the shunning or avoidance of the claimant by society. Defamation, traditionally, may either be a slander or a libel. A slanderous statement is that which is issued verbally, or not produced in permanent form. If the statement is published in a permanent form, it becomes a libel. Going by the traditional definitions of libel and slander, an electronically disseminated defamatory statement would generally amount to libel. The electronic data is content committed to the host computer and resides on the same until deleted. This is more than a transient form and is more likely to be libel. Considering the wide reach that the internet has, anonymous defamatory speech directed at individuals and employers in chat rooms and bulletin boards has the potential for causing great damage and hurt. In the US, cases involving defamatory statements made by anonymous internet users are commonly called 'John Doe' cases. The courts that have dealt with this issue have tried to reach a compromise between the freedom to speak anonymously and the right to determine the identity of one who has misused that freedom to engage in harmful speech or other illegal activity. In *Immunomedics, Inc., v Doe* (342 N.J.Super. 160 (2001)), the court held that "although anonymous speech on the internet is protected, there must be an

avenue for redress for those who are wronged. Individuals choosing to harm another or violate an agreement through speech on the internet cannot hope to shield their identity..."

17. There are certain general defences that can be taken to a case for defamation. Absolute privilege is a complete defence concerned with judicial proceedings, parliamentary privileges and official business. There is no cause of action for words said within the walls of a courthouse or tribunal recognised by law, no matter the content of the same. Similarly, communications between a solicitor and a client attract absolute privilege. The same applies to parliamentary proceedings or statements made in course of business.

18. Qualified privilege on the other hand, consists of:

Limited statements between persons with a common duty/interest to make and receive such statements.

Statements made to public pursuant to some form of legal duty.

Fair and accurate reporting of specified proceedings.

In addition to this, it must be shown that the statement made was at a fit and proper time, that the statement referred to the occasion in question and that it was published under right and honest motives.

19. Fair comment and criticism is a defence extended only if the statement made is an opinion and not if it is a fact. Again, the comment must be made without malice to afford a defence. To qualify as fair comment, the statement must be based on facts which are substantially true, or honestly believed to be true. It must also have a relation to the forum in which the statement is being made and should not merely assail an individual on unrelated grounds.

20. Reverting to the case in hand, the Respondent No.1 was engaged by the Commissioner, Panchayat & Rural Development, Assam to conduct audit in

various Departments. Needless to say that it was a contract between two persons. The present petitioner being the In-charge Project Director of a Department, found the service of the Respondent No.1 to be not satisfactory and therefore, she informed the aforesaid Commissioner to that effect.

21. The petitioner was doing her official duty. In the complaint petition, nothing has been alleged by the Respondent No.1 that for a particular cause, the petitioner wanted to malign him and therefore she had written the said letter to the Commissioner.

22. On a plain reading of the complaint petition, it is clear on the face of the record that the act of the present petitioner was a fair comment. A fair criticism is not an offence of defamation. The petitioner wrote the letter to the Commissioner on the basis of the inputs received by her.

23. If a person engages another person to do a particular work and subsequently if it was discovered that the employed person was not performing well, then the employer is at liberty to cancel the said appointment. It does not mean that the employed person was defamed.

24. In *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604 the Supreme Court has laid down the guidelines as to when the power under Section 482 of the CrPC can be exercised by the High Court. Paragraph 102 of the judgment reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of

justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide

and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

25. The power to quash proceeding under Section 482 of the CrPC is exercised when there are no *prima facie* materials to proceed against the petitioner even if the allegations are accepted as true. The complaint petition filed by the Respondent No.1 against the present petitioner does not establish a *prima facie* case of defamation.

26. Therefore, allowing the criminal proceeding to continue in the court below would be nothing but an abuse of the process of the court. This is a fit case for exercising the power under section 482 of the CrPC.

27. The criminal petition is allowed. The proceedings of Complaint Case No.1895^C/2012 pending in the court of Judicial Magistrate, First Class, Kamrup, Guwahati, is quashed and set aside.

The criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant