



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Principal Seat at Guwahati

Criminal Petition No. 1228/2019.

Mustt. Shahnaz Rasul @ Mansoor,
D/o Late Iftekhar Rasul,
R/o Danish Road, Lakhtokia,
P.O. – Panbazaar,
P.S. – Panbazaar,
Dist. – Kamrup (M), Guwhati,
PIN – 781001.

..... Petitioner.

-Versus-

1. The State of Assam,
Represented by the learned P.P. Assam.
2. Mustt. Shamim Siraj Hazarika,
W/o Late Siraj Hazarika,
R/o M.A. Road, Near Haweli Residency, Rehabari,
Dist. – Kamrup (M), Guwahati,
PIN- 781007.

..... Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the petitioner	:-	Mr. A. Bhattacharya.
Advocate for the respondent No. 1	:-	Mr. B. Sarma, Addl. P.P.
Advocate for the respondent No. 2	:-	Mr. G. Uddin.

Date of Hearing :- 02.09.2024.

Date of Judgment & Order :- 24.09.2024.

JUDGEMENT & ORDER (CAV)

Heard Mr. A. Bhattacharya, learned counsel for the petitioner; Mr. B. Sarma, learned Additional Public Prosecutor for the State, respondent No. 1; and Mr. G. Uddin, learned counsel for the respondent No. 2.

2. In this petition, under Section 482 of the Cr.P.C., the petitioner, namely, Mustt. Shahnaz Rasul @ Mansoor has prayed for quashing the order dated 04.05.2019, passed in C.R. Case No. 6996/2018, under Sections 499/500/501 of the IPC, and also the entire proceeding pending before the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati.

3. It is to be noted here that vide impugned order dated 04.05.2019, the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati has taken cognizance of the offences under Sections 499/500/501 IPC, against the petitioner and issued process to her to stand trial in C.R. Case No. 6996/2018.

Background Facts:-

4. The background facts, leading to filing of the present appeal, are adumbrated herein below:-

“Mustt. Shamim Siraj Hazarika, the respondent No. 2 herein, had instituted a proceeding under Sections 145/146 of the Cr.P.C., being C.R. Case No. 19/2016, before the court of learned Executive Magistrate, Kamrup (M) at Guwahati. In the said

proceeding, the present petitioner, as respondent, had filed written statement. Wherein she made some imputation against the respondent herein, as under:-

'Since long, the first party and her son, namely, Yusuf Hazarika was disturbing the peaceful living and possession of the second parties and trying to wrongfully and illegally evict them, depriving the rights of the second parties, as the first party and her son wanted to give the land to some builders and have threatened several times to leave the house, else to face dire consequences and on 27.04.2014, the first party along with others burnt the dwelling house of the second parties while they were sleeping at about 2 am at night, with the deliberate and mala-fide intention to throw and evict the second parties from their dwelling house into the streets and give the land to some builders, rendering the second parties absolutely homeless, depriving them of their legitimate rights. The dwelling house was burnt to ashes, nothing remained, everything including furniture, clothes, documents, their home, everything was burnt down, damaged and destroyed by the fire planted by the first party.'

After filing of written statement by the present petitioner, the learned Executive Magistrate, on 11.04.2024, had dropped the proceeding of C.R. Case No. 19/2016, on the ground that the dispute is purely a personal dispute between the parties regarding their share of land in their ancestral property.

Thereafter, the respondent herein has filed one complaint before the learned Chief Judicial Magistrate, Kamrup (M) at Guwahati. The complaint was then transferred to the court of learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati for disposal. In the said complaint it has been alleged inter-alia amongst others that in the written statement filed by the respondent therein i.e. the present petitioner in the Case No. 19/2016, before the learned Executive Magistrate, she had knowingly, with malicious intention and deliberately made false and defamatory statements against the Complainant, i.e. the respondent herein. It is also alleged that the defamatory statement was made knowing it to be false, with deliberate intention and knowledge, that such imputations and innuendoes would cause irreversible and irretrievable damage to the reputation, character and goodwill of the Complainant both in her personal as well as her social and public life.

The learned trial court then examined the complainant and two other witnesses under Section 200/202 Cr.P.C., took cognizance of the same vide impugned order dated 04.05.2019, under Sections 499/500/501 of the IPC."

Grounds:-

4. Being highly aggrieved and dissatisfied, the petitioner has preferred this present petition under Section 482 Cr.P.C. for quashing and setting aside the impugned order dated 04.05.2019, passed in C.R. Case No. 6996/2018, under Sections 499/500/501 of the IPC, pending before the

learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati on the following grounds :-

- (i) That, the learned trial court had hurriedly passed the impugned order, after recording the depositions of the witnesses on the same day, without being perused the statements being made in the complaint and also the statements of the witnesses;
- (ii) That, the learned trial court had failed to consider the fact that the complaint, even if taken in its face value, does not disclose the commission of offence under Sections 499/500/501 of the IPC;
- (iii) That, the allegation made in the complaint are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the petitioner;
- (iv) That, the learned trial court would have verified the status of the C.R. Case No. 19/2016, under Sections 145/146 of the Cr.P.C., which was stated to have been filed by the respondent No. 2, inasmuch as the respondent No. 2 made a categorical statement in paragraph No. 4 of the complaint petition filed by her that the petitioner failed to prove her averments in her written statement, but in fact the said proceeding was dropped which was intimated to her by the Officer In-Charge of Panbazaar P.S. and there was no opportunity for her to prove those averments made by her;
- (v) That, as because the proceeding instituted by the respondent was dropped, she has lodged the complaint case against the present petitioner to wreck vengeance against the petitioner

and the manner, which the learned trial court took cognizance of the case reflects that there is total non-application of mind;

(vi) That, the learned trial court had overlooked the fact that the allegation is that some defamatory statements has been made by the petitioner in her written statement and it appears that several litigations are going on between the petitioner and the respondent and that the respondent was not in the possession of the property in question and that the statement made by the petitioner in the written statement was not defamatory.

Submissions:-

5. Mr. Bhattacharya, learned counsel for the petitioner submits that the C.R. Case No. 19/2016, under Sections 145/146 of the Cr.P.C., having been dropped, the petitioner got no opportunity to prove the averments made by her in the written statement. Mr. Bhattacharya referring to a decision of High Court of Madras in the case of **Narayana Ayyar vs. G. Veerappa Pillai**, reported in **AIR 1951 Mad 34 (1950) IIMLJ 686**, submits that no cognizance of the offence under Section 500 IPC can be taken against a person, except under a complaint filed by the court or the officer concerned under Section 195 of the Cr.P.C. and since in the case in hand no such complaint was lodged by the Court or by the officer of the Court, under Section 195 of the Cr.P.C. the present complaint is not maintainable. Mr. Bhattachaya also submits that the complaint lodged by the respondent No. 2 and the documents placed on record, even if taken at their face value, failed to satisfy the requirement of Section 499 of the IPC and that there is no indication/materials to suggest that the reputation of the petitioner was lowered after filing of the written statement by the present petitioner before the Court of

learned Executive Magistrate. Mr. Bhattacharya also submits that the impugned order is cryptic and there is no indication that the learned trial court has applied its mind to find out a prima-facie case and that there was no discussion in the impugned order dated 04.05.2019, about the facts of the case. Referring to a decision of Hon'ble Supreme Court in the case of **Pepsi Food Limited vs. Special Judicial Magistrate**, reported in **(1998) 5 SCC 749**, Mr. Bhattacharya submits that the impugned order dated 04.05.2019, cannot sustained and therefore, it is contended to set it aside.

6. On the other hand, Mr. Uddin, learned counsel for the respondent No. 2, referring to a decision of the High Court of Kerala in the case of **M.K. Prabhakran vs. T.E. Gangadharan**, reported in **2006 1 ILR (Ker) 825**; and another decision of Hon'ble Supreme Court in the case of **M.N. Damani vs. S.K. Singa and Others**, reported in **(2001) 5 SCC 156**, submits that a clear case, under Sections 499/500/501 of the IPC is made out against the present petitioner as she had made imputation against the respondent No. 2 in written statement knowing the same to be false. Mr. Uddin further submits that that no case for quashing the present proceeding is made out here in this case and the power of quashing shall be exercised sparingly and therefore, it is contended to dismiss the petition.

7. Whereas, Mr. Sarma, learned Additional Public Prosecutor adopted the submission so advanced by Mr. Uddin, learned counsel for the respondent No. 2.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also the impugned order, dated

04.05.2019, passed in C.R. Case No. 6996/2018, under Sections 499/500/501 of the IPC, pending before the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati and also gone through the case laws referred by learned counsel for both the parties.

9. In order to decide the issue in question with greater precision, it would be apposite to reproduce the impugned order, dated 04.05.2019, so passed by the learned trial court in C.R. Case No. 6996/2018, under Sections 499/500/501 of the IPC, herein below:-

“04-05-2019

Complainant is present.

Today, the case was fixed for further-inquiry.

Perused the C/R including the complaint petition. Statement of the complainant Shamim Siraj Hazarika has already been recorded under section 200 Cr.P.C. and section 202 Cr.P.C statements of witnesses Yusuf Siraj Hazarika and Projeet Guha are recorded today. Heard learned counsel for the complainant.

On such perusal and hearing I find prima-facie materials of offence under Sections 499/500/501 of IPC against the accused person Shahnaz Rasul Mansoor. Accordingly, cognizance is taken against the accused person Shahnaz Rasul @ Mansoor under sections 499/500/501 of IPC of IPC.

Issue summons to accused person Shahnaz Rasul @ Mansoor.

Complainant to take steps.

Fix 31-05-2019 for appearance.”

10. That, perusal of the impugned order, as reproduced above, reveals that it is very cryptic. There is no reference to factual aspect of the case.

There is also no reference to the allegation made in the complaint and also about the statement of the complainant and of the witnesses recorded under section 200 and 202 Cr.P.C. There is no indication, even remotely; that the Magistrate had applied his mind to the facts of the case and the law applicable thereto. There is also no indication that the Magistrate had examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and as to whether the same are sufficient or not for the complainant to bring home charges against the accused.

11. While dealing with this aspect, Hon'ble Supreme Court in the case of **Pepsi Food Limited (Supra)** held that before summoning a person, the Magistrate has to carefully scrutinize the evidence brought on record. The relevant paragraph, i.e. 28 is reproduced herein below:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the

truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

12. Again in the case of **GHCL Employees Stock Option Trust vs. India Infoline Limited** reported in **(2013) 4 SCC 505**, Hon’ble Supreme Court has held that in order to issuing summons, the learned Magistrate has to record his satisfaction about prima-facie case against the accused persons and the role played by them.

13. It is to be noted here that in the case of **Sunil Bharti Mittal vs. CBI**, reported in **(2015) 4 SCC 609**, the Hon’ble Supreme Court has held that the words ‘sufficient grounds for proceeding’ appearing in the Section 204 are of immense importance and it is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and forming of such an opinion is to be stated in the order itself and therefore, the order is liable to be set aside if no reason is given therein, while coming to the conclusion that there is prima-facie case against the accused, though the order need not contain detailed reasons.

14. In the instant case, the learned trial court has examined the complainant and also examined one witness Yusuf Siraj Hazarika and another witness namely, Projeet Guha and thereafter, stated that a prima-facie case under Sections 499/500/501 of the IPC is made out against the petitioner and thereafter, taken cognizance and issued process to the accused. The impugned order dated 04.05.2019, never indicates that the learned trial court had examined the nature of allegation made in the complaint and the evidence, both oral and documentary in support thereon and as to whether that the same are sufficient for the complaint to succeed in bringing home the charge

against the accused or not. There is also no indication, whatsoever, that he had carefully scrutinized the evidence brought on record and tried to find out the truthfulness of the allegation or otherwise. Besides, no reason was also assigned by the learned trial court for arriving at the conclusion that a prima-facie case is made out against the present petitioner under Sections 499/500/501 of the IPC.

15. In that view of the matter, it cannot be said that the impugned order has been able to withstand the legal scrutiny.

16. Another aspect of the matter, which cannot be lost sight of is that the averments made by the petitioner in her written statement filed in the proceeding under Sections 145/146 of the Cr.P.C. was dropped by the learned Executive Magistrate, vide order dated 11.04.2017. Therefore, even if some imputation were made therein against the respondent No.2 herein, the petitioner got no opportunity to prove the same. Unless such an opportunity is afforded to her, this Court afraid, as submitted by Mr. Bhattacharya learned counsel for the petitioner; the petitioner cannot be prosecuted under Section 499/500/501 IPC. Had it been the case that the petitioner had failed to prove such averments made in her written statement, then the position would have been entirely different. But, this is not the case here.

17. I have considered the submission of Mr. Bhattacharyee, learned counsel for the petitioner in respect of maintainability of the complaint as no complaint was filed under Section 195 Cr.P.C. and also gone through the decision of the High Court of Madras in the case of **Narayana Ayyar (Supra)** and I find no force in his submission and the ratio laid down in the said case would not advance his argument.

18. Also I have gone through the case laws in **M.K. Prabhakran (supra)** and in **M.N. Damani (supra)**, referred by Mr. Uddin learned counsel for the respondent No.2. There is no quarrel at the bar about the proposition of law laid down in the said case. But, while the order of taking cognizance itself failed to withstand the legal scrutiny this court is of the view that in the given facts and circumstances of the case in hand the ratios, laid down in the said cases, would not come into his assistance.

19. Under the above mentioned facts and circumstances, this court finds sufficient merit in this petition. And accordingly this court is inclined to allow the same. And accordingly, this **petition stands allowed**. The impugned order dated 04.05.2019, passed in C.R. Case No. 6996/2018, under Sections 499/500/501 of the IPC, pending before the learned Sub-Divisional Judicial Magistrate No. 1, Kamrup (M) at Guwahati, stands quashed and set aside. The parties have to bear their own costs. Send down the record of the learned trial court with a copy of this judgment and order.

JUDGE

Comparing Assistant