

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33368 of 2012

Arising out of Complaint.Case No.-279 Year- 2010 District- SARAN

Sachidanand Ojha, Son of Bindeshwari Ojha, Resident of Village and P.O. Bhawalpur, P.S. Marhowrah, District Saran.

.... Petitioner

Versus

1. The State of Bihar.
2. Braj Bihari Singh, Son of Girza Shankar Singh, Resident of Village and P.O. Dubauli, P.S. Panapur, District Saran, at present residing at Marhowrah Sonarpatti, P.S. Marhowrah, District Saran.

.... Opposite Parties

Appearance :

For the Petitioner : Shri Sanjay Kumar Singh, Advocate

For the State : Shri Dasrath Mehta, APP

For the O.P. No.2 : Shri Hansh Kumar, Advocate

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 09-04-2015

Heard learned counsel for the petitioner. None appears on behalf of opposite party no. 2 in spite of name of the counsel appearing in the list.

2. The government had constructed a building for shifting the Sub-divisional Headquarters of Marhowrah in it. Some of the members of the noble profession trespassed on to the *verandah* of the building and as appears from Annexure-2, the new-report on the basis of which the complaint petition was framed, they illegally occupied the space. The petitioner being the local reporter of Hindi daily 'Hindustan' reported the incident and that was published in the said newspaper on 03.02.2010. The report, a copy of which forms part of the complaint petition, *inter*



alia, states that the government had been spending lots of money as rent in providing some space for running the office of Sub-divisional Magistrate, Marhowrah and it was after quite some efforts that the building was constructed and that had befallen to such illegal occupation as reported by the petitioner. The petitioner now stands summoned for committing an offence under Sections 501 and 502 of the Indian Penal Code.

3. The offence of defamation has been framed by the framers of the Indian Penal Code in order to protect the reputation of a person from being encroached upon by being attacked through scurrilous statements. Mere making of a statement discretely or in private conversations may not constitute the offence; it is mandatory that such a statement should be publicized for the information of the general public and such a publication ought to have the impact of harming the reputation, respect or other traits of the personality of a respectable person of the society. There are a number of exceptions appended to the provision of Section 499 and exceptions may not be germane for the present purposes.

4. The Court had the occasion of going through the news item which is fundamentally the document containing facts which form the basis for framing the complaint petition if finds that no names has been taken. No imputation as could be deemed



to be scurrilous as regards the moral or intellectual character of any person has been imputed or alleged. The news item which is part of the complaint petition, neigh the basis of it, in fact does not contain any scurrilous statement or a fact which could be formulated as an imputation, to be construed to have the effect of harming any ones reputation, either moral or intellectual.

5. Free press has its own duty. One of the duties of the press is to report responsibly and the responsible reporting partakes of true reporting of an incident. If the petitioner had not reported the incident, in the opinion of the Court, he could not have performed his duty which was required of him as a press-man. Reporting an incident has another value also. Such reports generally alert the society from activities which could not be acceptable in a democratic set up. In addition, it also raises the degree of consciousness amongst its citizens so that they could come together to resist such illegal, unauthorized acts which could be detrimental to the running of the democratic institutions. If the court starts passing summoning orders on such honest and direct reporting of an incident which did not have any remarks directed against anyone personally and that not scurrilous, the court shall itself lose its respect in the eyes of the general citizens and the man.

6. I am of the view that while passing the order of summoning, the learned Magistrate was probably being swayed by his sentiments and, may be, was probably acting in some sort of prejudice towards the press-men on account of the shows which are carried out by the electronic media in their programmes through which the media also indulges into activities which may not be acceptable to all. Judicial restraint is a tool and it is also a shield while passing an order, which could be affecting the personal liberty of a person to some degree. An order under Section 204 Cr.P.C. requires more cautious approach in passing such an order specially when it could entail enumerable harassment to a person who had been honest in performing his duties.

7. The prosecution initiated by order dated 21.10.2011, passed in Complaint Case No. 279 of 2010, Tr. No. 403 of 2011, passed by the learned Chief Judicial Magistrate, Chapra is hereby quashed.

8. The petition is allowed.

(Dharnidhar Jha, J.)

Sanjay/A.F.R.

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