

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO. 18 OF 2012

CONVICT-PETITIONER :

Smti. Mira Datta Bhowmik,
W/O. Late Bhupendra Ch. Datta Bhowmik,
Resident of 11, Jagannath Bari Road,
P.S. West Agartala,
District-West Tripura.

BY ADVOCATES :

Mr. D. R. Choudhury,

- *Vs* -

RESPONDENT :

1. Sri Nirmalya Dasgupta,
Son of Late Nripendra Dasgupta,
C/O. Tripura Charitable Health Society,
Resident of I.T.I. Road, Indranagar,
P.S. East Agartala,
District-West Tripura.

PROFORMA-RESPONDENT :

2. The State of Tripura,
Department of Finance,
Government of Tripura,
New Secretariat Complex,
Agartala, P.O. Lichubagan,
P.S. East Agartala,
District-West Tripura,

BY ADVOCATES :

Mr. S. Lodh,
Mr.A.Ghosh, P.P.,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing : **30.06.2015.**

Date of delivery of Judgment
& order : **28.07.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

By filing this revisional application under Section 397 read with Section 401 of Cr.P.C. the petitioner challenged the judgment and order dated 18.02.2012 passed by the learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in Criminal Appeal No.9(2)/2011, whereunder the judgment and order of conviction and sentence dated 14.01.2011 passed by learned Chief Judicial Magistrate, West Tripura, Agartala in Case No. C.R. 2576/2006 under Section 501 of IPC has been upheld. By the impugned judgment and order of conviction and sentence the accused-petitioner was sentenced to pay a fine of Rs.1,000/-, in default to suffer S.I. for one month.

2. Heard learned counsel, Mr. D. R. Choudhury for the petitioner and learned counsel, Mr. S. Lodh for the complainant-respondent No.1 as well as learned P.P., Mr. A. Ghosh for the respondent No.2-State of Tripura.

3. The fact in short, leading to the criminal prosecution, against the petitioner, is that respondent No.1 on 21.11.2006 filed a written complaint against the petitioner and another alleging that the accused-petitioner, Mira Datta Bhowmik, was the editor and publisher of a daily newspaper, namely, 'Dainik Sambad' at Agartala and that a libelous news item was published in the said newspaper prominently at page-1 on 06.10.2006 and

the complainant alleged that he was thereby defamed by the accused-petitioner and hence, he prayed for punishment of the accused-petitioner and another accused under Section 500, 501 read with Section 34 of IPC.

4. It is an admitted position that the petitioner was the editor and publisher of the newspaper, namely, 'Dainik Sambad' on 06.10.2006. It is also an admitted position that a news item with the heading **"Caparter Nam bhariye Nirmalyer Ramrama, Tadanta"** was published in the newspaper 'Dainik Sambad' on 06.10.2006. The newspaper is in Bengali language and is a widely published newspaper of the State. A copy of the newspaper has been proved as Exbt.-2. English rendering of the news item is as follows :-

"Utilizing the position in CAPART Nirmalya is flourishing, investigation thereof ... When the Central and State Governments have started intensive vigilance over the functioning of various NGOs, one leader of an NGO of the State has been flourishing himself in the name of CAPART. That member of the CAPART has started to establish his political base in various parts of the State. He is managing to sanction loan to the various NGOs' who are his followers and behind the screen he has been trying to establish an alternative organization by using the leaders of those NGOs.

So far the complaint and news collected, the name of the over all leader of that NGO of Indranagar is Nirmalaya Dasgupta who contested in the last Parliamentary Election as Congress candidate from West Tripura Parliamentary Election and was badly defeated in that Election. At that time, it was the news among the Congressmen that he donated a Car to a influential Congress Party Office Bearer and presently he is no more in that High post of the organization. The most surprising fact is that Shri Dasgupta arranged for a loan of more than Rs.6,00,000/- to a NGO which was established by that leader in the name of others and it is pretended that the said NGO impart training on weaving to the women. Not only this, Shri Dasgupta being a member of CAPART has recommended name of some NGOs who are his follower for sanctioning loan. It is reported that off and on he used to say to his close circle that if he has not been selected to contest in the next Assembly Election from his choiceable constituency, he would see the Congress Party. He also

says to his close circle that he would manage his nomination from the Congress party by paying money.

Even, though Shri Dasgupta is the leader of an NGO of the State, but he has been residing at Shillong for last twenty years. He is also a wealthy man. It is the remour and complaint that in the name of NGO some times he arrange for health camps, nutritious food distribution camps and in that way he has been evading Income Tax. Occasionally, he visits the State and leaves after 2/3 days. Everywhere he uses the name of CAPART. Whenever some disable persons are nominated for providing mechanical wheel chairs he accompany them to Delhi. He earns publicity by taking photographs of the moments. It is learnt that frequently he visits Delhi, Mumbai and Kolkata which is his regular practice. It is learnt that investigating agencies are collecting materials about the Chief of Tripura Cheritable Health Society. It is mention worthy that recently the Central Government has banned some NGOs."

5. On the basis of the complaint cognizance was taken and the accused persons were examined under Section 251 of Cr.P.C. narrating the substance of acquisition to which they pleaded not guilty and claimed to be tried.

6. In course of trial, the complainant examined himself as PW1 and in support of his case he had also examined two more witnesses, namely, PW2, Sri Dilip Debnath and PW3, Smt. Sitarani Deb. In course of adducing evidence the complainant also proved the following documents :-

**"Exhibit-1: The complaint petition as a whole
Exhibit-2 : The paper publication of Dainik Sambad dated 06.10.2006 in which the news item in question was published.
Exhibit-3 : The photocopy of protest letter dated 10.10.2006.
Exhibit-4 : Photocopy of protest letter dated 24.10.2006.
Exhibit-5 : Copy of Advocate Notice dated 14.11.2006
Exhibit-6 : The receipt of Courier Service for communication of notice dated 14.11.2006 and
Exhibit-7 : The enveloped registered letter with writings refused to accept;"**

7. After closure of the prosecution evidence the accused persons were examined under section 313 of Cr.P.C. and in their turn they declined to adduce any defence evidence. Defence

simply denied the allegation of defamation and the accused-petitioner further pleaded that at the relevant point of time the administration of the Institution was not under her full control and she had no knowledge and responsibility about the publication of the news item. Learned Chief Judicial Magistrate at the conclusion of trial considering the evidence on record passed a well reasoned judgment holding the accused-petitioner guilty under Section 501 of IPC and sentenced her to pay a fine of Rs.1,000/-, in default of payment to suffer S.I. for one month.

8. Aggrieved, the accused-petitioner preferred Criminal Appeal No.9(2)/2011 and by impugned judgment dated 18.02.2012 the learned Additional Sessions Judge dismissed the appeal and hence, this revisional application.

9. Appearing for the petitioner it is submitted by learned counsel, Mr. Choudhury that the news item is not defamatory. It has caused no personal injury to the complainant. The news item was published in the public interest and as a caution to the Non-Government Organisations(NGOs). There was no intention of defaming the complainant.

10. Learned counsel, Mr. Lodh, on the other hand, has submitted that a bare reading of the news item itself shows that it was highly scandalous and defamatory, punishable under Section 501 of IPC. The news item clearly published libelous, baseless allegations without any basis and the complainant made protest against the news item requesting the accused-petitioner

to publish the protest letter with similar importance, but neither the protest letter was published nor even the letter was responded by the accused-petitioner. He has also submitted that burden lies heavily on the accused to justify that the news item was not libelous or that it was published in public interest as claimed by the accused-petitioner. The accused-petitioner failed to discharge her burden and the trial Court as well as the appellate Court rightly convicted the accused-petitioner.

11. Learned P.P., Mr. Ghosh, has submitted that it is an admitted position that the news item was published in the newspaper, edited and published by the accused-petitioner and a bare reading of the news item clearly shows that it was libelous and hence, the trial Court and the appellate Court rightly held the accused-petitioner guilty of the offence and hence, this revisional Court may not interfere in the judgment.

12. While exercising revisional jurisdiction this Court is to see the correctness, legality and propriety of the finding/order passed by the inferior Courts and the regularity of the proceeding. This Court is not required to re-examine and re-appreciate the evidence on record unless there is allegation of perversity that the evidence has not been correctly appreciated or that there was finding based on no evidence.

13. As already observed earlier it is not disputed that the accused-petitioner is the editor and publisher of the newspaper, namely, 'Dainik Sambad', which had published the news item on

06.10.2006 with the heading "*Caparter Nam bhariye Nirmalyer Ramrama, Tadanta*". A bare reading of the news item makes it clear that there were imputations made in the news concerning the complainant that the complainant has been managing to sanction loan to various NGOs, which were his followers; that the complainant managed to be a candidate of parliamentary election as a Congress party candidate by way of donating a car to a powerful office bearer of Congress party; that the complainant arranged for sanctioning a loan for more than Rs.6,00,000/- to a NGO, which was established by the said leader in the name of other; that the complainant expressed to his close circle that he would see the Congress party if he had not been nominated to contest in the next assembly election from his choice seat; that the complainant in the name of his NGO organizes health camps, nutritious food distribution camps only with a view to evade income tax etc.

14. A defamation may be committed in two ways, i.e., (1) speech, or (2) by writing and its equivalent modes. The English common law describes the former as a slander and the later as a libel. The former is a spoken defamation while the later a written defamation, which may assume various forms. In the present case a clearly libelous news item was published in the first page of the newspaper with prominent heading attracting the readers to the news item which contains libelous imputations, whereas there was no basis of making those imputations.

15. Every man is entitled to have his reputation. The Jurist Blackstones has added to this proposition saying that "Every man is entitled to have his reputation preserved inviolate". A man's reputation is his property. Depending upon perception of that man, reputation is more valuable to him than any other property. Reputation is the state of being held in high esteem and honor or the general estimation that the public has for a person. Reputation depends on opinion, and opinion is the main basis of communication of thoughts and information amongst humans. In simpler words, reputation is nothing but enjoyment of good opinion on the part of others. So, the right to have reputation involves right to have reputation inviolate or intact.

16. The word defamation is driven from Latin word 'Diffamare'. Semantics or Etymology of the Latin word 'Diffamare' provides that it means '*Spreading evil report about someone*'. Thus, defamation is nothing but causing damage to reputation of another. The question of defamation, therefore, is linked up with one's reputation.

17. In the present case, the complainant categorically stated that he was an Engineer and a social activist associated with different organisations with high positions and those positions of the complainant have not been disputed. It is amply proved that the complainant has got high reputation in the society and estimation of the common people. No doubt

publication of such a news item lowered him in the estimation of the people, who used to respect him. Therefore, the news item published by the accused-petitioner was defamatory for the complainant.

18. The argument of learned counsel, Mr. Choudhury that the news item was not a defamation and that it was published in public interest to convey a caution to the NGOs etc. has been carefully discussed by both the trial Court as well as the appellate Court.

19. At the time of argument, learned counsel, Mr. Choudhury, referred to Ninth and Tenth Exceptions added to Section 499 of IPC. Ninth and Tenth Exceptions read as follows:-

"Ninth Exception. – It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception. – It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

20. Burden lies on the accused-petitioner to show that the publication was made in good faith for the protection of the interest of the accused-petitioner or for the protection of others interest or that it was made for public good. The accused-petitioner adduced no evidence though burden heavily lies on the accused-petitioner to show that those libelous statements in the news item were made in good faith etc. or for public good.

21. Section 105 of the Evidence Act prescribes that the burden is on the person who claims the benefit of an exception. Section 105 of the Evidence Act reads as follows :-

"105. Burden of proving that case of accused comes within exceptions.- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the Central Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

22. In view of the above provision, the accused-petitioner neither adduced evidence nor could discern anything from the mouth of the complainant and his witnesses that the news item was published in good faith or for protection of the interest of the accused-petitioner or others interest or that it was published with the intention for good of the news readers or for public good. The news item clearly postulates that it is scandalous and simply made with a view to defame the complainant.

23. Learned counsel, Mr. Choudhury has referred the decision in the case of **M.G.Perera V. Andrew Vincent Peiris & anr.**, reported in **AIR (36) 1949 Privy Council 106**, wherein the Privy Council has held that where the words used are defamatory, the burden of negating *animus injuriandi* rests upon the defendant. In that case on the particular fact and circumstances the newspaper was entitled to the benefit of the exception of fair comment, but the fact of the present case is clearly distinguishable and in the present case there is no fair

comment, rather the news item contains clear and necked libelous allegation and nothing else. We may gainfully refer here Para 19 of the judgment passed by the Privy Council, which reads as follows :-

"[19] In Roman Dutch law animus injuriandi is an essential element in proceedings for defamation. Where the words used are defamatory of the complainant, the burden of negating animus injuriandi rests upon the defendant. The course of development of Roman Dutch law in Ceylon has, put it broadly, been to recognize as defences those matters which under the inapt name of privilege and the apt name of fair comment have in the course of the history of the common law come to be recognized as affording defence to proceedings for defamation. But it must be emphasized that those defences or more accurately, the principles which underlie them, find their technical setting in Roman Dutch law as matters relevant to negating animus injuriandi. In that setting they are perhaps capable of a wider scope than that accorded to them by the common law. Decisions under the common law are indeed of the greatest value in exemplifying the principles but do not necessarily mark out rules under the Roman Dutch law. The "gladsome light of Roman jurisprudence" once shone on the common law : repayment to the successor of the Roman law should not take the form of obscuring one of its leading principles."

24. Learned counsel, Mr. Choudhury also referred a decision of the Calcutta High Court in the case of **Tarapada MAjumdar V. K. B. Ghosh & Co.**, reported in **AIR 1979 Calcutta 68**. The fact of that case is clearly distinguishable to that of the fact of present case. In that reported case a Lawyer communicated the opinion of his client through a letter written to an arbitrator, which contained some defamatory statement against the arbitrator and, therefore, in that reported case it was held that the Lawyer should be given the full freedom of delegating the right of his client. In my considered opinion, the case referred by learned counsel, Mr. Choudhury, thus, in no way

help the case of the accused-petitioner in the facts and circumstances of the case.

25. Learned counsel, Mr. Lodh referred the case of **Chaman Lal V. The State of Punjab**, reported in **1970(1) SCC 590**, wherein the Supreme Court has held that public good is a question of fact and good faith has also to be established as a fact. The Court held that Ninth Exception states that if the imputation is made in good faith for the protection of the person making it or for another person or for the public good, it is not defamation, but there must be evidence to support the plea that the imputation was made in good faith or for the public good.

26. Learned counsel, Mr. Lodh also referred the case of **Sewakram Sobhani V. R. K. Karanjiya, Chief Editor, Weekly Blitz & ors.**, reported in **AIR 1981 SC 1514**, wherein the Supreme Court has observed that Journalists do not enjoy any special privilege, and have no greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. Journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the

attack on the character of another was for the public good, or that it was made in good faith.

27. In the case at hand, as I find, both the trial Court and the appellate Court critically appreciated the evidence on record and arrived at a concurrent finding of guilt of the accused-petitioner. The news item, in my considered opinion, is absolutely defamatory and injurious to the reputation of the complainant and hence, punishment was rightly inflicted. The Courts below rightly refused probation to the petitioner.

28. The revisional application is, therefore, found to be devoid of merit and accordingly, the same stands dismissed.

Send down the lower court records along with a copy of this judgment.

JUDGE