

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2453 OF 2013

Phiroz Ibrahim Khan

.... Petitioner

Vs.

Jawarhar Singh & Anr.

.... Respondents

Mr. Kuldeep S. Patil for the Petitioner.

Mr. Deepak Thakare, APP, for the Respondent-State.

CORAM: A.V. NIRGUDE, J.

DATED: NOVEMBER 18 & 30, 2015

P.C:

1. This writ petition challenges an order dated 30-1-2013 passed by the Additional Sessions Judge, Greater Mumbai allowing Criminal Revision Application No.19 of 2012 and setting aside the order issuing process.

2. The petitioner is the complainant. He filed a complaint of defamation against respondent No.1. The facts leading to the complaint are as under:

The petitioner and respondent No.1 had some dispute since prior to filing of the complaint. A newspaper reporter interviewed respondent No.1 and informed him that the

petitioner had filed a criminal case against him. In response to this statement, respondent No.1 made a statement that the petitioner is a thief. The reporter made a report of this incident to his Editor and the Editor allowed publication of this his newspaper. The report in the newspaper clearly mentioned that respondent No.1 uttered the words that the petitioner was a thief. In view of this, the petitioner lodged his complaint alleging defamation, but he did not file this complaint against the publisher of the newspaper. The question is, whether the complaint is not maintainable if the publisher is not made a party?

3. For the sake of ready reference, Section 499 of the IPC, which defines the term “defamation”, is reproduced herein below:

“499. Defamation: 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 expected, 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- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

If one peruses Section 499 (quoted above) and Section 501 of the IPC, one gets an impression that making a defamatory statement is an independent offence, which is punishable under Section 500 of the IPC. Publishing a defamatory statement would also amount to an offence and is also punishable under Sections 500 and 501 of the IPC. Making a defamatory statement to a press reporter might amount to an offence of defamation, but the gravity of such an offence would certainly be less than the gravity of offence which can be alleged against the publisher who, without using his discretion, publishes such a statement. The publisher would cause publication of defamatory

material through printed words in his newspaper which would be available to thousands of readers and in that case the publisher commits graver offence. The petitioner/complainant conveniently dropped charges against the publisher. He had no reason to do so. The question is, whether dropping the principal accused from a case of defamation would make the case untenable against the other accused?

30th November, 2015

4. The answer to this question could be as under:

Even if the principal accused is dropped from prosecution, the complaint would survive against the other accused. At the time of trial, at any stage, the trial Court can initiate case against other accused, if the learned Judge comes to the conclusion that such accused ought to come before the Court. If this also does not happen, the trial Court might draw inferences that would probably weaken the prosecution case, but it cannot be said that the prosecution case should be thrown out only because the principal accused is not a party. The order of issuing process against respondent No.1-Jawarhar Singh is a legitimate action.

5. In view of the above, the writ petition is allowed. The impugned order dated 30-1-2013 passed by the Additional Sessions Judge, Greater Mumbai allowing Criminal Revision

Application No.19 of 2012 and setting aside the order issuing process is quashed and set aside. Consequently, the order dated 1-1-2011 passed by the Additional Chief Metropolitan Magistrate, 24th Court, Borivli, Mumbai in CC No.480/SS/2010, issuing process against respondent No.1, is restored. The writ petition accordingly stands disposed of.

(A.V. NIRGUDE, J.)