

Hon'ble Sri Justice M.S.K.Jaiswal

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Criminal Petition No.4418 of 2011

% 06-08-2015

Devireddy Venkat Reddy ...Petitioner

VERSUS

\$ Bankarupanda Padmavathi and another ...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: Sri T.Niranjan Reddy

^Counsel for Respondent No.1: Sri K.sarvabhuma Rao

Counsel for respondent No.2: Public Prosecutor (AP)

? Cases referred:

- 1) (1999) 3 scc 134
- 2) 1997 CrI.L.J. 3851
- 3) 1972 CrI.L.J. 968
- 4) (2010) 5 SCC 600
- 5) AIR 1981 S.C., 1514
- 6) 2001 (1) ALD (CRL) 858 (SC)
- 7) 2012(1) ALD (CrI) 744 (AP)
- 8) 2013(2) ALD (CrI) 687 (AP)

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Petition No.4418 of 2011

Between :-

Devireddy Venkat Reddy .. Petitioner

And

Bankarupanda Padmavathi
And another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 6th August, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

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|--|--------|
| 1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of Judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wish to see the fair copy of the Judgment? | Yes/No |

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.4418 of 2011

ORDER:-

The petition is filed under Section 482 Cr.P.C., for quashing all further proceedings in C.C.No.1535 of 2008 on the file of the Chief Metropolitan Magistrate, Visakhapatnam, registered under Section 500 IPC.

2. The petitioner is shown as an accused and in the year 2008, he was working as Senior Branch Manager at Bank of India, Overseas Branch, Waltair Main Road, Visakhapatnam. At that time, the 1st respondent/complainant was working as Computer Terminal Operator in the same bank. When the present petition is filed in the year 2011, the petitioner/accused was working as a Chief Manager, Bank of India, Kolhapur, Maharashtra and the respondent/complainant is said to have taken voluntary retirement from the bank services.
3. The averments of the complaint, in brief, are as under:-

On 22-10-2007 at about 03.15 p.m., the petitioner/accused called the 1st respondent/complainant to his chambers and informed her that one P.S.Rao from Zonal Office came there to inquire into the complaint lodged against the 1st respondent/complainant by one Mrs.Lina Tirkey, Deputy Manager (Admn). The Officer informed the 1st respondent that she should submit written explanation to the oral questionnaire by 23-10-2007. Thereafter, on 06-11-2007, the petitioner/accused issued a memo calling for the explanation of the respondent/complainant. On 10-11-2007, she was transferred from that Branch and she filed a Writ Petition in the High Court and obtained interim orders. When the orders were shown to the petitioner/accused, he did not allow her to perform the duties on the ground that the copy of the order has not been received and thereafter, when the copy was received, the petitioner/accused warned the respondent/complainant to behave properly in the Office. It is further contended that she was served with the charge sheet and she appeared before the Enquiry Officer on 23-01-2008. Certain documents were furnished to her by the Enquiry Officer and one of the documents was a letter, dated 22-10-2007 written by the petitioner/accused which contains the defamatory imputations against the 1st respondent/complainant. In the said letter, the petitioner/accused stated that the 1st respondent/complainant is argumentative, negative, litigant, provocative, egoistic, psychic and character assassination type of woman. The petitioner/accused further stated in the said letter that the 1st respondent/complainant is creating tense working atmosphere in the Branch and all the staff members are working under pressure because of her fighting/criminal/cruel mentality. According to the complainant, these imputations were defamatory and hence the complaint is filed.

4. After recording the sworn statement of the complainant and two other witnesses by names Jaldi Ishmael Babu, S/o.Prabhudas and Srinivasulu Ram Kumar s/o.S.Janakiram, the learned Magistrate took cognizance of the private complaint and issued summons to the petitioner/accused.

5. The petitioner/accused filed the present petition to quash the complaint on the ground that the alleged imputations in the letter addressed by the petitioner/accused were in discharge of his official duties to appraise the Enquiry Officer about the actual behaviour of the 1st respondent/complainant. As such, the letter would not come within the ambit of defamation as contemplated under Section 499 IPC. It is further contended that the learned Magistrate failed to see that the letter was addressed in his official capacity in discharge of his duties, and criminal prosecution ought not to have been registered without there being sanction. The alleged imputations made in the letter would fall within the exceptions under Section 499 IPC., and as such the petitioner/accused cannot be said to have committed any offence. On the basis of the letter of the petitioner/accused, the Enquiry Officer after due enquiry, found the respondent/complainant guilty of the charges and the disciplinary authority has imposed punishment on the

respondent/complainant by reducing the basic pay by two stages. Since the present complaint is not maintainable, the same is liable to be quashed.

6. On the other hand, learned Counsel appearing for the respondent/complainant submits that it is, no doubt, true that the respondent/complainant was working in the Branch where the petitioner/accused was the Senior Manager. It is submitted that if the petitioner/accused being a superior Officer found any laches on the part of the respondent/complainant, he is well within his powers to submit a report, but the nature of the imputations made in the said report as such which have no basis whatsoever and they are clearly defamatory and intended to cause harm to the reputation of the respondent/complainant, who was already by then put in 25 years of service in the bank. The respondent further submits that the petitioner/accused was bent upon harassing the respondent/complainant and that is evident from the fact that pending enquiry she was abruptly transferred from the branch and she had to file a Writ Petition and in pursuance to the directions of the High Court in the Writ Petition, she was allowed to join in the branch but was not entrusted to with any work and she was asked to come and sit in the branch. Learned Counsel submits that aspersions castigated in the said report are defamatory and at this stage whether the petitioner/accused is entitled to one of the defences available under Section 499 IPC., cannot be adjudicated and is only during the course of trial it has to be seen as to whether the petitioner/accused made such imputations and if so whether he has any of the defences as envisaged under Section 499 IPC. Learned Counsel submits that a complaint at the threshold on the ground that the petitioner/accused is entitled to one of the defences available to him and since he addressed a letter for initiating necessary action against his subordinate, the same cannot be termed as defamatory for launching the criminal prosecution. It is submitted that the petition of the petitioner/accused is liable to be dismissed.

7. The admitted case is that the petitioner/accused was a Senior Branch Manager where the respondent/complainant was working as Computer Terminal Operator. There were certain acts of omissions and commissions allegedly committed by the respondent/complainant in the matter of her behaviour with the other staff in the bank. She is also said to have indulged in certain verbal arguments with the Deputy Manager (Admn) by name Mrs. Leena Tirkey. The petitioner/accused found the behaviour of the respondent/complainant to be not conducive for the smooth functioning of the bank and accordingly he addressed a letter on 22-10-2007 to the Investigating Officer, Zonal Office, Visakhapatnam. In that letter while referring the indifferent attitude of the respondent/complainant, the petitioner/accused made a following observations in para 7 about the respondent/complainant:-

“Overall, I conclude that Mrs. B. Padmavathi is very argumentative, negative, litigant, provocative, egoistic, psychic and character assassination type woman. During last one year, I observed that she is creating tense working atmosphere in the branch and all the staff members are working under pressure because of her fighting/criminal/cruel mentality. She can't tolerate any other staff arguing against her or not agreeing with her, in any matter. Because of Mrs. Padmavathi, the branch is not progressing in business as Team Spirit is lacking in the staff. My opinion is that Mrs. Padmavathi is not suitable for Bank job, where service makes the difference.”

The enquiry was accordingly conducted and the respondent/complainant was punished departmentally. Those are the aspersions which are now for our consideration. However, the point in issue is as to whether the contents of para 7 extracted above admittedly made by the petitioner/accused against the respondent/complainant gives rise to a cause of action to prosecute the petitioner/accused for the offence of defamation punishable under Section 500 IPC.?

8. The contention of the petitioner/accused is he being the Senior Branch Manager of the bank, was well within his competence to submit the report about the conduct and behaviour of the respondent/complainant whose presence in the bank was creating obstacles in the smooth functioning of the bank and it was also affecting the business since the respondent/complainant was not even attending to her job diligently. Learned Counsel submits that when a Superior Controlling Officer submits a report to the Enquiry Officer about the conduct of an employee, that cannot be taken as basis for prosecuting the Officer on the grounds of defamation, more particularly, since the imputations made in the said report were found to be truthful resulting in the Enquiry Officer holding the respondent/complainant guilty of the insinuations.

9. Learned Counsel appearing for the petitioner/accused further submits that the petitioner/accused is entitled to the defence available under exception 9, which provides that 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. Learned Counsel submits that since he made the report in order to protect the interests of the bank, the co-employees in the branch and for the public good, it does not amount to defamation *per se* and hence continuation of the prosecution against the petitioner/accused will be travesty of justice.

10. In support of this contention, learned Counsel appearing for the petitioner/accused relied upon the following

authorities:-

In **RAJENDRA KUMAR SITARAMA PANDE v. UTTAM**^[1], the question was whether the allegations in the complaint alleging that accused had abused the Treasury Officer in a drunken state attracts the ingredients of an offence under Section 500 IPC. The Supreme Court in para 7 observed as under:-

“..... The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental enquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 IPC. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself.”

In **VEDURUMUDI RAMA RAO v. CHENNURI VENKAT RAO AND ANOTHER**^[2], a confidential circular issued by the accused on the basis of the instructions of the Head Office cautioning the other Branch Manager of the Bank about the complainant do not amount to defamation, a learned Single Judge of our High Court observed as under:-

“6. Therefore, there is nothing on record to hold that the petitioner/accused had issued the said Circular with any malice against this complainant or to cause any damage to his reputation as such. He issued the said Circular at the instance of the Central and Zonal Office. Moreover, it is a confidential Circular not meant for the public at large, but to his Branch Managers to be cautious while dealing with the complainant and others mentioned in that Circular in their business transactions. Moreover, the said Circular had emanated after due investigation done by the Vigilance Department of the Central Office of the Andhra Bank. There cannot be any doubt that such a Circular was issued only in good faith and also for the public good and to safeguard the interest of the public at large. In a case of this type, the truth of the imputations made against the complainant need not be proved by an accused person claiming the privilege under exception 9. Therefore, even if the allegations made in the complaint are taken to be true, the offence under Section 500 IPC., is not made out as the exception No.9 is squarely application to the facts in this case and as laid down in **State of Haryana V. Bhajan Lal (1992 (Suppl (1) SCC 335)**, the proceedings are liable to be quashed.”

In **ADM STUBBINGS AND ANOTHER v. SHELLAMUTHU AND ANOTHER**^[3], the Kerala High Court observed that an institution of domestic enquiry in respect of accusation of theft of master's property by servant and finding arrived at such enquiry, after giving proper opportunity of being heard to the delinquent servant, that the accusation is true, cannot furnish the basis of an action for defamation as it would amount to paralysing the administration of justice.

In **S.KHUSHBOO v. KANNIAMMAL AND ANOTHER**^[4] the Supreme Court made the following observations in paras 16, 33, 34 and 44:-

“16. In order to decide this case, it will not be proper for us to either condemn or endorse the views expressed by the appellant. When the criminal law machinery is set in motion, the superior courts should not mechanically use either their inherent powers or writ jurisdiction to intervene with the process of investigation and trial. However, such forms of judicial review can be exercised to prevent a miscarriage of justice or to correct some grave errors that might have been committed by the subordinate courts.

33. We now turn to the question whether the appellant's remarks could reasonably amount to offence of defamation as defined under [Section 499](#) IPC. In the impugned judgment dated 30.4.2008, the High Court observed that as to whether the appellant could claim a defence against the allegations of defamation was a factual question and thus would be decided by a trial Court. However, even before examining whether the appellant can claim any of the statutory defences in this regard, the operative question is whether the allegations in the impugned complaints support a prima facie case of defamation in the first place.

34. It is our considered view that there is no prima facie case of defamation in the present case. This will become self-evident if we draw attention to the key ingredients of the offence contemplated by [Section 499](#) IPC.

44. We are of the view that the institution of the numerous criminal complaints against the appellant was done in a mala fide manner. In order to prevent the abuse of the criminal law machinery, we are therefore inclined to grant the relief sought by the appellant. In such cases, the proper course for Magistrates is to use their statutory powers to direct an investigation into the allegations before taking cognizance of the offences alleged. It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the 'freedom of speech and expression' is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce

materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused."

11. Learned Counsel submits that in view of the above authoritative pronouncements of the Apex Court, it can safely be said that the petitioner/accused in addressing the letter to his departmental superiors was well within his competence and it was internal correspondence in the interest of the bank, employees and the customers and made in good faith and they cannot be said to be attracting the penal provisions of the Indian Penal Code.

12. The contention of the respondent/complainant is that the petitioner/accused being the superior Officer of the bank may have certain powers and authority to report about the behaviour of the employees to the departmental superiors but no Officer can make the imputations such as the one made by the petitioner/accused in the instant case against the respondent/complainant. The serious innuendos contained in the impugned letter has no basis whatsoever and merely because the respondent/complainant had certain arguments with the Deputy Manager (Admn) by name Mrs. Leena Turkey, during the lunch recess of a particular day, the Senior Manager cannot jump to a conclusion and make such far reaching allegations and caste aspersions on her which have lowered her reputation in the eyes of the co-employees and the members of her family and other people. Learned Counsel submits that may be there was some justification to say that the respondent/complainant was argumentative, negative, litigant and provocative, but absolutely there is no basis whatsoever for the petitioner/accused to say that the respondent/complainant is egoistic, psychic, character assassination type woman and the worst castigation is that the respondent/complainant is a fighting/criminal/cruel mentality person. Learned Counsel further submits that whether the petitioner/accused had a valid defence as provided under the exceptions to Section 499 cannot be gone into at this stage without there being trial. Only during the course of trial, if the respondent/complainant can show that the petitioner/accused made the comments alleged against her, the burden shifts on the petitioner/accused to show that the said communication was one within the exception No.9 provided under Section 499 IPC. Without there being any enquiry, at the threshold, the Court cannot conclude as to whether the alleged imputations made by the petitioner/accused against the respondent/complainant were made in good faith for the protections of the interests of the person making it or of any other person or for the public good.

13. Learned Counsel relies upon the following authorities in support of his contention:

In **SEWAKRAM SOBHANI v. R.K.KARANJIA**^[5] the Supreme Court has considered a similar aspect and held as under:-

"(Per Chinnappa Reddy, J)

To attract the ninth exception to [section 499, I.P.C.](#) the imputations must be shown to have been made (1) in good faith and (2) for the protection of the person making it or of any other person or for the public good. The insistence of the section is upon the exercise of due care and attention. The standard of care and attention must depend on the circumstances of an individual case, the nature of imputation, the need and the opportunity for verification and so on. In every case it is a question of fact to be decided on its particular facts and circumstances.

Harbhajan Singh v. State of Punjab, [1965] 3 SCR 232 @ 244, [Chaman Lal v. The State of Punjab](#) [1970] 3 SCR 913 @ 916 and 918.

Several questions may arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposed to demolish the defence. In the instant case the stage for deciding these questions had not arrived yet. Answers to such questions, even before the plea of the accused was recorded, could only be a priori conclusions.

The respondent's prayer before the High Court was to quash the Magistrate's order and not to quash the complaint itself as the High Court has done. But that was only a technical defect which need not be taken seriously in an appeal under [Article 136](#) of the Constitution where the Court is concerned with substantial justice and not with shadow puppetry.

(Per A.P. Sen J.)

The order of the High Court quashing the prosecution under [section 482](#) of the Code of Criminal Procedure is wholly perverse and had resulted in manifest miscarriage of justice. The High Court has pre-judged the whole issue without a trial of the accused persons. The matter was at the state of recording the pleas of the accused under [section 251](#) Cr. P.C. The circumstances brought out clearly showed that the respondent was prima facie guilty of defamation punishable under [section 500](#) of the Indian Penal Code unless covered by one of the exceptions of [section 499](#) Indian Penal Code.

The burden to prove that his case would come within the ninth exception to [section 499](#), namely, that the imputation was in good faith and was for the protection of the interests of the person making it or of any other person or for the public good was on the respondent. All that the respondent prayed for was that the Magistrate should not proceed to record his plea under [section 251](#) Cr. P.C. without perusing the enquiry report. There was no application for quashing the prosecution itself.

The enquiry report in respect of which the Government claimed privilege had by itself no evidentiary value. The contents of that report could not be made use of unless the facts were proved by evidence aliunde. The report being per se defamatory, it was for the accused to plead the ninth exception in defence and discharge the burden of proving good faith which implies the exercise of due care and caution and to show that the attack on the character of the appellant was for the public good.

[Sukro Mahto v. Basdeo Kumar Mahto and Anr.](#) [1971] Supp. SCR 329 at 332, [Harbhajan Singh v. State of Punjab](#) [1965] 3 SCR 235, [Chaman Lal v. State of Punjab](#) [1970] 3 SCR 913, referred to.

The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege. Journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under the 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. “

In **M.N.DAMANI v. S.K.SINHA AND OTHERS**^[6] the Apex Court has referred to the various authorities on the subject and

“8. Para 6 of the judgment in Sewakrams case reads:

6. The order recorded by the High Court quashing the prosecution under [Section 482](#) of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under [Section 251](#) of the Code. The requirements of [Section 251](#) are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or demands to be tried. The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under [Section 500](#) of the Code unless he pleads one of the exceptions to [Section 499](#) of the Code.

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It is for the respondent to plead that he was protected under Ninth Exception to [Section 499](#) of the Penal Code. The burden, such as it is, to prove that his case would come within that exception is on him. The ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or of any other person or for the public good.

Again, in para 18 of the judgment dealing with the aspect of good faith in relation to 9th Exception of [Section 499](#), it is stated that several questions arise for consideration if the 9th Exception is to be applied to the facts of the case. Questions that may arise for consideration depending on the stand taken by the accused at the trial

and how the complainant proposes to demolish the defence and that stage for deciding these questions had not arrived at the stage of issuing process. It is stated, Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. Good faith and public good are, as we said, questions of fact and matters for evidence. So, the trial must go on.

9. Para 13 of the judgment in Shatrughna Prasad Sinha's case reads: -

13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under [Section 499](#) triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of defamation under [Section 499](#) IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under [Section 500](#) IPC.

In **VANTIPALLI VEERA VENKATA SATYA HARISCHANDRA PRASAD v. SURAPURAJU RAMESH AND ANOTHE**

“The essential ingredients of defamation are: (1) Making or publishing any imputation concerning any person; (2) In order to establish good faith and *bona fides* it has to be seen first the circumstances under which the def

In **I.VENKATESWARLU v. STATE AND ANOTHER**^[8], a learned single Judge of our High Court refused to quash the p

- 14. Having perused the authorities cited by both the learned Counsel, what can be said is that the facts and circumstar
- 15. Having carefully perused the contents of the complaint, the sworn statement of the complainant and two of the sup
- 16. In view of the foregoing discussion, there are no merits in the petition and the criminal petition is liable to be dismis
- 17. In the result, the Criminal Petition is dismissed and the learned Magistrate is directed to proceed with the trial of the Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.Jaiswal, J

6th August, 2015
smr

[1] (1999) 3 SCC, 134
[2] 1997 Cr.L.J. 3851
[3] 1972 Cr.L.J. 968
[4] (2010) 5 SCC 600
[5] AIR 1981 S.C., 1514
[6] 2001 (1) ALD (Crl) 858 (SC)
[7] 2012 (1) ALD (Crl) 744 (AP)
[8] 2013 (2) ALD (Crl) 687 (AP)