

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-120-MA of 2015.
Date of decision: 16.07.2015.

Swami Sadanand Ji

.... Applicant/Appellant

Versus

Arvind Mehta & others

.... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) *Whether Reporters of the local papers may be allowed to see the judgment?*
- 2) *To be referred to the Reporters or not?*
- 3) *Whether the judgment should be reported in the Digest?*

Present: Mr. A.S. Manaise, Advocate for the applicant/appellant.

PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) read with Section 482 of Cr.P.C for grant of Special leave to appeal against the impugned judgment dated 17.09.2012 passed by learned Judicial Magistrate Ist Class, Gurdaspur whereby complaint filed by applicant under Sections 500/34 of the Indian Penal Code has been dismissed and respondents have been acquitted of the charge framed against them.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 500/34 of the Indian Penal Code alleging that he is the head/president of Daya Nand Math, situated at Dinanagar, Tehsil and District Gurdaspur. The complainant is also the head of various other Educational Institutions. Swami Sada Nand Ji the

complainant, took over as President of Daya Nand Math, Dinanagar after Swami Sarvanand Ji Sarasvati went on heavenly abode. Swami Sarvanand Ji Sarasvati executed a valid Will in favour of the complainant on 05.02.2001 having sound disposing state of mind, duly registered at the office of Joint Sub Registrar, Dinanagar. Complainant also held the post of secretary of Daya Nand Math before appointed as President of Daya Nath Math. Applicant-complainant was appointed working president of all the educational institutes managed by Daya Nand Math (Trust) by Swami Sarvanand Ji Sarasvati in his life time itself. The applicant-complainant is being worshipped as a Guru and Holy Saint by the people of the area and his followers. The applicant-complainant is also running Daya Nand Math Pharmacy, where he provides ayurvedic medicines to the needy persons free of costs. Accused No.1 is having inimical relations with the complainant as he cant's tolerate the complainant as President/Head of Daya Nand Math. Accused No. 2 is the Press Reporter of Punjab Kesari and Jagbani newspapers of the area of Gurdaspur while accused No. 3 is the press reporter of the above said newspapers of the area of Dinanagar. Accused No.4, is the Editor of Punjab Kesari Newspaper and Jagbani Newspaper, Jalandhar. The accused intentionally and willfully got published news items in Punjab Kesari Newspaper dated 09.04.2006 edition in Gurdaspur Kesari column under the heading with photograph of the complainant as "Swami Sada Nand ka samajik wahishkar kiya jae mehta". Above said news was published on the instance of accused No. 1 by accused Nos. 2 & 3 as their names are also mentioned in the above said news. False and frivolous allegations were levelled by the accused on the character of the complainant in the above said false news. The aim of the accused was to defame the complainant and to

lower down his reputation by levelling the false allegations in the news item dated 09.04.2006. Again on the next day edition dated 10.04.2006 of Punjab Kesri Newspaper and Jagbani Newspaper, the accused got published false and derogatory news against the complainant under the head of "Daya Nand Math da Akhir Sanchalak Kaun". Ek aur Washit samne aai" and Daya Nand Math de traadhikari the mamla Sargarmya".

In the news item, accused intentionally willfully mentioned an other unregistered will dated 05.09.2004 of Swami Sarva Nand Ji in favour of some other person. All the accused also got published a false news item dated 03.07.2003 in Punjab Kesari Newspaper Jalandhar under the head "Daya Nand Math Se 20 vidyarthi Niskashit". The accused published that there is a teacher incharge of Sanskrit **Vidyalya** who conducted third marriage and his wife is characterless. It was also wrongly stated in the news item that the complainant is having illicit relations with sister of Dinesh Kumar r/o Gharota. This news published against the complainant was widely circulated. The act of the accused badly injured the reputation of the complainant as well as Daya Nand Math. The complainant was embarrassed with people pointing finger towards the character of complainant after publication of false news by the accused in their newspaper. The accused defamed the complainant and harmed the reputation of the complainant in the eyes of general public. The accused have committed the offence of defamation punishable under law. Therefore, the complaint was filed.

On the basis of preliminary evidence, all the respondents-accused were ordered to be summoned to face trial for the commission of offences punishable under Sections 500/34 IPC.

In pre-charge evidence, the applicant-complainant

examined himself as CW1. He has also examined CW2 Dinesh Shastri to Bishan Dass and CW3 Balbir Salaria. On the basis of pre-charge evidence, respondents-accused were charge-sheeted for the commission of offences under Section 500 of IPC, to which, they pleaded 'not guilty' and claimed trial.

Statements of respondents-accused under Section 313 Cr.P.C. were recorded wherein they pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted all the respondents-accused from the charges framed against them, vide impugned judgment dated 17.09.2012. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

11. In the present case, allegations leveled by the complainant examined as CW1 is that accused no.1 got published news in Punjab Kesari dated 09.04.2006 edition in Gurdaspur Kesari Column under the heading with photograph of the complainant as "Swami Nand Ka Samajik Vashiskar Kiya jae Mehta." The newspaper also published photographs, the original newspaper along with the published column is Ex. C1. On 10.04.2006 edition the copy of the newspaper is Ex. C2. The news Ex. C2 is under the head of Daya Nand Math Ka Aakhir Sanchalak Kaun? He stated that in this news item it was published that the registered Vasiat executed in his favour by Swami Sarwanand Ji was false and it was stated in the news that an other Will dated 05.09.2004 which is unregistered executed by Swami Sarwanand Ji in favour of Shekhar Chander. The aim of publish this news to damage and misguide the general public and lower down his reputation.

He deposed that similar news items was published in the newspaper Jagbani on the same date as Ex. C3. He stated that in the year 2003, the accused got published the news in the Punjab Kesari under the head of Daya Nand Math Me 20 Vidharthi Niskashit which is mark-A on the file. He deposed that in this newspaper a false and derogatory allegation on his character was levelled by the accused that he had an intimacy with the wife of his teacher in village Changi. The accused by publishing false news lowered his reputation in the general public and in his institution. The news published was having widely circulation and circulated in the whole India.

12. CW-2 Dinesh Shastri and CW3 Balbir Salaria have made their depositions on the same lines as of complainant Swami Sada Nand.

13. On the other hand in order to rebut the evidence led by complainant, DW1 Vinod Gupta himself appeared into witness box and deposed that news item Ex. C1 and Ex. C2 has been published in the newspaper upon the verification of accused no.1. After verification, he deposed that the alleged news item has been written by accused no.1 on 08.04.2006 in his presence.

14. In order to prove the charge of defamation, the following ingredients are required to be proved.

- i) there must be a making or publication and*
- ii) That what is made or published must amounts to words*
- iii) that what is made or published must be a "imputation", and*
- iv) it must be made with intention to harm or with knowledge that it will harm the reputation of another.*

15. Neither ill-will nor malice is an ingredient of the offence of defamation and want of either, can not serve as a defence. An unproved plea of justification, in judicious cross examination of the person aggrieved, and obstinately persisting in the libelous charge without any sufficient reason, may be taken into consideration, as evidence of

malice. Malice at law does not mean that the accused was actuated with hatred or ill-will or even that he had an actual intent to vilify or defame such a person. It suffices that the statement was made willfully or purposely or without any lawful excuse or justification.

16. It is not necessary that a person complaining of defamation should show that he had actually suffered any harm in reputation provided the words are prima facie defamatory. It is not the part of the definition that the imputation made should have, in fact, caused any harm to another's reputation for it bases criminal responsibility upon the intention, knowledge and belief of the maker of the imputation. It is one of those cases in which the law unishes the archer as soon as the arrow is shot, no matter it fails to hit the target.

17. Now let us revert back to the facts of the present case. In the present case, notice to all the accused has been issued that accused No.1 Arvind Mehta got published defamatory material against the complainant on 09.04.2006 and on 10.04.2006 in newspaper Punjab Kesri and Jagbani, accused No.2 Vinod Gupta, accused No.3 Chaman Lal being reporter of the said papers and accused No.4 Vijay Gupta being the printer, publisher and editor of the above said papers committed the offence punishable under Section 500 IPC. The alleged defamatory news items dated 09.04.2006 Sada Nand Ji Samajik Vashishkar Kiya jae-Mehta," wherein, it is mentioned that Swami Sada Nand has regretted regarding his deeds by writing Mafinama. It is also mentioned that one criminal case has been registered against the complainant along with 17 other persons. It is further mentioned in the news item that an FIR under Section 377 IPC has been registered against the complainant and he has been charge sheeted on 13.08.2005. It is also finds mentioned in the alleged news item that there should be any enquiry regarding the Will which the complainant got executed in his favour from Swami Sarva Nand Ji who is at the age of 105 years. It is also mentioned in the news item that an FIR under Sections

395/452/379/307/326 has been registered against the complainant alongwith 17 other persons. At the outset, it has been contended by the counsel for accused Nos.2 to 4 that their act done was just to publish the news items based on the report given by Arvind Mehta and nothing more. He further contended that report has been submitted after verifying as to correctness of the report of the alleged reporting has been given by Arvind Mehta and, therefore, accused deserves to be acquitted. He supported his contentions by placing on record "The Editor, Deccan Herald, Bangalore Vs. Prof. M.S. Ramaraju 2005 (3) CCC 96 (Karnataka). It is necessary to mention at the juncture, that upon the newspaper, it have the legal moral and social duties to perform and after what is published is in the public interest or for the public good and is based on factual report, it would be extremely difficult to say that even such publication made in good faith to attracts the offence under Section 499 and 501 of the IPC.

18. I have gone through the judicial file, which shows that accused No.1 to 4 have published/printed news items on the basis of press note given by accused No.1 Arvind Mehta which is Ex. DW1/A having the signatures of accused No.1 Arvind Mehta, Ex. DW1/B. Ex. DW1/C, Ex. DW1/D, Ex. DW1/A are the further press notes given to the accused No.2 and 3 at the instance of Arvind Mehta accused No.1. Accused have produced on record Ex. DX i.e. Curl suit regarding titled Shekhar Chander Vs. Swami Sada Nand Ji, which is a suit for declaration to the effect regarding that defendant No.1 is not Incharge/ Mahant/ President of Daya Nand Math, Dinanagar, upon suit land on the basis of forged and fabricated Will dated 05.01.2001 which has never been executed in favour of defendant No.1 by Swami Sarva Nand Ji. Ex. D3 shows a criminal complaint under Section 500 IPC filed by Arvind Mehta accused no.1 against the complainant Swami Sada Nand. Ex. D4 further shows that complainant Swami Sada Nand has filed a civil suit titled Swami Sada Nand Vs. SS DAV Public School for declaration that plaintiff being the Achariya of Daya Nand

Math, Dinanagar and as per the constitution of defendant no.1 society which came into existence on 1983 in the continuous life time President of defendant No.1 society. Accused have also brought on record an FIR Ex. D5 registered against the complainant under Section 323/506/427/148/149 of IPC along with other co-accused, at the instance of Kamlesh Sharma that accused along with deadly weapons entered at their office. Accused has also brought on record Ex. D6, which is an FIR under Section 377 IPC at the instance of one Rajinder. As such, Ex. C1 and Ex. C2 publications are based upon the factual report and is made in good faith. Further in case titled "Vir Sanghvi Vs. State of Haryana 2006 (1) RCR (Criminal) RCR 115", it is held that whether contents of the news item are true and were correctly published and whether or not there was any complicity of the petitioners behind publication thereof, are disputed questions of fact which can be adjudicated on appreciation of evidence to be led by both the parties. So, it is duty proved on record that two FIRs Ex. D5 and Ex. D6 has been lodged against the complainant regarding which the publication has been made vide Ex C1 and Ex. C2. It is also proved on record that complainant Swami Sada Nand Ji was charge sheeted under Section 377 IPC. It is also proved on record that there was dispute of Will between the complainant and Shekher Chander Shastri, regarding which the suit of declaration Ex. DX has been filed by Shekher Chander Shastri. It is also proved on record that Swami Sada Nand Ji has also filed suit for declaration that he is being Achariya of Daya Nand Math is the continuous life time President of defendant no. 1 society and could not relieve from his post of President of defendant No. 1 society, which is against SS DAV Public School through Arvind Mehta its secretary.

19. So, in the cumulative of circumstances, the court is of the opinion that contents of news item and Ex. C1 and Ex. C2 are true and were correctly published and same were based upon the press note given by accused No.1. There was no complicity of accused Nos. 2 to 4 behind the

publication. Faced with the situation, the court finds that there is no material or substance in the arguments advanced by learned counsel for the complainant. The Courts finds merits in the arguments advanced by learned counsel for complainant and misconceived. Hence, benefit of doubt goes to the accused Nos. 2 to 4 and the accused Nos. 2 to 4 stands acquitted from the charges framed against them under Section 506 of IPC.

20. So far as the allegations levelled against the accused No.1 are concerned, the Court is of the opinion that no offences under Section 500 of IPC is made out against the accused No.1. Admittedly news item Ex. C1 and Ex. C2 has been published in the newspaper at the instance of accused No. 1 but the complainant has failed to prove on record that what was defamatory in the alleged news item. Admittedly civil and criminal cases has been lodged against the complainant. It is further pertinent to mention here that accused No.1 Arvind Mehta has filed criminal complaint under Section 500 of IPC against the complainant vide Ex. D/3, regarding which summoning order has already been passed on 20.11.2008. A criminal complaint has been filed at the instance of accused No.1 on 14.08.2003 and the present complaint has been filed by the complainant on 23.05.2006. Admittedly, civil and criminal litigation has remained pending between the parties and the complainant has filed the present complaint as a counter blast to the criminal complaint Ex. D3 filed by accused No.1. However, it is also proved on record that all the publication is based on factual report and is made in good faith. As such, no case of defamation regarding is made out. Hence, the accused No.1 & 4 also stands acquitted from all the charges framed against them under Section 500 IPC."

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

"10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the

High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, "the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State

of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R.(Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R. (Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R. (Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R.(Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the

conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge. There is also a delay of 762 days in filing the instant application. No cogent reasons have been mentioned in the application for condoning the delay.

As such, application for leave to appeal is dismissed on merit as well on account of delay.

July 16, 2015.
kanchan

(PARAMJEET SINGH)
JUDGE