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WP-1189-2015

WP-1191-2015

22Jan,2016

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1189 OF 2015

ALONGWITH

CRIMINAL WRIT PETITION NO. 1191 OF 2015

Uttam Manulal Kale

Age : 76 years, Occ : DCP IPS (Retd)

R/o: 802, Bullet Building, L.N. Road,

Hindu Colony, Dadar East

Mumbai-400 014

.....Petitioner

V/s.

1. The State of Maharashtra

2. S.S. Suradkar,

R/o: 802, Bullet Building, L.N. Road,

Hindu Colony, Dadar East

Mumbai-400 014

.....Respondents

Mr. Uttam Manulal Kale, petitioner present in person.

Mr. D.R. More, APP for State, respondent no.1.

Mr. S.S. Suradkar, respondent no.2 in person.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED 22nd JANUARY, 2016.

JUDGMENT :

1). The above two petitions are being disposed off by a common order as the parties to the petitions are same and the disputes under consideration therein are similar.

2). These petitions represent unfortunate and completely avoidable disputes between two high-ranking police officers who have since retired. Both are members of Gazetted Police Officer's Co-operative Housing Society and reside in the same building. The petitioner has retired as Deputy Commissioner of Police (I.P.S.) and respondent no.2 as Inspector General of Police. The acrimony between the two that started while in service has continued even after the retirement and is the genesis of series of litigations between them.

3). Respondent no.2 has filed two private complaints alleging commission of the offence by the petitioner punishable under Section 500 Indian Penal Code. The first complaint is dated 30th January, 2013 and numbered as C.C. No. 142/SS/2013. The second complaint is dated 30th March, 2013 and numbered as C.C. No. 428/SS/2013. By the order of the even date i.e. 3rd October, 2013, the trial Court issued process against the petitioner in both the complaints. The orders were challenged by the petitioner by preferring Criminal Revision Application No. 788 of 2013 and Criminal Revision Application No. 787 of 2013 respectively in the Sessions Court. Both the revisions are dismissed by the orders dated 13th March, 2015. Feeling aggrieved by the orders, the petitioner has approached this Court.

4). The petitioner does not dispute utterances of the imputations alleged in the two complaints. He also does not dispute the publication. But it is his case that, he cannot be held criminally liable for the imputations since the same would be covered by the exceptions carved out under Section 499 Indian Penal Code.

5). The facts of both the complaints are required to be narrated together since the same are interconnected. Infact, the second complaint arises out of the first complaint. On 30th January, 2013 respondent no.2 filed C.C. No. 142/SS/2013 (the first

complaint) alleging that, during the Special General Body Meeting of the Society held on 15th April, 2012 in the office of the Society, the petitioner, while acting as the Chairman of the Society and the moderator of the meeting, made statements in Marathi to the effect that everybody knows the falsehood in which respondent no.2 had indulged in and that he had filed false Affidavit in Court to help an accused in a TADA case. Respondent no.2 filed a CD of the video recording of the meeting alongwith the complaint. It is his case in the complaint that, the imputations were made despite the observations of the Division Bench of this Court in Writ Petition No. 1270 of 1994 that the Affidavit of respondent no.2 only contained a statement of facts.

6). When the petitioner learnt about filing of the first complaint, he on 28th February, 2003 filed an application seeking a hearing contending that, the complaint of respondent no.2 was a “malicious, false complaint” and that the imputations amounted only publication of true report of the proceedings of a Court of justice. Based on the contents of this application, respondent no.2 filed the second complaint i.e. C.C. No. 428/SS/2013 wherein he has alleged that, the petitioner has made further defamatory statements in his application. The further imputations as alleged in the complaint, are (i)respondent no.2 has filed false affidavit on 25th November, 1993, (ii)respondent no.2 had filed a

number of false cases against innocent persons and (iii) respondent no.2 is in the habit of lodging false cases.

7). After due verification of the complaints, the learned Metropolitan Magistrate on 3rd October, 2013 while passing short orders recorded his *prima-facie* satisfaction as regards the sufficiency of the material on record for issuing process against the petitioner. As regards the first complaint, he noted that, *prima-facie*, documents on record and verification of complainant show that the accused has made statements which would harm to the reputation of the complainant. As regards the second complaint, he noted that the imputations against respondent no.2 were *per-se* defamatory, they were made in the open Court and were heard by all the persons present in the Court. Respondent no.2 had produced in Court, copy of the affidavit filed by the petitioner containing the defamatory statements. Thus, on recording the satisfaction of sufficiency of material on record, the learned Magistrate, issued process in both the complaints against the petitioner under Section 500 Indian Penal Code.

8). As already noted earlier, the petitioner had challenged the orders of the learned Metropolitan Magistrate by preferring revision applications before the Sessions Court. In the Revision Applications, he sought to justify his acts, contending that the allegations made by him

are true and correct and are supported by the decisions of various Courts. The learned Sessions Judge while noting the scope of the revisional jurisdiction of the Sessions Court, held that the averments made in the complaints and the statement made on oath by respondent no.2 are *prima-facie* sufficient to fulfill the ingredients of Section 499 Indian Penal Code. Therefore, the trial Court has not committed any error while issuing process against the petitioner for the offence punishable under Section 500 Indian Penal Code.

9). The petitioner, who has appeared in person, submits that the learned Sessions Judge erred in not appreciating that the case of the petitioner would fall under the Exceptions of Section 499 Indian Penal Code, more particularly, the First, Second, Fifth, Eighth and Ninth Exception. The Exceptions relied upon by the petitioner read as follows :-

“First Exception.-- Imputation of truth which public good requires to be made or published.--

It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.-- Public conduct of public servants.-- It is not defamation to express in a good faith any opinion whatever respecting the conduct of a

public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Fifth Exception.-- Merits of case decided in Court or conduct of witnesses and others concerned.-- It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Eighth Exception.-- Accusation preferred in good faith to authorised person.-- It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.-- Imputation made in good faith by person for protection of his or other's interests.-- 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.”

10). Both the sides have passionately advanced submissions in the petition seeking to justify their actions. Each has referred to the orders passed by different Courts concerning the prosecutions of various persons and of various steps taken in discharge of their respective public duties in order to cast aspersions on the other. In my considered opinion, this controversy cannot be gone in the present stage of the proceedings. All such contentions taken and the submissions made, essentially being the defence of the petitioner, are required to be established during the course of trial before the learned Magistrate. Since making of the imputation and its publication is not denied and since the imputations are, *prima-facie*, seen to be *per-se* defamatory there is nothing erroneous in the orders passed by the trial Court and the Sessions Court. The petitioner will have to establish his defence of the imputations being covered by the First, Second, Fifth, Eighth and Ninth Exception under Section 499 Indian Penal Code at the appropriate time during the course of the trial. Also, the nature of defence taken by the petitioner is such that the same cannot be appreciated without evidence in support of the same. For the second, fifth, eighth and ninth exception, the petitioner will have to establish that the imputations made by him were in “good faith” in the circumstances of the exceptions. As regards the first exception, he

needs to establish that, the imputations were published by him for the “public good” which is a question of fact to be established by evidence.

11). The petitioner next submits that, respondent no.2 ought to have alleged in his complaint that the publication of imputation has resulted into the reputation of respondent no.2 being lowered in estimation of others. In the absence of such averment, the complaint cannot be proceeded with. In this connection, he relies upon decision of the Madras High Court in **J. Jayalalitha V. Arcot N. Veerasamy reported in 1997 Criminal Law Journal page 4585**. The said decision cannot be applicable to the facts of the present case where the imputations are on a, *prima-facie*, view of the matter *per-se* defamatory.

12). The petitioner, in support of his claim that no case of defamation can be said to have been made out because according to him the allegations in the complaint of respondent no.2 are covered by Exception Eighth, relies upon the decision of the Apex Court in the case of **Rajendra Kumar Sitaram Pande and Others v. Uttam and Another, reported in AIR 1999 Supreme Court page 1028**. The decision is distinguishable on facts. In the decision cited, the imputation had been made in a report to the superior officer regarding an incident that had taken place in the office. That report had

subsequently led to the departmental enquiry in which the complainant was found guilty. In the circumstances, the Apex Court held that the report made to the superior officer making allegations of the incident leading to action against the complainant would be covered by Exception Eighth to Section 499 Indian Penal Code. The facts of the case on hand are entirely different. There is no report made by the petitioner to any of his superiors.

13). The third decision cited is of Delhi High Court in the case of **Dr. P. Sharma Versus. P.S. Popli and Another, reported in 2002 (1) Crimes page 783**. In the proceedings filed under Section 482 Criminal Procedure Code, the Delhi High Court was considering the statements made in the Special Leave Petition by the accused alleging that “the complaint of the respondent was wholly false, mischievous and blackmailing tactic”. The Supreme Court had allowed the Special Leave Petition and quashed the complaint. The Delhi High Court held that in filing the Special Leave Petition, the whole emphasis was to get the complaint quashed. Therefore, imputation could not be said to have been made with intention or knowledge to cause harm to the reputation. Therefore, no offence of defamation was made out. In the facts of the case on hand, the imputations are not limited and

relevant to a specific proceeding alone unlike in the decision cited. Hence, the decision is not applicable.

14). The last decision cited by the petitioner is of Gujarat High Court in **Darusing Durgasing v. State of Gujarat and Anr. reported in 2006 Criminal Law Journal page 720** where averments and allegations made in the affidavit-in-reply against the Textile Labour Association and other workers were held to be averments made in good faith and without malice. Therefore, they were treated as the averments made in good faith and without malice and as such covered by Exceptions- Seventh, Eighth and Ninth to Section 499 Indian Penal Code. The Gujarat High Court, opined that the employer being in a position of an Authority was entitled to comment upon the conduct of the employee as long as the same was done in *bonafide* and in good faith. It was held that, the imputation made was for protection of the interest of the Company. The same was made before the Court which was seized with the dispute in regard to the termination of the services of the complainant. Therefore, the imputations were made in good faith and were made before the Judge for the purpose of justifying the order of termination. The imputations made in the application filed by the petitioner, are *prima-facie*, seen to be not limited to the allegations made in the complaint in which the same was filed. The

petitioner has alleged further that, respondent no.2 is in habit of lodging false cases. It would be relevant to note that the application had been made even before any process had been issued against the petitioner. The trial Court, therefore, by its order dated 30th March, 2013 rejected the application as not maintainable since the petitioner had no *locus-standi* to file that application. Considering the nature of the position and rank held by the petitioner in the police service, he would have certainly known that the application at that stage was not maintainable. Therefore, at this *prima-facie* stage of the proceedings, it cannot be said with certainty that the imputations made by the petitioner are covered by the Exceptions as claimed by him. Hence, the petitions are dismissed.

15). The petitioner seeks continuation of the ad-interim stay for a reasonable period to enable him to approach the higher forum. The ad-interim stay is extended by 4 weeks.

(SMT. R.P. SONDURBALDOTA, J)