

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42994 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- AURANGABAD

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1. Dr. Md. Ejaz Ali, son of late Mumtaz Ali
2. Md.Rashid Ahmad, son of late Mohmood Alam
3. Md. Rayazuddin, son of late Masood Ahmad
All resident of Gulam Sarwar Clinic, Mohallah-Bhikhana Pahari, P.S.-Pir Bahore,
Dist.-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Mojibullah Ansari, son of late Md. Raquib, resident of Kabir Mohalla,
P.S.-Aurangabad Town, Dist.-Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Md. Anis Akhtar, Advocate.
For the opposite party No. 2 : Mr. Jay Prakash Singh, Advocate.
For the State : Mr. Shailendra Kumar No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.12.2005 passed in Trial No. 2629 of 2005 arising out of Complaint Case No. 389-C of 2004 by the learned Judicial Magistrate, 1st Class, Aurangabad by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offences under Section 504 of the Indian Penal Code.

2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. Learned counsel for the petitioners has submitted



that the instant case has been filed not by the person who is aggrieved but the person who claims to be the follower of the person who is said to have been aggrieved. Counsel for the petitioner has further submitted that in the Solemn Affirmation of the complainant and other witnesses also, there is no any specific allegation of intentional insult to the complainant. It has further been submitted that the learned Magistrate has found *prima facie* case against the petitioners under Section 504 of the Indian Penal Code.

4. Learned counsel for the opposite party No. 2 and learned A.P.P. have submitted that the complainant is a follower of the person against whom the alleged news item was published to tarnish the image and due to publication of the said news item, the complainant got aggrieved and has filed the complaint. Thereafter, the learned Magistrate has after holding enquiry found *prima facie* case against the petitioners.

5. As per complaint petition, the petitioners are Chief Editor, Editor and Publisher of Daily Urdu Newspaper “Sangam” and in the official capacity, news item was published. The complainant alleged in paragraph-6 of the complaint petition that by publication of particular news item in the aforesaid newspaper on 08.05.2004, the image of Minister Shakil Ahmad Khan got diluted and complainant also felt ashamed.



6. During enquiry, besides Solemn Affirmation of the complainant, the statement of four other witnesses were recorded and the same have been enclosed as Annexure-2. From perusal of statement of those witnesses, it is apparent that none of them have stated that the person who is said to have been aggrieved by the aforesaid news item published in the newspaper, has expressed before them that he became defamed or he is aggrieved by such news item.

7. The enquiry witnesses 1 to 4 have stated to the court question that they had no talk with Mr. Shakil Ahmad Khan in respect of aforesaid news items. The enquiry witness No. 4 stated to court question that he does not know Mr. Shakil Ahmad Khan.

8. The counsel for the petitioners has relied upon a decision reported in **2007(2) PLJR-787 (Md. Hasnain Vrs. The State of Bihar and Another)** wherein the Hon'ble Court has held that in absence of particular words spoken by the petitioner it is difficult to ascertain whether the use of those words amounted to intentional insult.

9. In the instant case, allegation has been made by the complainant that some news item has been published against Mr. Shakil Ahmad Khan, the then Minister, and the complainant being his follower, became aggrieved and felt insulted.

10. From the complaint petition itself it appears that



not a single word was expressed against the complainant. The person, who is said to have been aggrieved, never made any complaint before the court.

11. The witnesses in their statement have stated that they had no talk with the person aggrieved (Mr. Shakil Ahmad Khan) with regard to the aforesaid news item. Therefore, the impugned order passed by the learned court below is not in accordance with law.

12. Accordingly, the impugned order dated 16.12.2005 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Trial No. 2629 of 2005 arising out of Complaint Case No. 389-C of 2004 along with the entire Criminal Proceeding against the petitioners is hereby quashed.

13. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

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