

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36231 of 2013

Arising Out of PS.Case No. -2440 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. KRISHNA KANT UPADHYA S/O DASHRATH UPADHYA SR. LOCAL EDITOR, HINDUSTAN, BUDHA MARG, P.S. KOTWALI, DISTRICT PATNA.
 2. SHASHI SHEKHAR S/O SH. JAGAT PRAKASH CHATURVEDY CHIEF EDITOR, HINDUSTAN, BUDHA MARG, P.S. KOTWALI, PATNA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. DR. SUDHAKAR PRASAD SINGH S/O LATE C.S.P. SINGH TEACHER IN EDUCATION, PATNA TRAINING COLLEGE, DARIYAPUR, P.S. KADAMKUAN, DISTRICT PATNA.

.... OPPOSITE PARTY/S

=====

Appearance:

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
For the Opposite Party/s : Mr. Manoj Kumar Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 11-07-2017

Heard learned counsel for the petitioners as well as learned counsel for the Opposite Party No.2 along with learned Additional Public Prosecutor.

2. Petitioners have challenged order dated 23.11.2012 passed by Sri Ghanshyam Singh, Judicial Magistrate, 1st Class, Patna relating to Complaint Case No.2440(c) of 2012 (Dr. Sudhakar Prasad Singh vs. Krishna Kant Upadhyia & Ors.) whereby and whereunder petitioners have been summoned to face trial for offences punishable under Section 501, 502, 34 of the IPC.

3. Opposite Party No.2/complainant, Dr. Sudhakar Prasad Singh filed complaint petition arraying four persons including Hindustan Media Venture Limited under garb of Section 499 IPC



punishable under Section 500,501,502,503 IPC relating to publication of a news item in Hindustan Daily Newspaper dated 22.08.2012 and on account thereof, the complainant found the news item defamatory with a view to tarnish his image and reputation in the society.

4. While challenging the order impugned, it has been submitted on behalf of petitioners that from perusal of complaint petition it is evident that opposite party no.2/complainant had not mentioned the news item, and further, how it be a defamatory one as it is based upon the factual aspect so made available by the leader of the student union. Opposite party no.2/complainant, knowingly withheld his mode of appointment as well as promotion having been allowed to him for which complaint was made by the union to the authority concerned which were also made available to the petitioners and a copy thereof, are annexure of the petition. So it is not the imputation as alleged rather factual as well as legal aspect which has not been controverted at the end of opposite party no.2, and that happens to be reason behind keeping mum on that very score. Keeping in view the aforesaid factual as well as legal aspect it could not be said that petitioners carried mensrea to publish the news item in order to malign the opposite party no.2/complainant. That being so, instant prosecution attracts quashing.

5. The learned counsel for the opposite party no.2 has submitted that petitioners are Editor, Chief Editor of the Hindustan Daily Newspaper and on account thereof, they are duly accountable



for the publication whereby imputation has been made against the opposite party no.2/complainant lowering his prestige in the society and so, they have rightly been made accused, and in likewise manner, summoned to face trial as has been held by Hon'ble Apex Court in ***Gambhirsinh R. Dekare v. Falgunbhai Chimanbhai Patel*** reported in AIR 2013 SC 1590.

6. The learned Additional Public Prosecutor endorsed the view expressed by learned counsel for the complainant/opposite party no.2.

7. From perusal of the complaint petition (Annexure-1), it is evident that complainant/opposite party no.2 had failed to incorporate the relevant passage of the news item which, in his opinion, happens to be defamatory one nor the opposite party no.2 as well as his witnesses deposed during course of enquiry with regard to contents thereof.

8. In ***Balraj Khanna v. Moti Ram***, reported in (1971) 3 SCC 399 it has been held:

“26. In this case we have already referred to Ex. PW 3/B, which, according to the complainant, contains the statements made by the appellants during the discussion of the resolution leading to his suspension on December 11, 1964. The High Court, in this connection, has adverted to the evidence of PWs 1, 3 and 4 on this aspect. As to how far the evidence of those witnesses is to be accepted, is a matter which will arise only during the trial of the complaint. From the averments made in the complaint, which refers to various matters referred to in Ex. PW 3/B, we are of the opinion, that the complainant has furnished in a substantial measure the words of imputation,



which, according to him, are defamatory. Therefore, the contention of Mr Daphtary that the complaint is defective inasmuch as it does not contain the actual words alleged to have been spoken by the appellants, has to be rejected.

27. The further question is whether the complaint is defective for the reason that the actual statements alleged to have been made by the individual accused have not been stated therein. So far as this aspect is concerned, if the case of the complainant is that each of the appellants made different statements or spoke different words, which are defamatory, then it is absolutely necessary that the complaint must specify the words spoken or the statements made by each of the appellants. But that is not the allegation in the complaint. We have already referred to the fact that it is specifically stated in the complaint that during the course of the discussion of the resolution, all the seven appellants made wild and baseless allegation against the complainant involving moral turpitude. According to him those statements are contained in Ex. PW 3/B. The evidentiary value of Ex. PW 3/B does not arise for consideration at this stage. The further question whether the complainant will be able to prove his allegation that all the seven appellants made all or any of the statements contained in Ex. PW 3/B, is again a matter which does not arise for consideration at this stage. We are only concerned to find out what are the allegations made by the respondent in his complaint against the appellants. When the case of the complainant is that all the seven appellants made the statements referred to in Ex. PW 3/B and he is prepared to go to trial on that footing, the question of the complainant being made to state the statements alleged to have been made by the individual accused does not at all arise. Such a situation will arise only when the case of the complainant is that different statements were made by different accused, who are before the Court.”

9. Putting reliance over *Laloo Prasad vrs. State of Bihar &*

Anr. reported in *1997(2) Crimes 498, Jayalalitha vrs. Arcot No.*



Veerasamy reported in **1977 Cr.L.J 4585**, In Amar Nath Singh vs. The State of Bihar & Ors., Dr. Chandra Bhushan Verma which also relates with publication of news item in Hindustan paper, reported in **2004(2) PLJR 481**, it has been held that in absence of verbatim production of publication in the complaint petition will not allow the prosecution of an accused. For better appreciation para-7 thereof is quoted below:-

“7. Counsel appearing for the petitioner has relied on two decisions to substantiate his contention. These decisions are 1997 (2) Crimes 498 (**Laloo Prasad vs. State of Bihar & anr.**) and 1977 Criminal Law Journal 4585 (**Jayalalitha vs. Arcot N. Veerasamy**). In 1997 (2) Crimes 498 cognizance was taken under Sections 500, 501, 502 and 504 of the Indian Penal Code. In this case also on the basis of a news item the private complaint was filed. None of the witnesses examined by the complainant deposed that defamatory word was uttered by the petitioner in their presence. It was held that a person cannot be said to have committed offence of defamation merely because some article or news item is published attributing certain utterances to that person, in absence of evidence that such objectionable words used by him. In 1977 Cr.L.J. 458 **Jayalalitha’s case** also it has been held that 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 caused it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

10. In *Subramanian Swamy vs. Union of India* reported in **2016 Cr.L.J 3214** at para 165, it has been held as follows



“**165.** For the aforesaid purpose, it is imperative to analyse in detail what constitutes the offence of “defamation” as provided under Section 499 IPC. To constitute the offence, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the reputation of a person is the basis on which the offence is founded and *mens rea* is a condition precedent to constitute the said offence. The complainant has to show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasises on the intention or harm. Section 44 IPC defines “injury”. It denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. Thus, the word “injury” encapsulates harm caused to the reputation of any person. It also takes into account the harm caused to a person’s body and mind. Section 499 provides for harm caused to the reputation of a person, that is, the complainant. In *Jeffrey J. Diermeier v. State of W.B. (2010) 6 SCC 243*, a two-Judge Bench deliberated on the aspect as to what constitutes defamation under Section 499 IPC and in that context, it held that there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.”

In the aforesaid judgment exceptions have been dealt with independently in detail and under para-181, 182, it has been



explained in following way:

“**181.** Again in *M.C. Verghese v. T.J. Poonan* (1969) 1 SCC 37, it has been ruled that a person making libellous statements in his complaint filed in court is not absolutely protected in a criminal proceeding for defamation, for under the Eighth Exception and the illustration to Section 499 the statements are privileged only when they are made in good faith. There is, therefore, authority for the proposition that in determining the criminality of an act under the Indian Penal Code the courts will not extend the scope of special exceptions by resorting to the rule peculiar to English Common Law that the husband and wife are regarded as one. In *Chaman Lal* (1970) 1 SCC 590 this Court has opined that the Eighth Exception to Section 499 of the Penal Code indicates that accusation in good faith against the person to any of those who have lawful authority over that person is not defamation. In *Rajendra Kumar Sitaram Pande v. Uttam* (1999) 3 SCC 134, it has been observed that Exception 8 to Section 499 IPC 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. In the said case the report of the Treasury Officer clearly indicated 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 was the gravamen of the complaint, would be covered by Exception 8 to Section 499 of the Penal Code.

182. In *Chaman Lal* (1970) 1 SCC 590 the Court has opined that good faith requires care and caution and prudence in the background of context and circumstances. The position of the persons making the imputation will regulate the standard of care and caution. In *Sukra Mahto* (1971) 1 SCC 885, emphasis has been laid on



protection of the interest of the person making it or of any other person or for the public good. Reference has been made to *Harbhajan Singh case AIR 1966 SC 97* to stress on due care and attention. In *Sewakram Sobhani v. R.K. Karanjia—(1981) 3 SCC 208*, it has been observed that 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, and the imputation made must be in good faith for the public good. In *M.A. Rumugam v. Kittu—(2009) 1 SCC 101*, it has been held that for the purpose of bringing the case within the purview of the Eighth and the Ninth Exceptions appended to Section 499 of the Penal Code, it would be necessary for the accused to prove good faith for the protection of the interests of the person making it or of any other person or for the public good. This Court, in *Jeffrey J. Diermeier—(2010) 6 SCC 243*, has observed thus: (SCC p. 256, paras 37-38)

“37. It is trite that where to the charge of defamation under Section 500 IPC the accused invokes the aid of Tenth Exception to Section 499 IPC, “good faith” and “public good” have both to be established by him. The mere plea that the accused believed that what he had stated was in “good faith” is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt.

38. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with the degree of proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor possible to lay down a rigid test for deciding whether an accused person acted in “good faith” and for “public good” under the said Exception.”



11. When any news item has been allegedly shown to be defamatory against the complainant, could not be allowed to base on the words, or lines picked up from hither and thither, rather the news item in its entirety has to be seen. In *Kunhikannan vs. Kalliani* reported in *1972 Ker. LT 619*, it has been held:-

“Where same passage in a written matter is alleged to be defamatory, the document should be read as a whole with a view to find out the main purport, and too much importance should not be attached to a few isolated passages here and there. It is not permissible in law in cases like this to take one portion alone of the document which is the subject matter under attack and consider it without reference to the whole matter which alone would help the court to appreciate the real intention of the parties”.

12. At the present juncture it looks useful to quote the passage as observed by the Apex Court in *Sahib Singh Mehra vs. State of U.P.* reported in *AIR 1965 SC 1451*:

“The Press has great power in impressing the minds of the people and it is essential that persons responsible for publishing anything in newspapers should take good care before publishing anything which tends to harm the reputation of a person. Reckless comments are to be avoided. When one is proved to have made defamatory comments with an ulterior motive and without the least justification motivated by self-interest, he deserves a deterrent sentence.”

13. Newspaper clip has been furnished on a direction to perceive intention of the petitioners as well as contents thereof to be labelled one. After going through the same, it is evident that the news item deals with activity of the concerned department to get the



allegation levelled by the student union against the then V.C. to be examined by the vigilance wing, and further one of example relates with activity taken in favour of opposite party no.2/complainant.

14. Because of the fact that opposite party no.2/complainant kept mum over initial stage, which is the subject matter and further, did not controvert the action of the department in directing the vigilance to enquire against the then V.C. relating to allegation including present one, so, on that score really opposite party no.2/complainant has been defamed when there happens to be no denial relating to aforesaid activities taken up by the government.

15. The publication, as it divulges is neither the comment, nor own fantasy, rather it speaks with regard to steps taken by the government on getting complaint against the then V.C., and the case of opposite party no.2/complainant has been shown as one of the example, apart from others. That being so, it should not be considered to be application duly soaked with malafide intention to defame.

16. Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	21.06.2017
Uploading Date	11.07.2017
Transmission Date	11.07.2017

