

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45228 of 2011

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

- =====
1. Raghav Bahl S/O Late P.N. Bahl Founder/Controller Shareholder, Network18 Group, 503,504, 507, 5th Floor, Mercantile House, 15, Kasturba Gandhi Marg, New Delhi-110001, And Office At Express Trade Tower, Plot No.15-16, Sector 16, Film City, Noida-201301, UP

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ms. Rahmat Fatima Amanullah D/O Mr. Afzal Amanullah Resident Of 133, Pataliputra Colony, Patna-800013

.... Opposite Party/s

WITH

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Criminal Miscellaneous No. 34865 of 2012

Arising Out of PS.Case No. -2101 Year- 2011 Thana -null District- PATNA

- =====
1. Rajdeep Sardesai S/O Late Dilip Sardesai, Arraigned As Editor-In-Chief Cum CEO IBN Network And CNN-IBN, IBN-18, Broadcast Limited, Express Trade Tower, Plot Nos. 15-16, Sector 16, Film City, Noida- 201301, UP.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ms. Rahmat Fatima Amanullah D/O Mr. Afzal Amanullah R/O 133, Patliputra Colony, Patna- 800013

.... Opposite Party/s

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Appearance :

(In both the cases)

For the Petitioner/s	:	Mr. Kamal Nayan Chaubey, Sr. Advocate Mr. Ambuj Nayan Choubey, Advocate Mr. Avanish Singh Rana, Advocate
For the Opposite Party/s	:	Mr. Shyam Kumar Singh, APP
For Opposite Party No.2	:	Mr. Rana Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 12-09-2017

Heard learned counsel for the parties.



2. These are the applications filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 29.10.2011 passed by Mr. Sunil Kumar-II, the Judicial Magistrate, 1st Class, Patna, in Complaint Case No.2101(C) of 2011, whereby the learned Magistrate has found a prima facie case against the petitioners for the offences under Sections 500 and 120B of the Indian Penal Code and has ordered for issuance of summons against the petitioners.

3. Just to make the records strait it is mentioned at the outset that by order dated 08.01.2014 and again by order dated 16.04.2015, this Court had ordered that records of Cr. Misc. No.32688 of 2011 be placed along with these applications. Cr. Misc. No.32688 of 2011 was against some different order passed in the same case and the aforesaid Cr. Misc. was separately dismissed on 27.02.2015 by a coordinate Bench of this Court.

4. The impugned order has been challenged on the ground that a bare perusal of the complaint petition would reveal that there is no allegation against the petitioners even if the allegation in the complaint petition are taken at their face value and are accepted in their entirety. Further ground is that there is no provision for vicarious liability in the criminal jurisprudence unless it is specifically provided by the Statue. The impugned order has been challenged on the ground that it is against the specific bar



contained in Sub-Section (2) of Section 196 of the Code of Criminal Procedure.

5. Before considering the details of the submission of the parties, it would be apt to look into the background of the present application. Opposite Party No.2 filed the above mentioned complaint case stating therein that the complainant was desirous of establishing an industry for shortlisted food processing. For the purpose the complainant approached the Bihar Industrial Area Development Authority (henceforth BIADA) on 21.04.2010 for providing a piece of land to set up the proposed food processing unit. In para-3 of the complaint petition, the complainant has disclosed the chronology of her application, its consideration and the date of first allotment of a piece of land, again sifting of the same to some other portion and finally issuance of allotment letter by the BIADA stating that they have allotted 87120 sq. ft. of land in Bihiya Industrial Area. The complainant claims to be daughter of a senior and reputed bureaucrat as well as the fact that her mother was Hon'ble Minister in the Government of Bihar. The complainant alleged that on 18th of July, 2011, the IBN-7 Hindi News Channel aired some news regarding scam in the allotment of BIADA land and some specific statement was there by the TV Channel uttering some scandalous and defamatory remarks against the parents of the complainant as well as complainant. The remarks



were shared by accused Nos.2, 3 and 4 on telecast. The petitioners were arrayed as accused No.5, i.e., petitioner Rajdeep Sardesai, being Editor-in-Chief-cum-CEO, IBN Network and accused No.6, i.e., petitioner Raghav Bahl, Founder/Controlling Managing Director of the said Network.

6. Allegation is that the news was shared with the public with tacit knowledge and approval of the petitioners without verifying the genuineness and correctness of the news. Candidly suppressing the true fact and knowingly and intentionally making false accusation of highlighting a wholly imaginary, fabricated and distorted picture regarding the land allotment to the complainant. There is mention of actual words uttered on the news channel which are not relevant for this purpose as this Court is not going to decide whether the words uttered were scandalous or not.

7. At the time of argument, learned counsel for the complainant-Opposite Party No.2 relied on the statement made in paragraphs 13 and 14 of the complaint petition for his submission that there is specific allegation against the petitioners also. Hence, it would be apt to reproduce paragraphs 13 and 14 of the complaint petition which are as follows:

“13. That the Complainant further states that the said broadcast on a national channel in Hindi was televised on 18.07.2011 and thereafter with the consent and approval of



accused No.5, Mr. Rajdeep Sardesai who is Editor-in-Chief cum Chief Executive Officer of IBN Network and CNN-IBN. Mr. Rajdeep Sardesai (accused no.5) had in fact personal knowledge of the whole matter and he had good reasons to believe that if the telecast of such news item in question were to be aired it would have defamed the Complainant and her parents. Such a primetime news report having highest viewership for a news channel and attracting the best advertising rates for the channel, was in fact aired after accused no.2, 3 and 4 had been given permission and approval of accused Nos.5 and 6 for televising and broadcasting this major story. The accused no.5, Mr. Rajdeep Sardesai in consultation with all the other accused persons named hereinbefore had taken a decision in capacity of Editor-in-Chief cum C.E.O. of his news channel to telecast the whole story for making it sensational not just in the State of Bihar but nationwide and all over the world wherever Indians reside. The accused no.5 and 6 while approving this story for its big broadcast at 9 PM primetime on 18.07.2011 had calculatedly designed to malign and defame the complainant and her parents not only for creating sensation but to make monetary gains for their news channel by increasing the channel's T.R.Ps. (Television Rating Points).

14. That the Complainant submits



that accused no.6, Mr. Raghav Bahl, Founding/Controlling Shareholder & Managing Director of Network 18, (Network 18 is the holding company of IBN-18 Broadcast Ltd. Which owns and operates the channel IBN-7 and CNN-IBN) is equally responsible for publication/broadcast of this defamatory news report in capacity of the owner and publisher of IBN-7. Such news item having alleged involvement of the Chief Minister, a number of Cabinet Ministers, other politicians and bureaucrats was aired after accused no.5 had obtained the consent and approval of accused no.6 and thus he too is part of the criminal conspiracy hatched against the Complainant and her parents by other accused persons 2, 3, 4 and 5. It is both shocking and surprising that the accused no.6 did not exercise care, caution and honesty and went ahead with the object of increasing his channel's T.R.Ps, and thereby increasing revenue for the said channel. Thus accused no.6 also by his personal acts and omissions had defamed and harmed the reputation of the Complainant and her illustrious and respectable family.

It is clear that broadcasting the news story in question had been done without care or caution or honesty- the ethics which every journalist is supposed to uphold. The accused persons in capacity of journalists have no special



privilege or greater freedom in making such reckless imputations and/or wild allegations which have been detrimental to the reputation of the Complainant and her parents.”

8. Learned counsel for the petitioner submits that the petitioners have stated on oath in paragraphs 15 and 17 of their respective petitions that they have got no role to play in the alleged defamatory story or in the editing of the news for channel IBN-7. The bald statement is there in paragraphs 13 and 14 of the complaint petition above because the complainant wants to drag the petitioners for the reason that they are holding high offices in the IBN-7.

9. Learned counsel has placed reliance on the case of **Keki Horimusji Gharda & Anr. V. Mehervan Rustom Irani & Anr.** reported in **(2009) 6 Supreme Court Cases 475** and on the case of **S.K. Alagh V. State of Uttar Pradesh & Ors.** reported in **(2008) 5 Supreme Court Cases 662**, for his submission that Indian Penal Code does not cast vicarious liability on a party not directly charged for commission of an offence, unless specifically provided therefore in the Statute itself.

10. Learned counsel for the Opposite Party No.2 submits that at the stage the Magistrate is to see whether prima facie material is there for issuance of process and once the Magistrate was satisfied on the basis of allegation and evidences collected



during inquiry that the petitioners are fit to be summoned to face trial, this Court should not interfere with the order of the Magistrate on mere technicalities as well as on appreciation of allegation and evidences in a meticulous manner. He further submits that sub-Section (2) of Section 196 of the Code of Criminal Procedure would apply only to consider cognizance under Section 120B of the Indian Penal Code and would not help the petitioners to challenge the cognizance under Section 500 of the Indian Penal Code. Therefore, criminal prosecution should be allowed to go on.

11. Section 499 of the Indian Penal Code defines the word defamation and Section 500 provides for punishment, which shall be simple imprisonment for a term which may extend to two years or with fine or with both.

Section 499 Of the Indian Penal Code is being quoted below:

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to



defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—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 causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

12. In the complaint petition there is no allegation that the petitioner directly used defamatory words in the manner referred to in complaint petition.

Further the ratio decided in **S.K. Alagh case** (supra) would be applicable in the facts and circumstances of the present case also as there is no statutory provision for vicarious liability



against the petitioners for the act committed by the other associates. Thus, the only question left to be decided is whether the defamatory act was committed by other accused persons under a conspiracy along with the present petitioners.

13. A bare perusal of the complaint petition would reveal that there is allegation of tacit consent and criminal conspiracy, against the petitioners, for commission of the offence of defamation. Sub-Section (2) of Section 196 Cr.P.C. specifically bars the cognizance under Section 120B Of the Indian Penal Code if the alleged criminal conspiracy was for commission of the referred offences with required punishment: Sub-Section (2) of Section 196 is being quoted below:

“(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding;

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.”



14. In this case the offence of defamation is punishable with simple imprisonment for a term of two years. Hence, cognizance for its conspiracy, under Section 120B of the Indian Penal Code, without the consent to of the State Government or the District Magistrate is bad-in-law as such not sustainable.

15. Accordingly, this Court is of the view that there is no direct allegation of defamation against the petitioners and cognizance for the offence under Section 120B of the Indian Penal Code i.e., criminal conspiracy to commit defamation is barred under the specific provisions of sub-Section (2) of Section 196 of the of the Code of Criminal Procedure.

16. In the result, the impugned order and entire criminal prosecution, only against the petitioners, stand quashed and these applications allowed accordingly.

(Birendra Kumar, J)

Mkr./-

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