

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 7710 OF 2010

ORDER :

The petitioners 1 to 4 of this quash petition are accused in C.C.No.1299 of 2010 on the file of the XVII Addl.Chief Metropolitan Magistrate. The 1st respondent-Durga Papers Private Limited (for short,'DPPL') represented by its Director, Durga Prasad Tiwari is the defacto-complainant. He filed a private complaint against the 4 accused viz; Nirmal Kuhad, President of Andhra Pradesh Paper Merchants Association(for short, 'the Association'), Vinay Baldwa, Secretary of Association; Prasad R.G., Chariman, Arbitration Board of the Association and M/s Sha Amirchand Tarachand & Sons represented by Vikas Kumar a businessman and it is for the offences punishable under Sections 500 and 501 r/w 34 IPC and the date of alleged offences was on 28.06.2009 at the office of the complainant within jurisdiction of Begam Bazar Police Station, Hyderabad and the witnesses cited are besides complainant one Promod Kumar Purohat and Jitender Parikh.

2. The averments in the private complaint dated 15.10.2009 shows that the complainant is a company with registered office at Nizam Shahi road, Hyderabad of wholesale distributor of writing and printing paper and paper boards etc., and he is a Member of the Association since 1998 and actively participating in the affairs of the Association for development of trade and business and was allowed as a Member of the Managing Committee during 2003 to 2008 twice

successfully with other Members and worked hard for development of the Association and also served as a Arbitration Board Member during 2005-06 and 2006-07 and also sponsored an award for the Members of Managing Committee who attends maximum meetings in time in the name of his late father Bhanwarlal Tiwari and he got clean business reputation. It is to his shock and dismay that he received the minutes of Annual General Body Meeting(AGBM) held on 28.06.2009 stating that a case is pending against the complainant. The complainant neither received notice from A.3 nor A.4 approached him regarding any case at any point of time and the accused 1 and 2 having knowledge about the same. The A.1 to A.3 in collusion with A.4 purposefully published the name of the complainant's company in the minutes of the AGBM, dt.28.06.2009 with an intention to defame the reputation of the complainant's company and its flourishing business and A.1 to A.3 without following basic rules and bye-laws of Association given consent to publish the said minutes and got it circulated among all the Members of the Association and A.3 Chairman of the Arbitration Board is supposed to follow the rules and regulations contemplated by the Association but without following with intent to impute reputation of the complainant's company did the same and the words and phrases used in the publication are per se defamatory and from which the complainant's company was looked down by the Members of the Association and the A.1 to A.3 being Presidents, Secretary and Chairman of the Arbitration Board of the

Association along with A.4 committed the offence and the complainant cause issued legal notice to them calling upon them to tender unconditional apology and to pay damages and with regard to the evasive reply issued by them thereby he is constrained to file the above complaint.

3. The learned Magistrate having recorded the sworn statement of the complainant, taken cognizance. It is the said cognizance order and summoning impugned by them herein with contentions that the complaint filed is without bona fides and a false outcome and it no way attracts any of the offences u/secs.500 and 501 IPC. It is the said deponent that used unparliamentary language against the Executive Body of the AGBM and after due enquiry and after extra ordinary General Body Meeting, he was expelled from the Association and out of frustration he moved the complaint and he also filed application to stall extra ordinary General Body Meeting by filing petition under Societies Registration Act, before the I Addl.Chief Judge, Secunderabad in O.P.No.600 of 2009 and could not get any interim order to stall the meeting and the general body unanimously without a single vote of dissent passed the resolution for his derogatory remarks and expelled him. The 1st petitioner-DPPL rents for the benefit of the AP paper merchants and there is an Arbitration Board to resolve the *inter se* disputes of the Members, constituted under the bye-laws of the Association. The petitioner No.4 herein filed a complaint against the complainant/R.1 before Arbitration Board that he was to receive

some amounts from R.1 and the Board as usual called upon R.1 to appear and answer the queries to resolve the disputes amicably. The R.1 did not attend the Arbitration Board meetings and in the extraordinary GBM held on 28.06.2009, the 1st petitioner being President of the Association called upon the Arbitration Board to submit with regard to pendency of the cases and disputes with the Board, the Chairman-3rd petitioner of the Board, submitted his report with regard to pendency of complaints 34 in number of which 20 complaints were resolved and 14 complaints are pending and out of the 14, one is against the R.1 filed by the 4th petitioner and it is on hearing the name of the R.1, he shouted at the Chairman of the Arbitration Board and also stated that there is a conspiracy between some of the Members and supporting the petitioner No.4 who filed the complaint before the Board and the 1st petitioner repeatedly called upon the R.1 to calm down as the announcement was with regard to the names of pending cases on hand only but the R.1 did not heed him and made sarcastic remarks using unparliamentary language against the Executive Board. The past President Arvind Hippalgaonkar took strong objection for the behavior of the R.1 and requested the President to take action against him by disqualifying his membership of the Association and other past President Rasiklal C.Shah pointed out that D.P.Tiwari-R.1 using foul language, arguing in high pitch voice, not listening to the other Members and lowering dignity of the Association in unacceptable manner and if he felt sorry for his behavior he would

have conveyed the same to the house immediately however he became adamant and the subsequent AGM dated 28.06.2009 went on smoothly and election of new office bearers was declared and also unanimously passed a resolution to constitute disciplinary action committee to take action against the D.P.Tiwari-R.1 and the Chairman of the said Disciplinary Action Committee is one K.Vishwanatham who tried to convene the meetings and called upon D.P.Thiwari-R.1 on three occasions by prior intimation to attend the meeting to which he avoided to attend and the meeting was adjourned and fixed ultimately to 27.10.2009 to decide ex-parte if he fails to attend, as per the provisions of the constitution of the Association and notice served on him on 09.10.2009 and he tried to allege false complaint before the SHO, Begum Bazar on 15.10.2009 on mischievous allegations against the petitioners herein and during the investigation, the petitioners appeared before the police and gave details about the persons and the police found fault with D.P.Tiwari-R.1 and he also cause issued mischievous legal notice for which the petitioners on behalf issued suitable reply and subsequently a notification was issued to convene an extra-ordinary GBM for approval of the resolution passed in the Managing Committee meetings held on 27.10.09 to expel him from the membership of the Association and said notice was duly served on Members of the Association in advance and the R.1 tried to stall the proceeding by filing a Petition in O.P.No.600 of 2009 before the I Addl.Chief Judge, City Civil Court, Secunderabad, and could not

succeed and after he was expelled, he withdrew O.P.No.600/2009, he filed O.P. No.121/2010 to cancel said extra-ordinary GBM held on 15.11.2009 to declare as illegal and the same is still pending and it is only to harass the petitioners he filed a false complaint and thereby taking cognizance of the case in C.C.No.1299 of 2010 is liable to be quashed.

4. Heard the standing counsel for the petitioners and the learned counsel for the 1st respondent and also the learned Public Prosecutor for the 2nd respondent and the perused the material on record.

5. Section 500 IPC, provides punishment for defamation which may extend to two years with simple imprisonment, or with fine, or with both and same is non-cognizable and bailable.

6. Section 501 is for printing or engraving matter known to be defamatory and it is punishable upto two years with simple imprisonment, or with fine or with both and the same is a non-cognizable and bailable.

7. So far as the definition of defamation concerned, Section 499 IPC reads as follows:-

“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 expected, to defame that person”

Among the exceptions 1 to 10 of Section 499, the exceptions 7 to 9 reads as follows:-

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a

person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates. Illustration A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorized 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. Illustration If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

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.

Illustration:-

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

8. Among the above, the issue regarding indebtedness to the 4th petitioner by the complainant—R.1, the 4th petitioner entity represented by its Director when came to meeting for discussion, the D.P.Tiwari-R.1-Director of DPPL enraged in the meeting of the Association for which the Association took a decision to expel him and expelled

finding fault of his conduct, comes within the exception referred supra of Section 499 IPC that too after discussion and after enquiry and report even he failed to participate from the notice issued and from the decision taken and even the decision is in circulation among them not by public circulation much less any wide publicity.

9. Having regard to the above, there is no offence of defamation made for the action taken in good faith to sustain cognizance order against the petitioners on the private complaint of D.P.Tiwari-R.1 represented by its Director.

10. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.1299 of 2010 on the file of the XVII Addl.Chief Metropolitan Magistrate, at Hyderabad against the petitioners and they are acquitted and their bonds shall cancelled.

11. Consequently, the pending miscellaneous petitions, shall stand closed.

Date:22.08.2017
vvr

Dr. B.SIVA SANKARA RAO J,