

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.685 OF 2006

JUDGMENT:

The complainant in C.C. No.12 of 1999 on the file of the learned II Additional Munsiff Magistrate, Gurazala, and respondent No.2 in Criminal Appeal Nos.380 of 2000 and 411 of 2000 on the file of the learned X Additional Sessions Judge (Fast Track Court), Guntur at Narasaraopet is the revision petitioner in the present Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. The learned Magistrate recorded conviction under Section 255 (2) of the Code against respondent Nos.1 and 2, who are accused Nos.1 and 3, while acquitting them under Section 255 (1) of the Code for the offences punishable under Sections 501 and 502 IPC, while splitting up the case against accused Nos.2 and 4 in C.C. No.148 of 1999, for the offence punishable under Section 500 of IPC, and sentenced them to undergo simple imprisonment for a period of one year each and to pay fine of Rs.1,000/- each with default sentence of one month simple imprisonment.

3. When both of them preferred separate appeals in Criminal Appeal Nos.380 of 2000 and 411 of 2000, the learned Sessions Judge, on re-appraisal of evidence, holding that mere publication is not sufficient and the complainant has to establish that the statement was published with a dishonest intention to cause harm to him, and in that

direction since no material is placed, reversed the conviction by acquitting both of them. The complainant got aggrieved and, therefore, preferred the present Criminal Revision Case, in fact, showing both accused Nos.1 and 3, in one and the same Criminal Revision Case, whereas two Criminal Appeals were preferred against the judgment of the learned Magistrate's Court. In such an event, in fact, two Criminal Revision Cases challenging the judgment in Criminal Appeal Nos.380 and 411 of 2000 ought to be filed, but, somehow, it appears, no objection was raised by the Registry.

4. The present Criminal Revision Case relates to the year 2006 and admitted on 20.04.2006. Later, when it was listed on 04.12.2017, there was no representation for the revision petitioner. Hence, the Registry was directed to list under the caption 'for orders' on 06.12.2017'. On 06.12.2017 also, there was no representation, therefore, the Registry was directed to list it to today under the same caption. Today when the matter called, the learned counsel for the revision petitioner represented the matter.

5. Heard Sri M.V.S. Saikumar, learned counsel for the revision petitioner and Sri K. Venkat Reddy, learned counsel for respondent No.2 - accused No.3 and the learned Assistant Public Prosecutor for the State of Andhra Pradesh. Though, notice served with respondent No.1 - accused No.1, none appears.

6. Before the learned Magistrate, on behalf of the complainant, besides examining himself as PW.1, also examined two others as PWs.2 and 3 and marked Exs.P-1 to P-13. Of course, on behalf of respondent Nos.1 and 2 herein - accused Nos.1 and 3, no witnesses were examined and no documents were filed.

7. As already mentioned in the above, the learned Magistrate felt it that the complainant could prove the offence punishable under Section 500 of IPC and convicted them under Section 255 (2) of the Code and inflicted the aforesaid sentence and fine.

8. The learned Sessions Judge dealt with the evidence on record exhaustively by independent appreciation of evidence on record. Substantially, the case of the revision petitioner - complainant has been, that he was working as a Cashier and Regional President, United Electricity Employees Union, affiliated to C.I.T.U, and he ventilated the irregularities committed by accused No.1 - A. Laxmana Rao, Lineman and Divisional Secretary of Telugunadu Vidyut Karmika Sangham, Macherla Division and as such, he bore grudge against him and to lower down his prestige in the public and in the department, accused No.1 prepared a complaint on the letter pad of his Union against 16 persons of his rival Union members with his signature and sent the same to the Chairman, APSEB, Hyderabad and Superintending Engineer (Operations), APSEB, Guntur, and due to fear of likelihood of persistent threat from those 16 persons including

PWs.1 and 2, accused No.1 gave Ex.P-2 statement to accused No.3, and accused No.3, who was a Reporter of 'Vaartha' Daily Newspaper, Guntur, by name Sri B. Veera Bhadrudu in collusion with accused No.1 published Ex.P2 with the allegation of PW.1 forging the signature of accused No.1 and the said statement was defamatory and the reputation of the complainant was lowered down in the department as well as in the public on account of Ex.P2 statement.

9. The learned Sessions Judge formulated the following two points:

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- I. Whether the contents of Ex.P2 are defamatory?
- II. Whether the reputation of the complainant was damaged on account of the publication of Ex.P2 statement? ”

i) Thus, the sum and substance has been that accused No.1 projecting that PWs.1 and 2 forged his signature, and put the colleague staff members in fear by making complaints with Higher Officials by using letter pad of the 'Telugunadu Vidyut Karmica Sangham' as they were originally associated with the Union of accused No.1 and since they behaved against the activities of the union, they were removed by the said Union and keeping that in mind that with a view to separate the Union, PWs.1 and 2 chose to forge accused No.1's signature and the Higher Authorities in the Electricity Department and the District Police missionary were enquiring into the matter. That has been the sum and substance of Ex.P2. The learned

Sessions Judge, referring to the findings recorded by the learned Magistrate finding that there is no evidence that PW.1 indulged in forging the signatures of anybody's earlier and that there is also no evidence that PW.1 has no morals or ethics and that no suggestion was even made in his cross-examination as to immorality to him or denying reputation of PW.1, opined that these all circumstances would go to show that PW.1 was commanding the reputation in the union as well as in the public and on account of the publication, imputing forged signature by securing the letterhead of rival union will certainly defame the character of PW.1 as there was possibility to damage of reputation of PW.1 on account of Ex.P2 press statement, and thereby held that the person, who published Ex.P2 statement and the person at whose instance the statement was published with an intention to cause harm or with knowledge or knowing the reason to believe that it will harm the reputation of the person concerned are liable to be punished for the offence under Section 499 IPC and, accordingly, answered the point No.1.

ii) On point No.2, referring to the three ingredients to constitute the offence of defamation, which are; i) making or publishing any imputation concerning any person; ii) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations; and iii) that the said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person

concerned, and that the intention to cause harm is *sine qua non* to prove the offence under Section 499 IPC, the learned Sessions Judge found that PW.1 has not placed any material before the Court to show that accused No.1 gave statement for publication of Ex.P-2 statement. He has also observed that even the statement said to have given by accused No.1 for publication of Ex.P2 statement was not produced by accused Nos.2 to 4 in Court. Referring to Ex.P13 letter addressed by accused No.4 to the complainant, he observed that the accused No.4 thereafter, stated that the publication of Ex.P2 was made due to inadvertence and negligence on the part of their staff and in Ex.P13, accused No.4 did not state that accused No.1 gave statement and believing the statement of accused No.1, Ex.P2 was published. Even suggestions were also made to PW.1 in his cross-examination to the effect only to wreck vengeance against accused No.1, PW.1 himself might have got published Ex.P2 through his associates, of course, it was denied.

iii) The learned Sessions Judge refers to the statements made by accused Nos.1 and 3 under Section 313 of the Code to the effect that accused No.1 presented report to the police suspecting PWs.1 and 2 and gave copy of the report to accused No.3 and accused No.1 never gave any statement for publication of Ex.P2 and that Ex.P2 was published on the strength of report of accused No.1 and the presentation of report by accused No.1 was true. The learned Sessions Judge observed that accused No.1 presented the report to the

police suspecting PWs.1 and 2 and he did not give any statement for publication of Ex.P2 and even if accused No.1 gave copy of report to accused No.3, accused No.1 cannot be held responsible for publication of accused No.2 statement. The learned Judge also observed that there was no evidence at all to show that accused No.1 asked accused No.3 to publish the statement under Ex.P2. The learned Sessions Judge would base on the statement made by accused No.4 under Ex.P13 that their office staff published Ex.P2 inadvertently. The learned Sessions Judge observes that simply because Ex.P4 complaint was received on the letterhead of accused No.1, it cannot be concluded that accused No.1 gave statement for publication of Ex.P2 statement. Thus, basing on these circumstances, the learned Sessions Judge observed that accused No.1 has not issued statement for publication under Ex.P2 and presenting report to the police suspecting sending of Ex.P4 by PWs.1 and 2 does not amount to issue of statement for publication of Ex.P2 and, therefore, held that the learned Magistrate has not properly appreciated the evidence on record and erroneously convicted the accused No.1 for the offence under Section 500 of IPC and conviction is liable to be set aside.

iv) On point No.3 touching accused No.3's complicity, having referred to Section 7 of the Press and Registration of Books Act, 1867, which raises the presumption in respect of when an Editor is responsible for selection of the material for publication in a Newspaper, and relying on the decision in **State of Maharashtra v.**

Dr. R.B. Chowdhari¹, wherein it was held that it is not the members of the editorial board but the persons declared as editor, publisher or printer are liable for any defamatory imputation in any newspaper news item, and also relying on another ruling in **S. Nihal Singh v. Arjan Das**², wherein it was held that for an alleged defamatory news item in a newspaper the presumption as to awareness of contents of the newspapers can be raised only against the printer or the publisher who made a declaration under Section 7 of the Press and Registration of Books Act or against the Editor whose name appears on the copy of the news paper, and so also in **M. Soma Sekhar v. S.A. Subba Raju**³ finding that accused No.3 is only a reporter and mere publication is not sufficient, but the complainant has to establish that the statement was published with dishonest intention to cause harm to him and material placed before the Court is not sufficient to hold that accused No.3 with a dishonest intention to cause harm to the complainant, published Ex.P2, and thereby even acquitted accused No.3, setting aside the conviction recorded for the offence under Section 500 IPC.

10. In the present Criminal Revision Case, the usual grounds of failure to appreciate the evidence on record in proper perspective has been raised, besides raising the ground that the statements actually are defamatory, which the learned Sessions Judge failed to notice and that the statement constitutes the ingredients of defamation, and the

¹. AIR 1968 SC 110

². 1983 CrL.L.J. 777

³. (1989) 1 Crimes 621

respondent Nos.1 and 2 have not replied to the petitioner when he gave a lawyer's notice, which are all ignored by the learned Sessions Judge and, therefore, to allow the Criminal Revision Case by setting aside the common judgment, dated 21.12.2005.

11. The findings recorded by the learned Sessions Judge have been referred to in the above. In fact, accused No.3 cannot at all be convicted as he is only a reporter. He is neither Printer, nor Editor, nor publisher as per the law declared by the Hon'ble Supreme Court in the aforementioned rulings. Therefore, the learned Sessions Judge has rightly set aside the conviction recorded against accused No.3.

12. Turning to accused No.1's case, as observed by the learned Sessions Judge that mere failure to answer to the lawyer's notice got issued by PW.1 cannot be viewed to raise a presumption that accused No.1 was the actual culprit at whose instance the defamatory statement was published and also responsible for making the defamatory statement. As rightly observed by the learned Sessions Judge that PW.1 has not placed any convincing material to show that accused No.1 had actually given the statement for publication of Ex.P2 statement, more particularly, in view of the contents in Ex.P13 that publication of Ex.P2 was made due to inadvertence and negligence on the part of their office staff. Even the observation made by the learned Sessions Judge that there is no evidence at all to show that accused No.1 asked accused No.3 to publish the statement under

Ex.P2 cannot be brushed aside. The finding recorded by the learned Sessions Judge that Ex.P13 shows that office staff of accused No.4 published Ex.P2 inadvertently. On the whole, the reasoning adopted by the learned Sessions Judge in analyzing Exs.P2, P4 and P13 and the findings recorded thereon cannot be upset. What is required to prove an offence under Section 500 IPC is, convincing evidence to prove all the three essential ingredients referred to in the above, which is absolutely lacking in the present case. Therefore, the order of acquittal recorded by the learned Sessions Judge so far as respondent Nos.1 and 2 i.e., accused Nos.1 and 3 respectively, are concerned, cannot be interfered with as the findings are not tainted with any patent illegality. Hence, it is to be viewed that there is no merit in the Criminal Revision Case.

13. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment, dated 21.12.2005, passed by the learned X Additional Sessions Judge (Fast Track Court), Guntur at Narasaraopet in Criminal Appeal Nos.380 and 411 of 2000.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

December 13, 2017.
Mgr