

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2978 of 2014

ORDER

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.113 of 2013 pending on the file of II Additional Judicial First Class Magistrate, Tenali, Guntur District, registered for the offence punishable under Section 500 IPC.

2. The petitioner herein is the Accused No.3-Ravikindi Ramaswamy in C.C.No.113 of 2013 and whereas the 1st respondent is the complainant, who filed a private complaint against the five accused making specific allegations that the first accused in the month of October, 2012 sent a false representation to the Superintendent of Police, Chittoor alleging that the complainant along with his son-in-law facing various cases for their criminal activities for smuggling of red sanders and other various offences under IPC and alleged to have vast criminal record. It is also stated that all the money, so, borrowed by the son-in-law of the 1st respondent invested in various real estate projects and acquired property in the names of his other family members to cheat the persons who had lent money.

3. It is specifically alleged in para 8 of the complaint that he came to know that in the month of November, 2012 the 1st accused got published and circulated the pamphlets along with the representation made to the Superintendent of Police, Chittoor with the assistance of all other accused, in the surrounding areas of the complainant's native place. The complainant received a copy of pamphlet through his neighbour by name Konduri Sangeetha Rao. The said pamphlet containing derogative and most abusive words

projecting the complainant as cheater and smuggler. Therefore, requested the Court to take cognizance of offence under Section 500 IPC against A1 to A5 and punish them in accordance with law.

4. The trial Court took cognizance of offence against A1 and A3 and refused to take cognizance of offence against A2, A4 and A5 and issued summons to this petitioner being the third accused as arrayed in the private complaint. The only reason for taking cognizance against this petitioner is that printing the names of Bonthala Venkata Subbaiah and Ravikindi Ramaswamy. If the allegations made in the complaint are taken into consideration on its face value, A1 alone made publication and circulated the pamphlets containing derogatory statement in the surroundings of the complainant native place.

5. Undoubtedly, if the pamphlet is published by the petitioner and A1 along with others, it would amount to publication of derogatory statement to attract the offence defined under Section 499 IPC and punishable under Section 500 IPC. But the allegations in para 8 of the complaint is clear that A1 got published and circulated along with the representation given to the Superintendent of Police, Chittoor with the assistance of other accused i.e. 2 to 5. Thus, at best, the allegation if accepted on its face value, the petitioner along with A2, A4 and A5 assisted A1 in publishing the pamphlet containing derogatory matter within the surroundings areas of native place of the 1st respondent. Therefore, it is an admitted fact from the allegations made in para 8 of the complaint that the petitioner did not make any publication of any derogatory material, but allegedly assisted to A1. The crime was not registered for the offence punishable under Section 500

read with 34 IPC. Therefore, it is difficult to accept that this petitioner *prima facie* published the derogatory material against the 1st respondent.

6. Section 499 IPC defined the offence defamation and it reads as follows:

“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.”

7. **Halsburys Laws of England**, Fourth Edition, Vol. 28, defines 'defamatory statement' as under:

“A defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of the society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to convey an imputation on him disparaging or injurious to him in his office, profession, calling trade or business.”

8. While speaking about reputation, William Hazlitt observed that a man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.

9. The word “defamation”, general term for words spoken (slander) or written (libel) to the prejudice of a person’s character, in such way as to support an action by such person against the speaker or writer.

10. Thus, any statement published, if affects reputation of any person, it would amount to defamation (libel).

11. Defamation may contained either slander or libel.

12. In common law the origins of defamation lie in the torts of “slander” (harmful statement in a transient form, especially speech), each of which gives a common law right of action. Defamation is the general terms used internationally, libel is in

written form. Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words of sounds, sign language, gestures or the like, then it is slander.

13. Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. Thus, criminal defamation may contain either “libel” or “slander”.

14. In **Gopinathan vs. Ramakrishnan**¹, the Kerala High Court held that, the act of any one who brings to the notice of another the libellous matter can be taken as publication. Therefore, a publication is to be construed in the contextual meaning to constitute an offence punishable under Section 500 I.P.C.

15. In **SNM Abdi vs. Prafulla Kr. Mahanta and Ors.**², the Gauhati High Court held that the law regarding defamation is already settled. The law is that in order to be defamatory a publication must tend to lower the plaintiff in the opinion of men whose standard of opinion, the Court can properly recognise, or tend to induce them to entertain an ill opinion of him. However, the plaintiff need not show a tendency of the imputation to prejudice him in the eye of every one in the community or all of his associates, but it is suffice to establish that the publication tends to lower him in the estimation of a substantial, respectable group, even though they are minority of the total community or of the plaintiffs associates. The law relating to defamation is a limitation upon the Constitutional guarantee of freedom of speech and of the

¹ 2002 (1) Cur Cri R 26 (Ker.)

² AIR 2002 Gau 75 at 76

press, and the vagaries and complex structure of such law, as it exists today, is to a large extent a direct result of the friction between them, as a restriction on untrammelled freedom of expression, and the highly cherished rights of freedom of speech and of the press.

16. Yet, another circumstance came up for consideration before the Supreme Court in **M.C. Verghese v. T.J. Poonan and another**³. In the facts of the above judgment, the respondent wrote three letters to his wife containing defamatory notes against appellant-father-in-law. The appellant filed complaint in Court of District Magistrate and District Magistrate discharged the respondent on grounds that communication by husband to wife does not amount to 'publication' in law. The High Court stated that writing of defamatory matter contained in said three letters were not 'publication' in law and no charge under Section 500 be made out and discharged respondent. The appellant preferred revision before the Apex Court and claimed three letters to be admissible in evidence under Section 122. The Supreme Court observed prima facie case was set up in complaint made by respondent and that letters available for being tendered in evidence. Apex Court stated that Section 122 prohibits married person to disclose any communication made to him or her during marriage by his or her spouse except with consent of spouse and nowhere said Section prohibits admissibility of evidence in any other manner and held that, bar of inadmissibility to be adjudged in light of whether marriage subsisting or not at date of communication through letters and remanded the matter back, by setting-aside the order of

³ AIR 1970 SC 1876

the High Court. This principle was considered in **C.H. Kadar and another**¹⁸ case, but the facts are totally different.

17. In view of the judgments of the Apex Court and other Courts, it is incumbent on the complainant to show that the accused made publication either libel or slander. But here in para 8 of the complaint, he made a specific allegation that A1 published and circulated the pamphlets containing derogatory material with the assistance of A2 to A5. The petitioner/A3 assisted A1 in publication of pamphlet and the complaint is filed only under Section 500 IPC and not under Section 500 read with 34 IPC. In such a case, taking cognizance against accused on the allegation that the petitioner/A3 also assisted A1 along with A2, A4 and A5, while refusing to take cognizance of offence against the other accused is illegal. Taking cognizance of offence against the petitioner/A3 printing name at the end of the pamphlet in the printed material is a contrary to the allegations made in para 8 of the complaint. Therefore, taking cognizance of offence against the petitioner/A3 is illegal and the same is liable to be quashed.

18. The scope of Section 482 Cr.P.C is limited and this Court can exercise its inherent jurisdiction only to give effect to the orders passed under the Code to prevent abuse of process of the Court and to secure the ends of justice. Keeping in mind, the Apex Court in **State of Haryana v Bhajanlal**⁴ laid down the following seven guidelines:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

⁴ 1992 Supp(1) SCC 335

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

19. As per guidelines 2 and 3, when the allegations made in FIR or complaint if taken on its face value would not *prima facie* constitute commission of any offence, the Court can exercise its inherent power under Section 482 Cr.P.C. to quash the proceedings.

20. Similarly as per Guideline No.3, the allegations made in the complaint are improper to the ordinary circumstances of a common man, the Court may exercise its inherent jurisdiction and quash the proceedings.

21. Here, in this case, as discussed above, the petitioner/A3 allegedly assisted for making publication of derogatory statement vide para 8 of the complaint along with A2, A4 and A5. But the Court refused to take cognizance of offence against A2, A4 and A5, but took cognizance of offence against the petitioner/A3 only on account of that his name is printed at the end of the pamphlet though he has not published the defamatory material and circulated in the surrounding places of the complainant. Therefore, I find it is a fit case to exercise inherent jurisdiction to prevent abuse of process of the Court. The complaint was filed by the 1st respondent only to wreck vengeance against this petitioner, who has filed civil suits and obtained decrees against him.

22. Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.113 of 2013 pending on the file of II Additional Judicial First Class Magistrate, Tenali, Guntur District, registered for the offence punishable under Section 500 IPC, against the petitioner/A3.

Consequently, miscellaneous petitions pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:19.12.2017
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