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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 319/2016

KULDEEP KUMAR CHAUHAN Petitioner
Through Mr. Naveen Kumar Bansal with Ms.
Laxmi Narain Atri, Advs.

versus

THE STATE & ORS Respondents
Through Mr. Arun Kr. Sharma, APP
Mr. J.N. Kalra, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **10.08.2017**

The petitioner/complaint has questioned the judgment dated 29.03.2016 passed in Complaint Case No.218/97 instituted for Section 500 of the IPC, passed by the learned ACMM-02 (Central): Delhi whereby the respondent has been acquitted of the charge under Section 500 of the IPC.

The petitioner, at the relevant time, was employed as a Junior Commissioned Officer in the Army Educational Core. The father of the petitioner had donated some land to Radha Swami Satsang Sabha and also for the purposes of construction of a degree college. The respondent, who happens to be a co-villager of the petitioner, was inimically disposed towards the family of the petitioner.

The case of the petitioner before the trial court was that the respondent had grabbed the land of the petitioner and in order to divert the gaze, had maliciously made a complaint to the superiors of the petitioner. A

legal notice was also sent to the petitioner in which certain derogatory/defamatory remarks were made against the petitioner. On the basis of the aforesaid legal notice dated 19.08.1996, an inquiry was initiated against the petitioner in which he was exonerated. However, the imputation contained in the legal notice referred to above damaged and denigrated the reputation of the petitioner in the eyes of others including his co-employees and the juniors.

The relevant portion of the legal notice wherein such imputation against the petitioner has been made is being extracted below:-

“9. That under the circumstances explained above, it would be true to say that my client apprehends danger to his life and limbs and also danger to the life and limbs of his family members at the hands of above said JCO and his father duly associated by Shri Dharampal son of Hira Singh who is nephew of the father of said JCO. Whenever, the father of said JCO tried to instigate my client to pick-up fight with him, aforesaid Dharampal always accompanied him and he also gave abuses and threatened my client with dire consequences. It would be pertinent to note that father of the said JCO and aforesaid Dharampal gave in writing on 25-12-95 and assured that they would not fight with my client. A photocopy of the said undertaking/writing is enclosed herewith for your ready reference. It would also be better to state herein that the father of said JCO had donated land measuring about 7 marala to the aforementioned Religious Organization on 18-01-88, but later on the above said JCO created nuisance and accordingly, his father denied to give possession of the said land. However, due to intervention of the respectables of the village only 5 Marlas of land was handed over to the said religious organization. The said act and conduct of the said JCO and his father clearly go to prove their malafide intention which they have by birth.”

The petitioner filed a complaint against the respondent under Sections

499 and 500 of the IPC at Dibrugarh Court in the State of Assam. However, the aforesaid complaint was transferred by the orders of Hon'ble Supreme Court to Delhi.

The trial court, after analysing the evidence on record and the deposition of the witnesses, came to the conclusion that the case of the respondent was squarely covered under Exception 9 to Section 499 of the IPC and acquitted him of the charge.

The petitioner had examined himself as CW1 and had stated before the trial court that it was publically announced at the time of regiment roll call that a legal notice against the petitioner has been received in the office. A show cause notice was served upon him but later he was exonerated of the charge. He also stated before the trial court that due to the legal notice sent by the accused/respondent, not only did he face mental agony but was also subjected to indisciplined behaviour by his juniors. He was not allowed to go on leave. However, in his cross-examination, he admitted of pending cases between him and the respondent with respect to cutting of trees standing on the ancestral property.

One Dharam Pal, who was examined as CW2, worked in the same regiment as that of the petitioner, supported the case of the prosecution. He has stated that on receipt of the legal notice, the petitioner became very worried. However, he did not remember the date when the regiment roll call was conducted and it was publically disclosed that a complaint was received against the petitioner. He did not even know the contents of the complaint but only knew that some inquiry was held by the Commanding Officer against the petitioner. Thus, CW2 clearly stated about his ignorance with respect to the contents of the legal notice.

On behalf of the respondent, the respondent examined himself as DW1. He has admitted before the trial court that there was a dispute pending between him and the petitioner. In cross-examination, he denied of having authorised any advocate by the name of Sudarshan Kumar Ghai to give any legal notice to the petitioner. He was introduced to the aforesaid advocate through one of his friends. It was clearly averred by him that he did not sign on any paper nor did he give any fee to the learned advocate.

Rajesh Kumar Singh (DW2) and Constable Virender Singh (DW3) could not state anything in defence of the respondent. However, one Subhash Chander (DW4) deposed that a compromise had taken place between the parties.

The trial court on going through the records and on perusal of the evidence adduced on behalf of the parties, discerned that CW2 at the time of his deposition had retired from the service and that the petitioner had not proved any document to demonstrate that any legal notice was served upon him or his Commanding Officer or that the Commanding Officer had issued any show cause notice to him.

The trial court was, therefore, of the view that there was no proof of the fact that the legal notice referred to by the complainant as derogatory or defamatory was ever served upon him and even if it were served upon him, it only referred to the dispute between the parties and was intended for the protection and well-being of the respondent, which the respondent, in good faith, had got it communicated to the Commanding Officer of the petitioner.

The relevant Sections 499 and 500 are reproduced hereunder:

“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 expected, 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.*

XXXX XXXX XXXX XXXX XXX

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.*

500. Punishment for defamation

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both”

The Ninth Exception to Section 499, which gives protection to imputation made in good faith for the protection of the interest of the person

making it or of any other person or for the public good was explained by the Supreme Court in **Harbhajan Singh v. State of Punjab and Anr.** AIR 1966 SC 97. The Supreme Court in the aforesaid case opined that where the accused invoked ninth exception to Section 499 of the IPC, good faith and public good, both, are required to be satisfied and failure of the accused to prove good faith would exclude the application of the ninth exception. In the aforesaid case, the Supreme Court referred to Section 52 of the IPC which defines 'good faith' which requires the element of honesty. However, it was explained that an accused need not strictly prove the truth of the allegation made by him for invoking Exception 9.

In **Sukra Mahto v. Basdeo Kumar Mahto and Anr.** 1971 (1) SCC 885, the same principles were reiterated.

From a perusal of the legal notice dated 19.08.1996, it would appear that there existed a dispute between the petitioner and the respondent and that a superior officer of the petitioner was informed about the conduct of the petitioner and a request was made to restrain him from indulging in illegal activities. This obviously cannot be without good faith and only for the protection of the interest of the respondent. Good faith is demonstrated by the fact that the superior officer of the petitioner was informed.

Since the matter related to a dispute between the parties, any complaint has to be seen in the context of an attempt on the part of proposed wrong doer to save/protect his interest. Even public good would be subserved if any person, who is misusing his official position, is prevented from doing so. The respondent, in the present case was only seeking protection from the superior officer of the petitioner.

The illustrations provided in the ninth exception of Section 499 IPC is

very instructive.

“Illustrations

(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.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.”

What is public good and what would be in the interest of the person charged of the offence are issues which would depend on marshalling of facts and circumstances of a particular case.

The trial court has rightly taken the view that in the background of civil dispute between the petitioner and the respondent, even if the legal notice, as claimed by the petitioner, was read out aloud and an inquiry was conducted into the conduct of the petitioner, that would not constitute an offence for defamation. If such acts were taken as defamatory acts, it would amount preventing people from approaching superior authorities against the wrong doers, for redressal of their grievances.

Since the trial court has taken reasonable view of the matter, this court considers it to be completely unnecessary to interfere with the judgment of acquittal.

Leave is declined.

The petition is, accordingly, dismissed.

ASHUTOSH KUMAR, J

AUGUST 10, 2017/ns