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

+ CRL.L.P. 369/2017

UMA SETHUMADHAVAN & ANR ..... Petitioners

Through: Mr.Atanu Saikia, Adv.

versus

GOPI ELLATH

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE ASHUTOSH KUMAR**

**ORDER**

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**10.07.2017**

**Crl.M.A. 10571/2017**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**CRL.L.P. 369/2017**

The petitioner has challenged the judgment and order dated 05.05.2017 passed by the learned Metropolitan Magistrate (South) 05, Saket Courts, New Delhi in CC No.45/2/14 (P.S.Mehrauli) whereby the respondent has been acquitted.

The appellants are the mother and son respectively whereas the respondent is the father of wife of petitioner No.2.

The wife of petitioner No.2, namely Ms.Jayashree, left her matrimonial home on 27.01.2013. It has been alleged that petitioner No.2 had sent an email on 02.02.2014 to the respondent asking him to send back

his daughter (wife of petitioner No.2) to the matrimonial fold. In response to the aforesaid email, the respondent is said to have replied on February 14, 2014 via email which has been alleged to be defamatory.

From a perusal of the reply given by the respondent, it would appear that the petitioner No.1 and his wife did not have cordial relations between them. The elder son of petitioner No.1 i.e. the brother of the petitioner No.2 had a disturbed family life and perhaps the petitioners considered it to be an insinuation on the part of the respondent when the respondent is said to have written to petitioner No.2 that the relationship between his elder brother and his wife had run in rough weather because of the machinations of the family of the petitioners and in particular, the petitioner No.1.

The nature of the reply which is alleged to be defamatory is merely an explanation of the fact that the wife of petitioner No.2 had left the matrimonial home of her own accord, being dissatisfied with the environment in her matrimonial home. This is only a reply to the allegations levelled by the petitioners. The same cannot be treated as a material/publication which has damaged the reputation of the petitioner.

Section 499 of the Indian Penal Code defines defamation. It reads as under:-

*“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.”*

There are certain exceptions to the aforesaid definition. Exceptions 9 & 10 are as hereunder:-

***“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.***

*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.

***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.”*

The respondent had written to the husband of his daughter about the reasons for their marriage being on rocks. It was only a reply to the allegations leveled by petitioner No.2. The reply also clearly indicated that there was no scope for reconciliation between petitioner No.2 and the daughter of respondent No.2.

In that view of the matter, no offence under Section 499 IPC can at all be said to have been made out.

Though the learned Magistrate has acquitted the respondent on other grounds namely that the complainant did not depose that the imputation came to the notice of any other person and that the complainant had not led any evidence regarding the same, but since the complainant failed to establish that the offence was committed, the judgment of acquittal cannot be faulted with.

No case has been made out for interference with the judgment and order of acquittal.

Leave declined.

**ASHUTOSH KUMAR, J**

**JULY 10, 2017**

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