

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Revision Case Nos.1780 and 1781 of 2017

Crl.R.C.No.1780 of 2017:

Between:

Ms. P.S. Meherhomji.

... Petitioner/Accused No.2

AND

Mr. K.T.Vijay Kumar
and others.

...Respondents/Complainants

Crl.R.C.No.1781 of 2017:

Between:

M/s. Rallis India Ltd.
Rep. by K. Sudershan,
Authorized Signatory.

... Petitioner/Accused No.1

AND

Mr. K.T.Vijay Kumar
and others.

...Respondents/Complainants

DATE OF JUDGMENT PRONOUNCED: 06.07.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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|---|----------|
| 1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? | Yes / No |
| 2. Whether the copies of judgment may be
marked to Law Reporters / Journals? | Yes / No |
| 3. Whether Their Lordship wish to
see the fair copy of the Judgment? | Yes / No |

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Petitioner

**: Sri D.V.Sitaram Murthy, Senior Counsel
for Ms. Shireen Sethna Baria**

^ Counsel for Respondentss 1 & 2 : **Sri P. Prabhakara Rao**

^ Counsel for Respondent No.3 : **Public Prosecutor (Andhra Pradesh)**

< Gist:

> Head Note:

? Cases referred:

- 1) LAWS (BOM) 1985 12-31
- 2) AIR 1988 Kerala 18
- 3) 1993 CrL.L.J. 2685 (Madras)
- 4) AIR 1962 MP 382
- 5) AIR 1959 AP 657
- 6) AIR 1923 Mad. 666
- 7) AIR 1924 Mad. 340
- 8) 1986 CrL.L.J.1797
- 9) 3 (1967) DLT 169
- 10) 1979 SCC Online Calcutta 17
- 11) 1994 CrL.L.J. 1954 (Karnataka)
- 12) MANU/MP/0044/1963
- 13) 1984 CriLJ 1618 (Karnataka)

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case Nos.1780 & 1781 of 2017

COMMON ORDER:

The point that arises for consideration in these two Criminal Revision Cases is:

“Whether the letter addressed by Accused No.2, the Company Secretary of Accused No.1 at Mumbai to the Lead Manager of the complainant at Mumbai allegedly containing scurrilous imputations to defame the complainant at Vijayawada who received the said letter forwarded by Lead Manager, will confer territorial jurisdiction on the Courts at Vijayawada to entertain the criminal case for defamation?”

2) Criminal Revision Case Nos.1781 and 1780 of 2017 are filed by A1 and A2 respectively in C.C.No.43 of 2010 challenging the common order dated 21.06.2017 in CrI.M.P.Nos.2212 and 2213 of 2017 in C.C.No.43 of 2010 passed by learned IV Additional Chief Metropolitan Magistrate, Vijayawada dismissing the petitions filed by A1 and A2 under Sections 245 r/w 177 and 179 Cr.P.C. seeking to reject the complaints due to lack of territorial jurisdiction.

3) The factual matrix of the case is that 1st complainant is the Managing Director and 2nd complainant is the Chairman of M/s.Chemical Biotech Company Limited, Vijayawada. The said Company with an intention to go for public issue engaged M/s.Ashika Capital Limited based at Mumbai to be its Lead Manager for preparing prospectus for making public issue. In the course of preparing prospectus, M/s.Ashika Capital Limited, Mumbai sought

information from A1 Company based at Mumbai regarding credentials of respondent/complainant Company. A2 being the Company Secretary of A1 based at Mumbai addressed a letter dated 14.12.2006 to M/s.Ashika Capital Limited making certain derogatory remarks against the complainant and marked copies to certain statutory authorities at Mumbai and New Delhi. M/s.Ashika Capital Limited forwarded the said letter to the respondents/complainants to their registered office at Vijayawada and the complainants having been felt defamed by the said letter filed the complaint. Both the accused filed Crl.M.P.Nos.692 and 693 of 2017 seeking to discharge them but those petitions were dismissed. Aggrieved, they preferred Crl.R.C.Nos.1015 and 1016 of 2017 before the High Court and they were disposed by order dated 12.04.2017 granting liberty to the petitioners to raise the question of jurisdiction before trial Court in pre-charge enquiry. Hence, the accused filed Crl.M.P.Nos.2212 and 2213 of 2017. The accused contended that no part of cause of action had arisen within the jurisdiction of Court at Vijayawada except in Mumbai. It appears that they also took a plea that in O.S.No.12 of 2007 between respondents/complainants and petitioners/A1 and A2, the II Additional Senior Civil Judge, Vijayawada dismissed the suit holding that the impugned letter was addressed to Lead Manager at Mumbai and the suit ought to have been filed at Mumbai and as such the Court at Vijayawada lacks territorial jurisdiction. The learned Magistrate however dismissed both the petitions with the observations, firstly that though the impugned letter dated 14.12.2006 sent by petitioners/A1 and A2 was received by M/s.Ashika Capital Limited at Mumbai however, the contents in the

impugned letter affected the reputation of the complainant Company having its registered office in Vijayawada where the complainant Company received the impugned letter and hence the Court at Vijayawada has jurisdiction and secondly, against the judgment in O.S.No.12 of 2007 an appeal is pending and the matter is subjudice.

Hence the instant Criminal Revision Cases.

4) Heard both sides.

5a) Severely castigating the trial Court's assuming the jurisdiction, learned senior counsel Sri D.V.Sitaram Murthy would argue even assuming that letter sent by A2 to M/s.Ashika Capital Limited did contain scurrilous remarks against the complainant and thereby attracted the offence of defamation under Section 499 IPC, still, he would emphasise, the Court at Vijayawada cannot entertain the criminal case for, it woefully lacks territorial jurisdiction. In expatiation, he would argue the letter was posted by A2 at Mumbai to the addressee who is also a resident of Mumbai. Of course copies were marked to certain statutory authorities at Mumbai and Delhi. By posting the letter, the act of publication which is one of the essential ingredients of the offence of defamation under Section 499 IPC, was completed at Mumbai itself and of course at Delhi.

b) Then, referring to Section 179 Cr.P.C. he would submit that within the ambit of said section, the offence of defamation is an act of imputation coupled with bringing the consequences by its publication. Therefore, the offence can be tried by the Court where the act of vituperative statement was

made and also in the Court within whose jurisdiction such defamatory statement was published. In the instant case, he vehemently argued, the accused never made publication of the defamatory statement, which is one of the essential ingredients of the offence, at Vijayawada. Therefore, the consequence was not ensued at Vijayawada to confer jurisdiction on the Court at that place. If the Secretary of the complainant sent the letter addressed to him at Mumbai to Vijayawada, by that count the consequence cannot be said to be ensued at Vijayawada.

6) Per contra, learned counsel for respondents/complainants would argue that the letter addressed by A2 to M/s.Ashika Capital Limited was in fact intended to tarnish the reputation of the complainant in the esteem of public and therefore the accused intended that letter was to be read by the complainant. Hence, M/s.Ashika Capital Limited forwarded the letter to the complainants whose registered office is situated at Vijayawada where they read the letter and felt annoyed due to slanderous remarks contained in it. Though the accused have not sent the letter to complainant at Vijayawada, however, since it was routed through its agent, the publication of defamatory statement can be said to be made at Vijayawada also and therefore, the Court at Vijayawada would certainly acquire territorial jurisdiction to decide the case. He thus prayed to dismiss the revisions.

7) The point for determination is:

“Whether the common order passed by the Trial Court is factually and legally sustainable?”

8) **POINT:** Section 499 IPC defines defamation and sets out exceptions to which it is subject. Whereas Section 500 provides penalty for defamation. The ingredients of the offence of defamation are:

- 1) An imputation made
 - (i) by words, either spoken or intended to be read or
 - (ii) by signs or
 - (iii) by visible representations
- 2) making or publishing the imputation concerning any person;
- 3) such imputation must have been made with the intention of harming or with the knowledge or having the reason to believe it will harm the reputation of a person concerning whom it is made.

So, an imputation made in any manner described above with an intention or knowledge or with the belief that it will harm the reputation of a person in respect of whom such imputation is made and published will complete the offence. Therefore, publication of the imputation is the furtherance of the offence of defamation. We have thicket of case law as to what is publication and when it is said to be completed in the context of determining the jurisdiction of a Court which is germane for our discussion now.

9) In *Dinkar Rajaram Pole vs. Ramrao Nandanwankar*¹ the High Court of Bombay happened to interpret the term ‘publication’. Referring to Volume 4, Second Edition “Words and Phrases Legally Defined” and Halsbury’s Laws of England, (Third Edition, Vol.24, Page 35, Item 60 containing a caption “what amounts to publication”) High Court of Bombay held that a publication is a process which commences from writing and ends with conveying it to

¹ LAWS (BOM) 1985 12-31

third person other than the defamed party. This process for its termination does not wait for the knowledge of the person defamed. The knowledge of the person defamed is immaterial as far as defamation is concerned. It is true that he may have a substantial interest in the whole episode but his interest is irrelevant as far as process is concerned. The High Court concluded that the essential ingredients of the process of publication are (i) writing a defamatory statement (ii) conveying it to a third person other than the person defamed. These two processes made one complete process of 'publication'. While thus interpreting the term 'publication', the High Court of Bombay expressed its difficulty to appreciate the arguments of the learned counsel for the petitioner that his knowledge is necessary for completion of the process. It was sought to argue that there cannot be defamation without the knowledge of the person who has actually been defamed. However, the said argument was not found favour with the High Court of Bombay.

10) The High of Kerala also expressed similar view on the term 'publication'. In *P.R.Ramakrishnan vs. Subbaramma Sastrigal and another*² it was held thus:

“Para-6: *The next question is about publication of the imputation. It is contended that there is no publication. To attract the definition of the offence of defamation as contained in Section 499 of the I.P.C., the imputation should have been made or published. “Whoever makes or publishes any imputation” are the relevant words employed in the section. The word “makes” is intended to supplement the sense of “publishes”. Those words conjunctively connote “to make public”. It is settled proposition that there is no publication if the libeller merely communicates his libel to the person defamed.(Emphasis supplied)”*

² AIR 1988 Kerala 18

11) Agreeing with the decision in *P.R.Ramakrishnan*² the High Court of Madras in *B.P.Bhaskar vs. B.P.Shiva*³ has observed that the receipt of notice containing alleged scurrilous imputation by the complainant himself and not by any others will not at all amount to 'publication' in the eye of law.

12) In *Re vs. Bhulliram Jalam*⁴, the High Court of Madhya Pradesh (Gwalior Bench) has held:

***“Para-5:** x x x x x It is of the essence that in order to constitute the offence of defamation it must be communicated to a third person because what is intended by the imputation is to arouse the hostility of others: If a person merely writes defamatory words and keeps the writing with himself, the offence is not made out. Likewise, if the libeller merely communicates the libel to the person defamed it does not constitute an offence under the said section although it may amount to an insult and may be punishable as such. The question whether the libel in fact has been communicated to a third person is material. It is not enough that the libeller posted it to a third person.*

13) Thus, from the above, it is clear that to complete the offence of defamation, publication has to be made by the offender to the third person other than the person intended to be defamed. The reason is that the offender would generally intend to lower the reputation of a particular person in the esteem of world at large. He may send the defamatory letters to the third parties as well as the person defamed in such cases, the offence under Section 499 IPC may be attracted. However, if the offender sends the letter of scurrilous remarks to the person defamed alone, it will not attract the offence

³ 1993 CrL.L.J. 2685 (Madras)

⁴ AIR 1962 MP 382

under Section 499 IPC though such act may amount to intentional insult and attract the offence under Section 504 IPC.

14) The next aspect is, whether the publication which is one of the essential ingredients of offence of defamation, is a 'consequence' within the mischief of Section 179 Cr.P.C. to determine the jurisdiction of a Court. Section 179 Cr.P.C. reads thus:

Sec.179: Offence triable where act is done or consequence ensues:-

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

Thus, the above section explains us that in respect of those offences which complete by an act and also its consequences, such offences can be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

15) Defamation is concerned, indictment is an act and its publication is a consequence. Mere indictment alone, however scathing or loathsome it may be, will not amount to defamation unless it is published. Therefore, at the cost of pleonasm, the indictment and publication together completes the offence. As a necessary corollary, the place where the act of indictment is made or the place where the publication was done will get jurisdiction. This aspect has been reiterated in the following decisions.

16) In *Pisupati Purnaiah Sidhanthi vs. Pisupati Satyanarayana Sidhanthi*⁵ the son who is the complainant and his father who is the accused are residents of Karavadi in Ongole taluk of Guntur District. The complainant has alleged that his father sent a defamatory letter against him to one Karnam Jayarao Pantulu Garu residing at Doulatabad in Kodangal Taluk, Mahaboobnagar District and when the complainant went to Doulatabad on tour, the said letter was shown to him by said Jayarao Panthulu. Having been felt defamed, the complainant filed a case under Section 499 IPC against his father in the Court of Munsif Magistrate, Ongole. The accused/father challenged the jurisdiction of the Court at Ongole on the prime ground that the publication of defamation was made at Doulatabad and therefore the Court at Ongole had no jurisdiction. The Munsif Magistrate overruled the objection. The matter went in revision before the High Court. The High Court referred the decision of Madras High Court reported in *Krishnamurthi Iyer v. Parasurama Iyer*⁶ wherein a letter containing defamatory matter was posted at Madras with a view to be read in Tinnevely. The High Court of Madras held that offence of defamation is triable either in Madras or in Tinnevely under Sections 179 and 182 of the Cr.P.C. The High Court of A.P. also referred another judgment reported in *Burke v. Skipp*⁷ wherein it was held that a letter is deemed to be published both where it is posted and where it is received and opened. Our High Court has ultimately approved the order of the Magistrate at Ongole and dismissed the Revision.

⁵ AIR 1959 AP 657

⁶ AIR 1923 Mad. 666

⁷ AIR 1924 Mad. 340

17) In *Rekhabai vs. Dattatraya*⁸ the High Court of Bombay at Nagapur was dealing with the case where a wife wrote a letter from Arvi containing defamatory statements against her husband to her mother at Amravathi. The husband after knowing about the said letter filed criminal case under Section 500 IPC against the wife before Judicial Magistrate, First Class, Arvi. The wife took primary objection that publication of defamatory letter has taken place at Amaravathi and hence the Court at Judicial Magistrate, First Class, Arvi did not have jurisdiction to entertain the complaint. The learned Magistrate negatived her contention. The wife filed petition under Section 482 Cr.P.C. before the High Court of Bombay at Nagpur. The High Court referring the earlier judgments of Madras High Court and also the High Court of A.P. mentioned supra held as follows:

“Therefore, in a defamation case, the venue of trial could be at the place where the letter was written and posted or also at the place where the letter was received and read. In the instant case, the Judicial Magistrate, First Class, Arvi, was right in holding that Arvi Court had jurisdiction to entertain and try the complaint.”

18) In *Narain Singh vs. State of Delhi*⁹ the facts are that the accused posted a defamatory letter at Delhi to Major G.S. Dhillon at Bareilly and addressee sent back the letter to Ajit Singh—complainant for his perusal. Being aggrieved, the complainant filed a complaint under Section 500 IPC against the accused in the Court at Sub-Divisional Magistrate at Delhi. The accused raised a preliminary objection that the Sub-Divisional Magistrate Court at Delhi had no jurisdiction to entertain the complaint as the defamatory

⁸ 1986 Cr.L.J.1797

⁹ 3 (1967) DLT 169

statement could be said to have been published, if at all, at Bareilly. Turning down his objection the trial Magistrate held that the offence of defamation by means of a defamatory letter could be tried both at the place of posting as well as the place where the publication took place. The revision filed by the accused before the Additional Sessions Judge, Delhi was also dismissed. Hence he filed revision petition before the High Court of Delhi. Approving the orders of Courts below the High Court of Delhi by referring various decisions has observed that the offence could be tried either at the place where the posting took place or at the place where the actual publication took place.

19) A careful perusal of the above precedential jurisprudence will give us an understanding that the offence of defamation is concerned, it contains two main aspects for the purpose of conferring jurisdiction to a Court (i) the place of indictment (2) the place of publication. Both the Courts will assume jurisdiction. It is also necessary to observe that in all the above cases the accused was the person who made the imputation at one place and he himself made the publication at the other place thereby, both the Courts got the jurisdiction.

20) In *Narain Singh*⁹ it would appear, the Sub-Divisional Magistrate, Delhi got the jurisdiction because the accused posted the letter from Delhi and not because the addressee in his turn sent back the letter from Bareilly to the complainant at Delhi.

21) Now, coming to instant case, though indictment was made by the accused and publication was also made by him at Mumbai but he did not make

the publication at Vijayawada as the said letter was not sent by the accused directly to the complainant at Vijayawada. In such an instance the point is, whether the consequence was said to be ensued at Vijayawada to confer jurisdiction on the trial Court at Vijayawada.

22) In my considered view, in the aforesaid circumstances, publication cannot be said to be made at Vijayawada and therefore, consequences has not ensued at that place to confer jurisdiction on the local Courts. Had the accused published the letter by sending it to different places and also to Vijayawada, it may be said that consequence of publication was ensued also at Vijayawada. However, admittedly, the accused has not sent the letter to Vijayawada. It was only M/s.Ashika Capital Limited transmitted the letter from Mumbai to Vijayawada. It is only a remote consequence but not a direct consequence of publication to confer jurisdiction to the Courts at Vijayawada. My view gets fortified from the following decisions.

23) In *Kamal Singh Badalia vs. State and another*¹⁰ the facts are that the accused in the capacity of office bearer of Akhil Bharat Varsiya Jain Sanskrit Rakshak Sabha of Parshanath Mandir Path, Patna City wrote a letter to Law Secretary, Government of Bihar, Patna. In the said letter he allegedly made imputations against the complainant. The Law Secretary went through the letter and thereafter forwarded the said letter to Bejoy Singh Nahar, President of Bihar State Board of Shetambar Jain Religious Trusts and the said letter was opened by the office Assistant of Nahar at Calcutta. The said Bejoy Singh Nahar in turn forwarded the said letter to the complainant asking for his

¹⁰ 1979 SCC Online Calcutta 17

comments. Thus, in essence, the letter was written by the accused in Patna and it was published in the Secretariat in Patna when the contents were made known to Law Secretary and Under Secretary of the Government of Bihar at Patna. The High Court of Calcutta in those circumstances observed the offence of defamation under Section 499 IPC, if any, was completed with its publication at Patna. It further observed it was no doubt true the consequence of alleged commission of such offence was ensued at Calcutta according to the complainant as he was defamed in Calcutta. However, the consequence that ensued at Calcutta was not part of offence of defamation. The High Court further observed it was not the case of the complainant that while sending the letter to Law Secretary at Patna the accused also sent the copies of letter to any one in Calcutta so as to entitle the metropolitan Magistrate to entertain the complaint on the ground that the accused published the defamatory statement in Calcutta. Accordingly, the High Court dismissed the revision.

24) In *Sri C.S.Sathya vs. State of Karnataka*¹¹ the facts are that the accused in his weekly 'Jwalamukhi' edited, printed and published an article at Bangalore defaming the complainant. It appears the complainant saw the weekly in question at Udipi and filed criminal complaint under Section 500 IPC before the Judicial Magistrate of First Class Court at Hubli (sic. Udipi). The jurisdiction of the trial Court was questioned by the accused. In that context, the High Court of Karnataka perused the decision in *Ganga Prasad Jaiswal v. Chotelal Jain*¹², wherein it was held:

¹¹ 1994 CrI.L.J. 1954 (Karnataka)

¹² MANU/MP/0044/1963

“On a careful perusal of Section 179, it is quite clear to me that the word “consequence” occurring therein indicates only that consequence which is an integral part of the offence and not a consequence which is not material to the culpability of the accused in relation to that particular offence.”

Basing on the above and other judgments, the High Court has held that under Section 179 Cr.P.C, either the Court where the words are spoken which are intended to be read or by signs or by visible representations makes or publishes or where the consequences of harming the reputation of another person ensue, have got the jurisdiction to try the case. It further observed that consequence that ensue must form part of the ingredients of the offence and if it is not a part of the ingredients of the offence, then the consequence even if it takes place in the jurisdiction of another Court, it will not give jurisdiction to try the offence. Applying the aforesaid observation to the facts, it held that in that case the alleged defamatory matter was published at Bangalore itself to be intended to be read so the consequences of harming the reputation of the complainant has ensued at Bangalore itself. The complainant reading or having come to know of this alleged defamatory matter at Udipi is not an ingredient of the offence, because the offence itself is completed at Bangalore and hence the Court at Bangalore alone has got jurisdiction to try the offence.

25) It must be noted that the decision in ***S.Bangarappa v. Ganesh Narayan Hegde***¹³ cited by learned counsel for respondent is not applicable in the instant case as the same can be distinguished on facts. In that case, accused No.1 held a press conference at Bangalore and allegedly made defamatory statements.

¹³ 1984 CriLJ 1618 (Karnataka)

The said statement was published in various newspapers. At first, it was published in the evening edition of Sanjevani at Bangalore on 28.04.1983. On the next day, it was published in Samyukta Karnataka Daily in Hubli. The complainant seeing the said paper, felt defamed and filed complaint under Section 500 IPC against A.1, who made the statement and A.2 and A.3, who are the printer and publisher and editor of Samyukta Karnataka. It was argued that the offence was completed at Bangalore and consequence was not ensued at Hubli to confer jurisdiction. This argument was turned down by the High Court of Karnataka holding that publication in Samyukta Karnataka on the next day was also a consequence out of statement made by A.1 in the press conference. However, in the instant case, as already discussed, accused has not made any publication at Vijayawada and therefore, the consequence, if any, has not ensued there to confer jurisdiction on the local Court.

26) In the result, both the CrI.R.Cs are allowed and it is held that the Court of IV Additional Chief Metropolitan Magistrate, Vijayawada, has no territorial jurisdiction to try the case. The said Court shall return the case file to the complainant for presentation in a proper Court subject to law of limitation.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 06.07.2018

Note: L.R. copy to be marked: Yes / No

Murthy