

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.4786 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 and A2 seek to quash the proceedings against them in C.C.No.75 of 2011 on the file of Additional District Munsif Magistrate, Puttur.

2) Brief facts of the prosecution case are that petitioners/A1 and A2 entered into an agreement in the year 2006 with complainant for purchase of site situated in Nagaram road, Puttur, Chittoor District for Rs.21 lakhs and thereafter, the said agreement was terminated. Therefore, the petitioners developed enmity and grudge against the complainant and filed a complaint on 23.02.2008. The police after enquiry declined to take any action as it is a civil dispute. The 1st petitioner filed suit O.S.No.30 of 2008 on the file of IV Additional District Judge, Tirupati for specific performance of agreement. While so, 1st petitioner issued a public notice in Eenadu newspaper on 20.03.2008 indicating about filing of suit in respect of suit property and also an agreement executed by complainant and cautioned that alienation of suit properties or creation of sham documents will not be valid and parties to such transaction will be liable for the civil and criminal proceedings taken by the petitioners. The complainant annoyed with the notice issued by the 1st petitioner and filed compliant against the 1st petitioner and his son—2nd petitioner stating

that publication of notice caused damage to his reputation and they are liable to be punished under Section 500 IPC.

Hence, the present Criminal Petition.

3) Heard arguments of Cherukuri Masthan Naidu, learned counsel for petitioners; Sri K.S.Murthy, learned counsel for 1st respondent and learned Assistant Public Prosecutor for the State (AP).

4) Denouncing the complaint allegations as lacking the ingredients to constitute defamation in terms of Sections 499 IPC, learned counsel for petitioners, would argue in vehemence that admittedly the 1st petitioner filed O.S.No.30 of 2008 on the file of IV Additional District Judge, Tirupati, against 1st respondent/complainant and one G.Subramanyam Reddy for specific performance of agreement of sale dated 25.12.2006 entered into by 1st respondent/complainant and G.Subramanyan Reddy with the 1st petitioner and the same is pending by the date of complaint. Along with the suit, she filed I.A.No.44/2008 seeking interim injunction restraining the defendants not to alienate the suit property pending suit. The Court posted the matter to 24.03.2008 for appearance of the defendants. In that context, the 1st petitioner through her counsel issued a paper publication informing to the public about the filing of the suit. Added to it, she issued caution in the interest of general public as well as the petitioners that any alienation of the suit properties or creation of sham documents will not be valid in view of the pendency of the suit and parties, who entered into such

transactions will be liable for the civil and criminal proceedings to be taken up by the petitioners. Learned counsel would submit that such issuance of paper publication was in the interest of the public as well as the petitioners and not with an oblique motive of tarnishing the image of the 1st respondent/complainant as alleged. Since a civil dispute is pending between the parties, issuing of publication touching the pendency of the dispute in a Court of law, would by no means amount to defamation. He argued that the act of the petitioners would squarely fall under the tenth exception to Section 499 IPC. He would further argue that the allegation that the petitioners with an ill intention to damage the reputation of the 1st respondent/complainant got summoned him to police station on 23.02.2008 and police having found that the dispute between the parties was a civil litigation, did not like to intervene and sent them away is false and even if it is true by mere attending Police Station for some enquiry, cannot be regarded as damage to the prestige or reputation. He thus prayed to allow the petition.

5) Per contra, learned counsel for 1st respondent/complainant would argue that the petitioners with an intention to lower the prestige of the 1st respondent/complainant, at first made a false complaint to the police and got summoned the 1st respondent/complainant to the police station but luckily the police did not intervene in the matter which was a civil dispute. Later the 1st petitioner filed a suit and made a publication to defame the

complainant. She made the paper publication without the order of the Court. Therefore, the publication *per se* amounts to defamation. He thus prayed to dismiss the petition.

6) The point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT**: It is a petition to quash the proceedings invoking the plenary powers of this Court under Section 482 Cr.P.C. The Apex Court in *State of Haryana and others vs. Ch. Bhajan Lal and others*¹ has laid down the following guidelines regarding exercise of inherent powers under Section 482 Cr.P.C. to quash the proceedings to prevent abuse of process of Court. They are:

“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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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 uncontroverted 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.

¹ AIR 1992 SC 604

4. *Where, the allegations in the F.I.R. 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.”*

As per the petitioners, their case falls under guideline No.1, inasmuch as even if the allegations in the complaint are uncontroverted, they do not constitute a *prima facie* case as, the publication made by her is justified by the Tenth exception of Section 499 IPC.

8) 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 thus:

- 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 reputation of a person in respect of whom such imputation is made and published will complete the offence of defamation. It is well known that a written defamation is called “libel” and spoken defamation is called “slander” under common law.

9) In the instant case, the gist of the allegations is that the 1st petitioner by making newspaper publication tried to tarnish the dignity of the 1st respondent/complainant in the esteem of the public. A learned Judge of this Court in ***Bennett Coleman and Co. Ltd. and others v. K. Sarat Chandra and others***², happened to discuss the principles for determining whether a statement is defamatory or not, as follows:

² 2016 (2) ALT 106 (AP) = MANU/AP/1026/2015

“Para 7(c.i). Test of defamatory statement, Rules and Principles: There are certain established rules to determine whether statement is defamatory or not.

The first rule is that the whole of the statement complained of must be read and not-only a part or parts of it.

The second rule is that words are to be taken in the sense of their natural and ordinary meaning.

The Court must have regard to what the words would convey to the ordinary man.

The test to be applied for the determination of the question whether a statement is defamatory, the answer to the question is would the words tend to lower the plaintiff in the estimation of right-thinking members of society?’

The test of defamatory nature of a statement is its tendency of excite against the plaintiff, adverse opinion/feeling of other persons.

The typical form of defamation is an attack upon the moral character of the plaintiff attributing to him any form of disgraceful conduct.” सत्यमेव जयते

10) It has now to be seen whether the paper publication admittedly made by the 1st petitioner was aimed at lowering the honour, dignity and prestige of the 1st respondent/complainant in the esteem of general public or members of the society, or was it made in good faith to convey a caution for the public good and also in the interest of the petitioners themselves to bring their case within the fold of Tenth Exception to Section 499 IPC. At this juncture it is useful to extract Exception No.10 to Section 499 IPC.

“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.”

To attract this exception, the statement made by its maker would not amount to defamation, if the maker conveys a caution in good faith to one person against another, provided that such caution was intended for the good of the person to whom it is conveyed, or to some person in whom that person is interested, or for the public good. Therefore, to come under the umbrella of the exception, presence of good faith and absence of malicious intention is the *sine qua non*.

11) Coming to the case on hand, admittedly the 1st petitioner filed O.S.No.30 of 2008 on the file of IV Additional District Judge, Tirupati, against the 1st respondent/complainant and another seeking specific performance decree in terms of agreement of sale dated 25.12.2006 and said suit was pending by the date of the complaint. The 1st petitioner filed I.A.No.44 of 2008 seeking interim injunction restraining the defendants from alienating the suit property wherein the Court ordered notice for appearance of the parties on 24.03.2008. It appears, the Court did not grant any *ad interim* injunction. Thereafter, the 1st petitioner got issued a paper publication through her counsel informing to the public that she filed suit—O.S.No.30 of 2008 and I.A.No.44 of 2008. In the said publication a cautionary note

was made that alienation of suit properties or creation of the sham documents will not be valid and parties to such transactions will be liable for the civil and criminal action to be taken by the 1st petitioner.

12) I have carefully gone through the aforesaid paper publication. The tone and tenor of the publication as stated supra is in the cautionary manner. However, it does not appear to tarnish the image of the 1st respondent/complainant in the esteem of the public, rather, the notice only spells out the factum of filing of the suit and consequences that would entail, if anybody enters into any transaction with the 1st respondent/complainant in respect of the suit property. It is true that by the date of the above publication, the Trial Court did not grant any injunction restraining the 1st respondent/complainant from alienating the suit property. However, in my considered view, that is not alone the yardstick to measure the alleged defamation. What is germane for consideration is whether the publication made contains any imputation to tarnish the image of the 1st respondent/complainant in the esteem of the public. To my comprehension, except disclosing the factum of filing of the suit and exhorting public about the consequences that would follow if they enter into any transaction in respect of that property, no defamatory usage is made in the notice to bring the notice within the ambit of Section 499 IPC. It is pertinent to note that the 1st petitioner did not claim in the impugned notice that the Court has granted any order in her favour. Therefore, the publication made in the newspaper can be

regarded as being issued in the interest of the public as well as the 1st petitioner and nothing more. Hence the act of the petitioner squarely falls within the Tenth Exception of Section 499 IPC.

13) The other allegation made in the complaint that the petitioners dragged the complainant to the police station to tarnish his image also does not deserve consideration because even according to the complainant, the police having found that the matter is of civil nature, did not incline to register any crime. Mere summoning a person by the police to enquire in a matter will not amount to defamation.

14) So at any rate, the complaint allegations even if uncontroverted will not justify the commission of the offence under Section 500 IPC and therefore, continuation of the criminal proceedings would amount to abuse of process of the Court.

15) In the result, this Criminal Petition is allowed and the proceedings against the petitioners in C.C.No.75 of 2011 on the file of Additional District Munsif Magistrate, Puttur, are quashed.

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

U. DURGA PRASAD RAO, J

Date: 06.08.2018

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