

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.2961 of 2011

ORDER :

This petition under Section 482 of Cr.P.C. is filed to quash the proceedings in C.C. No.10 of 2011 on the file of the Chief Metropolitan Magistrate at Hyderabad.

2. The contention of the petitioner/A6 is that she is innocent and false complaint has been filed by the 2nd respondent making false and baseless allegations. Even as per the complaint, there is no specific allegation against the petitioner attracting the offence punishable under Section 500 of I.P.C. Even as per the news item, the petitioner went to the said locality on official duty and the locality people made complaint against the 2nd respondent, then the petitioner directed the Inspector of Police, Charminar Police Station, who was present there, to take action against the 2nd respondent. It is further contended that the learned Magistrate, without looking into the averments of the complaint in a routine manner and mechanically taken the cognizance of the complaint against the petitioner and issued the process.

3. *Per contra*, the 2nd respondent/complainant contended that at the instance of the petitioner a news item was published with derogatory statement which lowered down reputation of the complainant.

4. Learned Assistant Public Prosecutor contended that there is specific overt act against the petitioner attracting the offence

punishable under Section 500 of I.P.C. Accordingly, there is *prima facie* material against the petitioner to prosecute.

5. Now, the point that arises for determination is :

"Whether there is prima facie material to prosecute the petitioner."

A perusal of the record goes to suggest that the petitioner who is arrayed as A6 in C.C.No.10 of 2011 is a Mayor, Greater Hyderabad Municipal Corporation and first citizen of the corporation area and the 2nd respondent has intentionally and deliberately made the petitioner as one of the accused without any *prima facie* allegations against her to attract the offence and the learned Magistrate, without looking into the averments of the complaint, in a routine manner and mechanically taken the cognizance of the complaint against the petitioner and issued process.

6. The 2nd respondent filed a private complaint asserting that he is a respectable businessman in the locality. A1 is the Editor and Publisher of Telugu Daily Newspaper, Eenadu. A1 published the news item against the 2nd respondent on 27.5.2010 and 2.6.2010 for the benefit and advantage of the petitioner/A6 and others and it was published at their instance with common goal and intention. On 27.5.2010 there was publication about the petitioner instructing on 26.5.2010 to the Inspector of Police, Charminar to take action against the complainant. It is further alleged in the complaint that A2 to A5 and A7, being present there, personally complained to A6-mayor against the complainant that he has been harassing the local

businessmen by misusing the provisions of the Municipal Act for making unlawful gains. A photo along with the news is published wherein A7-Smt.Ranjana Devi Goel is seen appreciating while receiving a Pearl Necklace being gifted to the petitioner being a public authority.

7. There is also another publication on 2.6.2010 under the caption "Gharana Nindutidi Arrest (Notorious Criminal Arrested)". A reading of news goes to suggest that the complainant is extracting money by threatening from building owners at Gulzar House, Charkaman in old city and filing civil cases against building owners who are violating the building permissions. Further, on 27.5.2010 the complainant threatened Sanjay Vijay Vargi (A2) of Charkaman area and demanded Rs.2,00,000/- for withdrawal of case. In the news item it was stated that while the petitioner was moving in Gulzar House area, businessmen of the said locality complained to her. In response, the petitioner/Mayor instructed the Prasad Rao, Inspector of Police, Charminar P.S. to take action.

8. In the case of *Umar Abid Khan and others Vs. Viney Gonsalves alias Vincent Gonsalves and others* (2010 AILD 83 (Bom.)) the Bombay High Court held that every person has a legal right to preserve his reputation inviolate. In law it has been accepted as personal property and it is jus in rem a right good against all the world. Libel is a publication of a false and defamatory statement tending to injure the reputation of another person without lawful justification or excuse. For an actionable claim, the statement must be expressed in some permanent form *eg.* writing, printing, pictures

etc. Even if in a sense newspapers owe a duty to their readers to publish any and every item of news that may interest them, this is not such a duty as makes every communication in the paper relating to a matter of public interest a privileged one. Just because something interests the public, it is not necessarily in public interest to publish it.

9. In the case of *M.Siva Rama Murthy Vs. K.S.N.Babu* (2000 (1) ALT (CrI.) 494 (A.P.)) relied on by the respondent, this Court held that the question whether the imputation was made in good faith is itself dependent on facts and circumstances of the case. Whether such statement was made in the interest of the person making it or of any other person or for the public good has also to be examined in the context of the facts and surrounding circumstances, which may be brought out during the trial.

10. 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 interest of the person making it, or of any other person, or for the public good.

11. In the instant case, the publication, dated 27.5.2010 goes to suggest that while the petitioner/Mayor was moving in Gulzar House area, the businessmen and owners of the buildings of the locality made complaint to the petitioner against the complainant/R2. In response, the petitioner/Mayor instructed the Prasad Rao, Inspector of Police, Charminar, to take action on those complaints. She has not stated or uttered any word affecting the conduct and character of the complainant. The publication, dated 2.6.2010 goes to suggest that Police, Charminar, arrested notorious criminal who is

threatening owners of the buildings and collecting money in old city Guljar House area. According to the complaint of those owners of the buildings, the complainant used to visit the areas where new buildings are under construction, threaten them and file cases saying that they are violating the Town Planning Rules, if necessary by utilizing Right to Information Act. He used to threaten even the owners of the buildings who are constructing as per Rules by filing civil cases. Accordingly, he filed more than 50 civil cases. After settlement with the building owners, he will withdraw the cases. While so, on 27.5.2010 the complainant threatened Sanjay Vijay Vargi (A2) of Charkaman area and demanded Rs.2,00,000/- for withdrawal of case and he complained to the Police, Charminar P.S. and a case is registered against him. The petitioner/A6 has not given any complaint to the Police in writing or orally. Whatever she instructed to the Inspector is that to take action on the complaints presented by building owners of that locality.

12. In the case of *Ram Swarup Vs. Mohd.Javed Razack* (AIR 2005 SC 2005) the Apex Court held that it is argued before us that cognizance taken by the Metropolitan Magistrate of an offence under Sections 499 and 503 IPC is not warranted, and in any event, before taking cognizance the Magistrate ought to have referred the matter to the police under Section 156(3) of the Code of Criminal Procedure for investigation by the Police. We are not impressed by the argument. The Magistrate after examining the complainant on oath came to the conclusion, prima facie, that an offence was made out. We find no fault with the Metropolitan Magistrate so far as this aspect of the matter is concerned. More over, since the Magistrate has exercised

his power to take cognizance, the same cannot be faulted on the ground that he had not referred the matter to the police for investigation under Section 156(3) of the Code of Criminal Procedure. On perusal of the complaint, we find that similar defamatory words were used against the complainant also apart from his father and, therefore, the right of the complainant to move the court and lodge a complaint before the competent Magistrate cannot be challenged.

13. In the case of *Jagdish Ram Vs. State of Rajasthan* ((2004) 4 SCC 432) the Apex court held that the contention urged is that though the trial court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet the entire material was not considered. From perusal of order passed by the Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well-written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Sections 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view.

14. In the case on hand it is clear from the petition that based on the complaint the learned Magistrate took cognizance of the complaint and registered it as C.C. No.10 of 2011 and issued summons to petitioner and others. The order of taking cognizance by the Magistrate is not before me for consideration. However, the

material on record goes to suggest that the petitioner has not got published any derogatory statement with regard to the complainant. She merely directed the Inspector of Police to take action on the complaints of local businessman and owners of buildings. She also did not endorse any such defamatory or derogatory statement. Whatever she did is in good faith being a Mayor and representing the Corporate people. The petitioner/Mayor is justified being a public representative to instruct the Police to take action on the complaints made by the building owners and businessmen of the said locality. Her direction alone is not derogative or make any imputation on the character of the complainant. She acted in good faith and instructed the Inspector of Police to take action on the complaints of businessmen and builders of that locality for protection of interests of the businessmen and builders of the locality to which she is a Mayor and it is nothing but for the public good which does not attract any defamation as required under Sections 499 and 500 I.P.C.

15. In the facts and circumstances discussed above and findings therein, I find that the petitioner/A6 being a Mayor when the businessmen and builders complained against the complainant, instructed the Inspector of Police, Charminar P.S. to take action against those complaints. She has instructed in good faith and for the public good. She has not made either defamatory or derogatory statement against the complainant. The Magistrate without application of mind simply took cognizance of the complaint. Since the act of the petitioner/A6 is in good faith and for public good and as she has not made any defamatory or derogatory statement against

the complainant, the proceedings in C.C. No.10 of 2011 against petitioner/A6 are liable to be quashed.

16. In the result, the Criminal Petition is allowed quashing the proceedings in C.C. No.10 of 2011 on the file of the Chief Metropolitan Magistrate at Hyderabad insofar as the petitioner/A6 is concerned.

17. Consequently, miscellaneous petitions pending, if any, shall stand closed.

27th February, 2018

skmr

JUSTICE N.BALAYOGI

