HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CRIMINAL APPEAL No.484 of 2006

JUDGMENT:

This Criminal Appeal is preferred by the appellant/complainant aggrieved by the acquittal of 1st respondent/accused by the learned XVI Metropolitan Magistrate, Hyderabad in C.C.No.221 of 2000.

2) The parties in this appeal are referred as they were arrayed before the Trial Court.

3) The facts which led to file the appeal can be briefly summarised thus:

a) The accused is the son-in-law of complainant, who married the only daughter of complainant on 02.10.1983. According to complainant, the accused was given on demand an amount of Rs.75,000/- and Rs.25,000/- by way of Demand Drafts and Rs.40,000/- in cash to the accused at the time of betrothal ceremony. Initially, accused treated his wife well but after she gave birth to a baby girl, he started ill-treating her. The accused worked as a Doctor at Mecca in Saudi Arabia by leaving his wife and two daughters with the complainant at Hyderabad in the year 1994 and the complainant maintained them for three years. In the year 1997, accused returned and stayed with the complainant. The complainant submitted that there were disputes between the accused and his wife and that the accused used to harass his wife for more money to purchase house, for which, she filed a criminal case against the accused.

He also stated about the alleged harassment meted out by the accused to his wife and a case was also filed when the accused tried to kidnap the children.

b) He further submitted that accused had filed O.P.No.209/2000 on 03.02.2000 before the Family Court, at Hyderabad seeking custody of the children by implicating the complainant and his wife. In the said O.P, the accused made certain defamatory imputations against the complainant alleging that accused sent huge amounts to him and purchased one flat No.105 at Express Apartments, Khairthabad in his wife's name and the complainant collected monthly rents and misused the same. In the said O.P, it was further alleged that complainant was previously convicted in one former ACB case and acquitted in a latter case. The complainant claimed that he was never convicted nor prosecuted in any ACB case. Thus the complainant claimed that due to the imputations of the accused in Paras 3 and 4 of the petition in O.P.No.209/2000, his prestige, reputation and honour were lowered and they were *per se* defamatory and hence the complaint to punish the accused for the offence under Section 500 IPC.

c) During trial, PWs.1 and 2 were examined and Exs.P.1 to P.5 were marked on behalf of complainant. No oral or documentary evidence was adduced on behalf of accused.

d) The Trial Court after considering both oral and documentary evidence, held that the allegations of accused do not constitute defamation and accordingly, acquitted the accused.

Hence the appeal by the complainant.

4) Heard arguments of Sri K.Suresh Reddy, learned counsel for appellant and Sri A.Hari Prasad Reddy, learned counsel for 1st respondent.

5) Fulminating the judgment of the Trial Court, learned counsel for appellant would argue that the Trial Court grossly erred in dismissing the complaint though the allegations made by the accused would clearly attract the offence under Section 500 IPC. In expatiation, he would submit that the allegations made in O.P.No.209/2000 touching the character and conduct of the complainant are irrelevant and unwarranted since the said O.P was filed by the accused seeking custody of his children as against the 1st respondent therein, who is his wife. Therefore, the allegations *per se* are defamatory.

a) Nextly, he argued that none of the allegations made by the accused in O.P.No.209/2000 were substantiated by him to seek shelter under lawful justification. He thus prayed to allow the appeal.

6) Per contra, learned counsel for 1st respondent/accused would argue that in O.P.No.209/2000 the complainant is not a third party but he was the 2nd respondent therein and therefore, the allegations made against him

can by no means be regarded as irrelevant or unwarranted. He further submitted that in his endeavour to submit to the Court that all the respondents acted against him by taking away his property and distancing his children from him, the accused had to make justifiable averments in the O.P and therefore, those statements would clearly come within the exception of Section 499 IPC. The Trial Court has rightly considered the allegations and their implication and proof offered by the accused and acquitted him and therefore, the appeal is not maintainable.

7) In the light of above rival arguments, the point for determination in this appeal is:

> *"Whether the judgment of 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) 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.

3) making or publishing the imputation concerning any person;

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.

9) It has now to be seen whether the two sets of averments said to be made by the accused in O.P.No.209/2000 would constitute an offence of defamation. The first averment in O.P.No.209/2000 which according to the complainant, is defamatory is thus:

> *"**Para 3**: It is submitted that during the period of 1987 to 1997 when the petitioner was in abroad have sent huge amounts to his father-in-law(respondent No.2). The petitioner has purchased one flat bearing No.105, situated at Express Apartments, Khairthabad in the year 1986 in his wife name. Therefore, it was entrusted to respondent No.2 to manage and to collect monthly rents from bonafide tenants. Since the petitioner was being away from India. All those years the respondent No.2 collected the rents and used for his own purpose. The monthly rents collected by respondent No.2 is accrued in lakhs of rupees and respondent No.2 is still receiving the rents borne out of that Flat No.105, which belongs to petitioner. Therefore, the petitioner asked about the account of those rents for which the respondent No.2 developed unhappy differences with the petitioner and instigated his daughter who is respondent No.1 to influence the petitioner. But the petitioner could not listen to his wife who is respondent No.1. Therefore, the respondent No.1 also developed unhappy differences with her husband and started harassing the petitioner with an adamant manner."*

10) Now the first aspect to be looked into is whether the above averments *per se* amount to defamation. The gist of the averments is that the accused purchased Flat bearing No.105 situated at Express

Apartments, Khairthabad in 1986 in the name of his wife with the income earned by him in aboard and it was entrusted to respondent No.2 (complainant) to manage and he collected the rents and used for his own purpose. When we carefully analyse the entire averments in Para 3, the reason for making such averment was mentioned in the latter part of the Para 3 to the effect that when the petitioner asked about the account of the rents, the complainant developed unhappy differences with the petitioner and instigated his daughter (respondent No.1) to influence the petitioner but he did not budge and therefore, his wife also developed unhappy differences with him and started harassing him in adamant manner. Therefore, according to the accused the root cause for the differences between his wife and him is the non-accounting of the rental amounts by the complainant. It is pertinent to note that the accused only used the phrase, respondent no.2 collected the rents and used for his purpose but did not specifically mention that the complainant misappropriated the amount. So when the entire paragraph 3 is read in conjunction with other averments in the O.P, which was filed for the custody of his children, it would not appear that the averments in paragraph 3 are directed against the complainant (R.2 in O.P) to defame him. Therefore, by no stretch of imagination, the said averments can be regarded as *per se* defamatory.

11) Even assuming that the above averments apparently contain the defamatory remarks, the justification was shown through the cogent evidence. Ex.D.3 was the evidence of PW.1—complainant in C.C.No.12

of 1992 which case was filed against him by the ACB. In that case, the appellant herein/complainant was examined as DW10. At Paragraph 2 in Page 3 of Ex.D.3, PW.1 (complainant) as DW10 therein, has admitted thus:

> *"Flat No.B.105 in Express Apartments was purchased by my son-in-law Dr.J.Abdul Gafoor in the name of his wife Sayeeda Gafoor."*

In Paragraph 4 at Page 3, he further admitted as follows:

> *"During the course of search of my house on 15.12.87, Rs.13,000/- and odd was found which was the amount of advance of the flats of B.5 belonging to my son and B.105 belonging to my daughter and rents @ Rs.2,000/- p.m. I received 3 months rent as advance for each flat."*

In his cross-examination as DW.10, he denied the suggestion that he paid the instalments for purchase of Flat No.B.105 of Express Apartments. Thus the cumulative effect of his previous admissions is that the said flat was purchased by the accused herein in the name of his wife. It is true that the complainant tried to offer an explanation for his previous admission to the effect that in order to escape the liability in C.C.No.12 of 1992, he has given incorrect statement under Ex.D.3. This itself shows the conduct of the complainant as he speaks the same fact in different ways on different occasions to suit his convenience. It is true that the accused filed O.S.No.103/2001 seeking declaration that he was the owner of Flat No.105 and the deposition of the complainant (Ex.D.3) was also referred in that suit but the Civil Court did not incline to consider the admission of the complainant herein that the said flat was purchased by the accused himself. The said Court ultimately dismissed the suit. As rightly observed by the learned Magistrate, we are not determining the title over the aforesaid flat between the accused and complainant. As already noted supra, we are testing the veracity of the complainant with reference to his earlier deposition in C.C.No.12/1992. For the limited purpose of the present case, suffice to say that the categorical admission of the complainant itself paves the way for drawing the justification to the averments made by the accused in O.P.No.209/2000.

12) Coming to the second averment, it is the allegation of the complainant that the accused made a false averment in O.P.No.209/2000 to the effect that the complainant was involved in two ACB cases and in one case he was convicted and in another case he was acquitted. Opposing the said averment, the version of the complainant is that he was involved only in one case i.e, C.C.No.12/1992 which was ended in acquittal. Therefore, the averments are *per se* defamatory. In support of his contention, the complainant filed Ex.P.2—Photostat copy of petition in O.P.No.209/2000 stating that he received the same through summons sent by Family Court, Hyderabad. The last sentence in Paragraph 6 of Ex.P.2 reads thus:

> *"The Respondent No.2 previously convicted in former ACB case and acquitted in a latter case."*

However, coming to Ex.P.1, which is the certified copy of petition in O.P.No.209/2000, the last sentence in Paragraph 6 reads thus:

"The Respondent No.2 previously not convicted in former ACB case and acquitted in a latter case."

The word "not" was obviously written with ink and initialled. So when Ex.P.1 is taken into consideration, it would show as if the complainant was previously not convicted in former case and acquitted in a latter case which means in both the cases he was acquitted. This statement cannot be considered as a defamatory one rather an informatory one. Ex.P.2, as rightly observed by the Trial Court, is only a Photostat copy and does not contain the seal of the Court and initials of the issuing officer. Therefore, the same cannot be pitted against Ex.P.1 to compare the difference in the averments. It was also argued that in fact the complainant was not involved in two ACB cases and mere mentioning that he was involved in two cases is *per se* defamatory though it is further mentioned that in both the cases he was not convicted. This argument also does not hold much conviction. In Ex.D.3 at the last Paragraph of Page 7, the complainant in his chief-examination deposed thus:

"I am not in possession of disproportionate assets beyond my known sources of income. The earlier case and this case was foisted by the ACB Investigating Agency for political reasons. The earlier case against me was dropped by the Government."

Thus he himself made it clear that there were in fact two ACB cases against him. Hence the second averment made in O.P.No.209/2000 also cannot be treated as defamatory one.

13) So on a conspectus of the entire facts and evidence, the judgment of the Trial Court was factually and legally correct and I find no irregularity or illegality in it.

14) Accordingly, the Criminal Appeal is dismissed by confirming the judgment of the Trial Court in C.C.No.221 of 2000.

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

U. DURGA PRASAD RAO, J

Date: 31.07.2018
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HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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