

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.7498 of 2011

ORDER :

This petition under Section 482 Cr.P.C. is filed seeking to quash the proceedings against the petitioners/Accused Nos.1 and 2 in C.C.No.138 of 2011 on the file of the III Additional Munsif Magistrate, Ongole, Prakasam District.

2. The 1st petitioner/A1 is daughter of the 2nd petitioner/A2. Respondents 1 and 2/complainants are mother-in-law and father-in-law of the 1st petitioner respectively.

3. The contention of petitioners is that the respondents 1 and 2 in the private complaint alleged that the 1st petitioner filed a complaint against them and their son for the offences under Section 498-A and 506 I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act. The 1st petitioner also filed O.P.No.145 of 2009 before the Family Court, Hyderabad, against their son seeking for divorce. The above complaint was filed with lot of imputations attacking the characters of the complainants with dishonest intention to damage their reputation. Further, the police personnel, who came for investigation, have made defamatory statement, which are witnessed by the neighbours. In the complaint filed by the 1st petitioner it is alleged that accused No.2/complainant No.1 herein is of bad character and she is involved in illegal activities, including running of brothel house one at her house and

another at her son-in-law's place. The 1st petitioner also made complaint to the higher officials, as a result, the 2nd respondent herein was put to suspension, which is also reported in newspapers. Due to which, the complainants' image was badly damaged and they were put to humiliation and mental agony. On the basis of the above, the respondents 1 and 2 filed the private complaint, which was numbered as C.C. No.138 of 2011.

4. The contention of petitioners is that respondents 1 and 2 filed the present complaint only to counter-blast the complaint filed by the 1st petitioner. The harassment meted out by the 1st petitioner was only stated in the complaint filed by the 1st petitioner. The present complaint is filed only with oblique motives and to bring petitioners to their dictates. It is further contended that the averments made in C.C. No.142 of 2009 have been in good faith and in the belief that they are all true. In the charge-sheet filed in C.C. No.142 of 2009 does not anywhere specifically stated that these allegations are incorrect. Therefore, allegations squarely fall under exception 8 of Section 499 IPC. Further allegation that Police had used defamatory language or that the newspapers had defamed respondents herein would have no relevance as far as petitioners are concerned, as they had no role to play in such alleged publication.

5. *Per contra*, respondents 1 and 2 contended that petitioners in the complaint specifically alleged that A2/respondent No.1 herein was a lady of bad character and running brothel house one in her home and

another at her son-in-law's house. In the statements, petitioner Nos.1 and 2 stated that respondent No.1 is a very bad woman with dirty character as she used to run brothel house one at home place and also at her son-in-law's place. There is also publication in the newspaper with the same facts, which are defamatory and the complaint is maintainable.

6. In the case of *Anjana Saikia (Das) v. Anuradha Das and Anr.* ((2004) DMC 38) the Gauhati High Court held that there cannot be any complete restriction with the question of applicability that the Exception 8 and 9 cannot be gone into at the preliminary stage that is, either at the time of issuing process or in revision proceeding and the matter would have to be thrashed out during the trial only. The matter will vary from case to case depending upon the facts involved. There may be cases where a bare perusal of the complaint petition will show the applicability of Exceptions under Section 499 IPC. Exception 8 and 9 of Section 499 starts with the words 'it is not defamation'. There may however be cases where recording of evidence will be considered as a must to examine the applicability of the Exception 8 and 9 of Section 499 IPC. In that case accusations are found to be true by the competent court, so there will be no scope to claim defamation. Ultimately the Court found that there is sufficient force in the submission that the defamation proceedings have been instituted with ulterior motive for wreck vengeance or to pressurise the petitioner.

7. In the case of *Navjote Kaur Khara Vs. State of Punjab and another* (2017 Law Suit (P&H) 1550) Punjab & Haryana High Court

held that in that case respondent/complainant instituted a complaint under Section 500 IPC against the petitioner on 8.1.2011 before the trial court. As per the allegations in the complaint, the petitioner while submitting a complaint to the Director General of Police, Punjab has levelled certain allegations which according to the respondent/complainant are derogatory and defamatory. Exception 9 to Section 499 IPC provides that any imputation made in good faith by a person for protection of his or other's interest is not a defamation. The complaint filed by the petitioner before the Director General of Police, Punjab was only to the extent that she was harassed on account of demand of dowry and had prayed for registration of a case under Sections 406 and 498-A IPC. The alleged publication of the complaint by a correspondent in the newspaper was not intended to lower the reputation of the respondent/complainant as it was an imputation made in good faith by a person for protection of her interest. Thus, it is apparent that no offence on the bare reading of the complaint is made out and, therefore, continuation of the criminal proceedings will prejudice the right of the petitioner/accused as the complaint is time barred.

8. In another case of *Harjit Kaur Vs. Jaswinder Singh Bhogal* (2007 Law Suit (P&H) 1437) the petitioner therein in the written statement filed in the divorce petition pleaded that as a matter of fact, the petitioner is a man of bad character and even goes to another women. On 26th December, 1998, the petitioner forcibly asked the respondent to go with Daljit Seera who is owner of petrol pump on Hazipur Road, Dasuya to Dalhousie at 12 O'clock. When she refused to go with him, the

petitioner gave beatings to the respondent and turned out from the house in just three wearings and also retained her gold ornaments and other valuable articles and further refused to maintain her. In such case the High Court held that the aforesaid allegations have made by the petitioner to defend the divorce petition filed by the respondent and it cannot be said that the said allegations have been made with an intent to harm the reputation of the respondent. Moreover, the respondent himself also made some what similar allegations against the petitioner, who was also aggrieved thereby, but in view of the serious allegations made by the parties against each other, learned Additional District Judge did not think it proper to initiate action against the respondent when application under Section 340 of the Code of Criminal Procedure was filed by the petitioner. In view thereof, since both the parties have indulged in mud slinging against each other, it would be expedient in the interest of justice, if the impugned complaint is also quashed, since petitioner's application under Section 340 of the Code of Criminal Procedure has also been dismissed by the learned Additional District Judge being not expedient in the interest of justice to take action against the respondent under said provision.

9. Similarly, in another case of *Sohan Singh Vs. Sapinder Singh* in CRM-M-12677-2008 (O&M) the Punjab & Haryana High Court held that a perusal of eighth exception would make it manifest and it is not defamation to prefer in good faith an accusation against any person to lawful authority over that person with respect to the subject matter of accusation. 'Good faith' has been defined in Section 52 IPC

and says that nothing is said to be done or believed in “good faith” which is done or believed without due care and attention. While dealing with 8th exception to Section 499 IPC held that allegations made to the police regarding commission of offence would be covered in Eighth Exception and would not constitute defamation even if the allegations levelled are taken on their face value. It was further held that the petitioner has neither published nor defamed the complainant in public eyes but he made a complaint to the police and the complainant would be protected

DAVINDER KUMAR 2014.12.15 12:35 I attest to the accuracy and integrity of this document under Eighth Exception appended to Section 499 IPC.

10. Similarly, in the case of *Vedurumudi Rama Rao Vs. Chennuri Venkat Rao and anr.* (1997(2)ALD Cr1 192) this High Court held that Exception 9 to the Section 499 IPC relates to imputation made in good faith by person for protection of his or others interest. This exception relates to private communications which a person makes, in good faith, for the protection of his own interest, or of any other person, or for the public good. Admittedly, the petitioner-accused herein issued the said Circular only on the instruction from the Central and Zonal offices by repeating what he was asked to communicate to his Branch Managers in the region. Therefore, there is nothing on record to hold that the petitioner-accused had issued the said Circular with any malice against this complainant or to cause any damage to his reputation as such. There cannot be any doubt that such a Circular was issued only in good faith and also for the public good and to safeguard the interest of the

public at large. In a case of this type, the truth of the imputations made against the complainant need not be proved by an accused person claiming the privilege under exception 9. Therefore, even if the allegations made in the complaint are taken to be true, the offence under Section 500 IPC is not made out as the exception No.9 is squarely applicable to the facts in this case and as laid down in “State of Haryana v. Bhajan Lal”, 1992 Suppl (1) SCC 335.

11. In the case of *P.Sharma Vs. P.S.Popli And Anr.* (94(2001) DLT 913) the Delhi High Court held that Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation, the report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental inquiry had been initiated that the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code.

12. In the above cases complaints were made with good faith believing the allegations to be true. In such cases, it was settled principle of law that exception 8 of Section 499 IPC will apply and they would not attract any accusation, imputation or defamation, but in the case on hand,

the respondents 1 and 2 in the complaint specifically averred that out of dishonest and evil agreement between the accused, who are petitioners herein, to assassinate the character of the complainants, who are respondents 1 and 2, thereby damage their reputation, filed the complaint with lot of imputations attacking the character of the complainants/respondents 1 and 2.

13. The 1st petitioner/A1 in crime No.5 of 2009 pleaded and stated as follows :

‘the accused No.2 was a lady of bad character and running brothel house one in her home place and another at her son-in-law’s house at Nirmal Nagar, beside Dr.Ravi Children’s Hospital’.

Further, she also pleaded in O.P.No.145 of 2009 as follows :

‘the petitioner further submits that to her shock she came to know that her mother-in-law was a bad character and running all illegal activities at Ongole as well as at Nirmal Nagar beside Ravi Children Hospital, Ongole.’

The 1st petitioner/A1 gave statement to the Inspector of Police, Women P.S., Begumpet as follows :

‘My mother-in-law is a very bad woman with dirty character as she used to run brothel house at her home place at Nirmal Nagar, Ongole, and also at her son-in-law’s place at his flat near Ravi Childrens Hospital at Nirmal Nagar – she used to encourage her telling advantages of participating in such business and encourage her in maintaining extra-marital relationships for which she always hesitated and disliked to participate in such discussions.’

Similarly, A2 gave statement as follows :

'her mother-in-law is a very bad woman, she used to run brothel house, she used to encourage my daughter telling the advantages of participating in such business and encourage her in maintaining extra marital relationships, for which she always hesitated and disliked to participate in such discussions'.

14. The contention of the respondents in the complaint is that the statement of petitioners 1 and 2, who are A1 and A2, before the police and the allegations in the complaint are baseless, intend to damage the reputation of the complainants/R1 and R2. They gave defamatory statements with dishonest intention to lower down the moral and intellectual characters of the complainants who are respondents 1 and 2 and their family in the estimation and eyes of others, including known and unknown persons and relatives. Besides that, the 2nd petitioner by sitting in the vehicle on 21/22-1-2009 at 1 AM created big havoc at the house of the respondents by showing the FIR copy and openly uttering that *"Archana complaint ichchindi - Rajakumari ante nuvvena - ikkadaa, nee alludu inti daggara brothel house naduputhunnavantaga - podam padandi"*. As it was odd time, on hearing havoc, neighbours in the locality came there, witnessed the scene and heard the utterances made by the police and basing on the FIR allegations, formed bad opinion about the characters of respondents 1 and 2. The police also arrested respondents 1 and 2 and took them into custody. They were sent for remand and later enlarged on bail. After investigation, charge-sheet was filed and numbered as C.C. No.142 of 2009 and nothing was found in the charge-sheet about the imputations made against the character of the 1st respondent. The Regional Joint Director, Guntur had also issued charge memo to the respondent No.2 and news items were published on

29.7.2009 in Eenadu, Prakasam, with headlines “*Varakatna Vedhinpu caselo UTF netha suspension*”; in Andhra Jyothi, Prakasam on 29.7.2009 with headlines “*Gruha Himsa Caselo UTF netha suspension*”; and in Sakshi, Ongole on 29.7.2009 with headlines “*Varakatnam caselo H.M. suspension*”. The public, after going through the publications in the newspapers, according to respondents 1 and 2, formed a bad opinion about them. Some of the unknown people also looking complainants in sarcastic manner. The above publications in the newspapers, allegations in the complaint and also the proclamation of the police officials who came for investigation at odd hours and also arresting and remanding them, certainly defamed the respondents and there is nothing on record to show that those imputations were made in good faith. There is *prima facie* material to prosecute the petitioners. The allegations in the complaint, imputations made by the police officials at odd hours and the publication in the newspapers in no way fall under exception 8 of Section 499 IPC.

15. In the facts and circumstances discussed above and findings therein, I am of the considered view that there are *prima facie* imputations to prosecute the petitioners. They do not fall under exception 8 of Section 499 IPC. In all the cases relied on by petitioners, imputations are made believing them to be true and correct in good faith, whereas imputations made and the publications made in the present case are *prima facie* not with good faith and there is *prima facie* material to attract offences under Sections 120-B (2), 500 IPC and also under Section 500 read with Section 34 IPC and the imputations made does not

attract the exception 8 of Section 499 IPC. There is nothing to suggest that the present complaint is filed in the abusive process of Court.

16. In the result, the Criminal Petition is dismissed.

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

JUSTICE N.BALAYOGI

11th October, 2018

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