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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 03rd July, 2018

+ CRL.M.C. 4514/2015 and CrI. M.A. 16078/2015

S.T.P SINGH

..... Petitioner

Through: Mr. Atul Kumar and Mr.
Abhimanyu Sharma, Advocates

versus

TARSEM SINGH & ORS

..... Respondents

Through: Mr. Harpreet Singh Popli, M.
Deepak Diwan, Mr. Anuj Yadav, Mr.
Mukul Girdhar, Mr. Ankit Kaushik and Mr.
Abhishek Dalal, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner herein at the relevant point of time was an employee in the capacity of a Trained Graduate Teacher (TGT) with Guru Harkrishan Public School, Fateh Nagar, New Delhi, the respondents being part of the management thereof in the capacity of Chairman, Manager and Principal respectively. On the basis of some enquiry, a chargesheet was issued for disciplinary action against the petitioner on 08.02.2010, the same having been served on the petitioner under the cover of memorandum dated 12.02.2010 calling him upon to submit his reply within the period specified.

2. On 03.04.2010, the petitioner presented a criminal complaint against the respondents alleging offence under Section 500 read with

Section 34 of Indian Penal Code, 1860 (IPC) having been committed. The Magistrate took cognizance on the said complaint and eventually summoned the respondents as accused persons. After their presence had been secured, the Magistrate by order dated 06.08.2011, decided to follow the procedure prescribed for summons trial and issued a notice, presumably under Section 251 of the Code of Criminal Procedure, 1973 (Cr.P.C.), to proceed ahead. The said order was challenged by the respondents before the court of sessions by criminal revision (no.84/2011). The revision petition was allowed, by order dated 31.07.2015, thereby setting aside and closing the proceedings in the criminal case.

3. It is the aforesaid order the legality whereof is sought to be challenged by the petition at hand invoking the jurisdiction of this court under Section 482 Cr. PC.

4. The prime reason why the sessions court decided to exercise its revisional jurisdiction to interdict and close the proceedings in the criminal complaint is indicated in the impugned order to be the eighth exception to Section 499 IPC which defines the offence of defamation, it being the opinion of the revisional court that accusations having been preferred against the petitioner before the respondents who had the lawful authority over him, on account of he being an employee of the school of the management of which they were a part, the acts alleged could not constitute the offence of defamation.

5. It is the submission of the petitioner that the benefit of the exception could not have been given without enquiry, it being a matter of defence, he placing reliance in this context on rulings of the Supreme Court in *Balraj Khanna and Ors. Vs. Moti Ram*, AIR 1971 SC 1389 and *M.A. Rumugam Vs. Kittu @ Krishnamoorthy*, AIR 2009 SC 341 and of a learned single Judge of this court in *Tata Motors Ltd. vs. State*, 2009 SCC Online Del 308.

6. While the reasoning on the basis of which the session court has passed the impugned order may be open to debate, there is another reason, a more fundamental one, on the basis of which this court holds that the petitioner cannot succeed. This aspect may be elaborated hereinafter.

7. A court of the Magistrate is empowered by Section 190 Cr. PC to take cognizance of any offence, *inter alia*, upon receiving “a complaint of facts which constitute such offence”. The expression “complaint” is defined by Section 2(d) Cr. PC to mean “any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report”. It is essential in this scheme of the criminal procedure that the criminal complaint on the basis of which the court of the Magistrate is expected to exercise its jurisdiction under Section 190 Cr. PC. - it generally entailing an inquiry in terms of Section 200 and 202 Cr. PC - must set out all the necessary facts indicating the requisite ingredients constituting the offence which is alleged to have

been committed by the person(s) against whom criminal action is sought and expected.

8. The offence of defamation is defined by the provision contained in Section 499 IPC which, to the extent necessary, may be quoted as under :-

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

xxx

Explanation 4 - No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.
xxx””

(emphasis supplied)

9. It is clear from a bare reading of the above extracted provision that it is not only essential that the impugned imputation harming the reputation of the person in question must be alleged to have been “made” or “published” but also that it must be shown, amongst others, to have directly or indirectly, *inter alia*, lowered the moral or intellectual character of the said person “*in the estimation of others*”.

10. The petitioner places reliance on the view taken by a learned single Judge of this court in *Sanjay Mishra Vs. Govt. of NCT of Delhi and Anr.* in CrI. M.C. 3350/2008, decided on 23.03.2012 where in the context of criminal complaint under Section 500 IPC, it was observed that “*publication*” has a meaning wider in the context of criminal action in contrast to the civil law and would include “*a communication to the person defamed alone*” and that “*the prosecution for defamation in criminal cases can be brought although the only publication is to the person defamed as it is very likely to provoke a breach between the persons involved*”.

11. With due deference, this court finds the above view expressed by the learned single Judge in the case cited at bar to be *per incuriam*. The principle that the offence of defamation is committed only when there is a communication to a third party is well settled. [See *Abdul Aziz vs. Maulana Syed Muhammad Arab Saheb*, AIR 1935 Cal 736 : 159 IC 727: 37 Cr LJ 133; *Khima Nand and Anr. vs. Emperor*, 1937 ALJ 128 : 169 IC 622 : 38 CrL. LJ 806; *Sohanlal Daga vs. Sreechand Daga*, AIR 1941 Cal. 247; *Kundamal vs. Emperor*, AIR 1943 Sind 196 : 45 Cr LJ 105 : 209 IC 234; *Lachhman vs. Pyarchand*, AIR 1956 Raj 169 : 1959 Raj LW 222; *Amar Singh vs. K.S. Badalia*, (1965) 2 Cr. LJ 693; *Challa Subarayalu v. Darbha Ramakrishna Rao*, (1968) 2 And LT 101].

12. The key words in the main clause wherein the offence of defamation is defined by Section 499 IPC are “*makes or publishes*” the “*imputation*” encompassing insinuation with the propensity “*to*

harm” the “*reputation*” of the person against whom the same is directed. For the present discussion, the said clause has to be read in light of the explanations appended thereto particularly the fourth explanation which excludes from the purview of the criminal offence the imputations with such insinuation as to the character of the affected person unless it is designed to adversely affect the reputation “*in the estimation of others*”.

13. It is necessary to focus on the expression “*publishes*”. The word “*publish*” is defined by Chambers, 20th Century Dictionary to connote :

“to make public; to divulge; to announce; to proclaim; to send forth to the public; to put forth and offer for sale orig. any article, new books, newspapers, etc. to put in circulation.”

14. Halsbury Laws of England (Third Edition) explains that :

“publication consists in making known the defamatory statement after it has been reduced into some permanent form”

15. The authoritative commentary on Law of Defamation and Malicious Prosecution (second edition) authored by H.P. Gupta explains the word “*publish*” as under :-

“1. To make known or announce publicly; promulgate; proclaim. (2). To print and issue (a book, magazine, map, etc.) to the public. (3) Law to communicate (a defamation) to a third person (4). To print and issue the work of; to publish Hemingway (5). To engage in the

business of publishing books, magazines, newspapers, etc. (6) To have one's work printed and issued."

16. Pertinent to note in the context of use of words "*in the estimation of others*", the commentary on Indian Penal Code by Ratan Lal (2002) in relation to the offence of defamation begins with the general comment that:

"the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed."

17. V. Mittar in his commentary on Law of Defamation & Malicious Prosecution (Twelfth Edition) expounds on the subject with reference to fourth explanation thus :-

"And further since in Explanation 4, appended to the section, it is laid down that no imputation is said to harm a person's reputation unless it lowers him in the estimation of others, it follows that there can be no publication unless it reaches at least a third person, in whose estimation the reputation of the person defamed could possibly suffer."

(emphasis supplied)

18. Following the view taken by the full bench decision of the Privy Council in *Queen Empress Vs. Taki Husain*, 7A 205 (FB) - 4A.W.N. (1884) 340, Allahabad High Court in a very early decision

reported as *Khima Nand and Anr. vs. Emperor*, 1936 SCC Online All 307; 1937 Crl. LJ 806 held thus :-

“The only rule is that there can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is, to a party other than the person defamed...”

(emphasis supplied)

19. In a very well researched judgment on the subject rendered by Patna High Court in case reported as *Sardar Amar Singh Vs. K.S. Badalia*, 1964 SCC OnLine Pat 186 : (1965) 2 Cri LJ 693, it was held thus :-

“One of the ingredients of the offence of defamation is that there should be making or publication of any imputation concerning any person. Such imputation may be words either spoken or written. The defamatory matter has to be published. In other words, it has to be communicated to a person other than the person defamed. The word ‘makes’ in S. 499 refers to the originator of the defamatory matter. I can usefully refer here to Volume III, 6th edition of Dr. Sir Hari Singh Gour's Penal Law of India, page 2340 where the learned author has noted that the word “makes” in S. 499 has been used in its etymological sense as connoting “to make public” or to make known to people in general. Publication implies communication to at least one person other than the person defamed. In other words, communication must be to a third party, that is, to a

party other than the person defamed (vide Khima Nand v. Emperor, 38 Cri LJ 806 (All)... ”

(emphasis supplied)

20. Similar questions had arisen before the High Court of Andhra Pradesh in case reported as *Challa Subbarayudi Vs. Darbha Ramakrishna Rao, 1967 SCC Online AP 137 : (1968) 2 ALT 101* and the following view was taken :-

“13. Publication is the communication of the words or doing the defamatory act in the presence of at least one other person than the person defamed. Communication to the plaintiff himself would not be enough because defamation is an injury to one's reputation and reputation is what other people think of man, and not his own opinion of himself. Publication of the defamatory act or statement therefore is an essential element for the constitution of defamation.”

(emphasis supplied)

21. In the context of similar criminal complaint under Section 500 IPC, the Kerala High Court in the matter reported as *P.R. Ramakrishnan Vs. Subbaramma Sastrigal and Anr., 1986 SCC Online Ker 309 : AIR 1988 Ker 18 : 1988 Cri. LJ 124* took the following view :

“....To attract the definition of the offence of defamation as contained in S. 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)

22. Similar questions arose before the Madras High Court in the case of *Smt. Dr. Nagarathinam vs. M. Kalirajan*, 2001 SCC Online Mad 355 : 2001 Cri LJ 3007. Drawing strength from the observation of the Supreme Court in *Bilal Ahmed Kaloo vs. State of Andhra Pradesh*, (1997) 7 SCC 431 : (1997 Cri LJ 4091), albeit in the context of offence under Section 505 IPC, to the effect that the words “*makes or publishes any imputation*” should be interpreted as “*words supplementing to each other*”, and that a *maker of imputation without publication is not liable to be punished under that section*”, the Madras High Court held that “*the publication with intention of harming the reputation of the person concerned to make others to know the imputation is the most important ingredient to make out an offence under S. 500 IPC*” and further that “*there will be no publication, if the complainant alone is informed of the defamatory words*”, and also that “*a communication to the defamed himself will not be a publication.*”

23. In view of the above, this court holds that in absence of allegations or evidence showing that the defamatory material was published to an individual other than the person defamed, a case for criminal action for the offence of defamation cannot be maintained.

24. The petitioner though alleging that each and every allegation in the chargesheet with which he was served was false, baseless and defamatory in nature chose to confine his case on a certain paragraph (which is not being extracted here in his interest) quoted by him, in (para 6 of) the complaint terming it as “annoying” and “defamatory”, he made out a case for criminal action for the offence of defamation against the respondents by certain averments (in paras 5, 7, 9 and 10) which may be quoted as under :-

“5. That in order to take vengeance and as a counterblast, the accused persons have all of a sudden framed false and baseless charges against the complainant without any basis and documentary evidence. The complainant was issued a photocopy of false and frivolous charge sheet dated 08.02.2010 in utter violation of Principle of Natural Justice and provisions of DSEA, 1973. The aforesaid chargesheet is full of false, baseless and defamatory allegations against the complainant. The sole purpose of raising defamatory allegations against the complainant is to defame him amongst his colleagues, students, parents, friends and right thinking member of society, who know the complainant and respect him. The copy of covering letter dated 12.02.2010 with copy of chargesheet dated 08.02.2010 are collectively annexed herewith this complaint as Annexure C-2.

7. That the accused persons have signed the chargesheet and therefore all are equally liable for committing offence of defamation against the complainant.

9. That the accused persons have not conducted any inquiry as required under Rule 120 of Delhi School Education Rules, 1973 and without any disciplinary inquiry and without affording any opportunity to the

complainant, have terminated the complainant from service in utter violation of Principle of Natural Justice and provisions of DSEAR, 1973. The copy of termination order is annexed herewith this complaint as Annexure C-4. The complainant has been terminated in order to frustrate and to restrain him from claiming his rights from the school. Earlier also, the complainant was illegally terminated and said rule was set aside by the school tribunal and upheld by the Hon'ble High Court.

10. That the accused persons have deliberately and malafidely have spoiled the image of the complainant amongst students, staff, teachers, parents, friends and other members of Society by aforesaid imputation in charge sheet. The accused persons have deliberately committed the offence of defamation with common motive and intention and in consultation with each other. Therefore, accused persons are liable for prosecution and punishment u/s. 500 / 34 IPC.”

(emphasis supplied)

25. In a similar fact situation as at hand, Calcutta High Court in the case of *S.S. Sanyal and Anr. Vs. K.V.R. Nair and Ors., 1987 Cri. LJ 2074* observed thus :-

“...Indeed in this case the imputation had no reason to get publicity unless it was given publicity by the complainant opposite party himself. The charge-sheet was meant for his eyes only. It was for him to look into it and send a reply to it if he considered that to be necessary. If he really stuck to that then there was no reason why the charge-sheet in question should have obtained due or undue publicity in this case...”

26. It is clear from a bare perusal of the averments in the criminal complaint, in general, and the paragraphs quoted above, in particular,

that there is not a whisper of any allegation of the respondents having “*published*” the contents of the chargesheet to any person other than the petitioner himself. There is not a whisper of averment either as to how the impugned imputations had come to the notice (assuming that is what is implied by the complaint) of “*the students, staff, teachers, parents, friends and other members of Society*”, it not being the case of the petitioner that “*publication*” of the defamatory material to such persons at large was made by, or at the instance of, the respondents.

27. In view of the above, it is clear that the complaint presented by the petitioner before the court of the Magistrate on which he sought criminal action against the respondents for the offence of defamation was deficient to the effect that there was no averment made as to the publication of the insinuating material and consequently his petition could not have been even treated as a “*complaint*” within the meaning of the expression used in the Code of Criminal Procedure or such as on which cognizance could have been taken by the Magistrate in exercise of the jurisdiction vested in him by Section 190 Cr. PC.

28. In the above facts and circumstances, this court declines to interfere. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

JULY 03, 2018

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