

HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on: 26-6-2019Judgment delivered on: 15-7-2019Writ Appeal No.97 of 2008*{Arising out of order dated 19-3-2008 passed by the learned Single Judge
in Writ Petition (C) No.1467/2008}*

Mohd. Arshad Khan, Advocate, Aged about 32 years, S/o Mohd.
Akram Khan, R/o Jama Masjid Street, Durg, Tah. & Distt. Durg
(C.G.)

(Petitioner)
---- Appellant

Versus

1. Central Bureau of Investigation, 12 Khamba Lane, New Delhi,
Through Director-General.
2. State of Chhattisgarh, Through Town Inspector, Police Station, Durg
(C.G.)
3. Bar Council of India, 21 Rouse Avenue, Institutional Area, New
Delhi.
4. State Bar Council of Chhattisgarh, Through Secretary, State Bar
Council of Chhattisgarh, High Court Premises, Bilaspur (C.G.)
5. Shri Prakash Choubey, Aged 70 years, Alias Deen Dayal Choubey,
S/o Dol Singar Choubey Alias Katwaru Choubey, R/o Girdhari
Nagar, Durg, Tah. & Distt. Durg (C.G.)
6. Shri Prakash Choubey, S/o Shri Dal Singar Choubey, Retired
Assistant Labour Commissioner, Govt. of Uttar Pradesh, Presently
residing at:- Ward No.1, Kairi Road, Chandauli, Uttar Pradesh.

---- Respondents

For Appellant: Mr. V.G. Tamaskar, Advocate.

For Respondent No.1 / CBI: -

Mr. B. Gopa Kumar, Assistant Solicitor General of India.

For Respondent No.2 / State: -

Mr. Siddharth Dubey, Deputy Govt. Advocate.

For Respondent No.3: -

Mr. Vimlesh Bajpai, Advocate.

For Respondent No.5: -

Mr. B.N. Mishra and Mr. T.K. Jha, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, CJ and
Hon'ble Shri Sanjay K. Agrawal, J.

C.A.V. JudgmentSanjay K. Agrawal, J

1. This writ appeal is directed against the order passed by the learned Single Judge by which the appellant's substantive writ petition filed under Article 226 of the Constitution of India praying for quashing of Criminal Case No.833/2006 between Shri Prakash Choubey v. Mohd. Arshad Khan pending in the Court of Judicial Magistrate First Class, Durg, including the order framing charge for offence punishable under Section 501 of the IPC, has been dismissed finding no merit.
2. Respondent No.5 herein filed a writ petition seeking quashment of the order framing charge for offence under Section 501 of the IPC against the appellant herein before the jurisdictional criminal court by which the criminal court has taken cognizance of the commission of offence punishable under Section 501 of the IPC stating that the appellant herein has filed W.P.No.3333/2003 before this Court against respondent No.6 and made a defamatory statement in para 6 of the said writ petition that criminal case for offence punishable under Section 395 of the IPC is pending against him which is absolutely false and which is defamatory and on the said writ petition being filed and notice having been issued to him, respondent No.6 has suffered damage of his reputation among the public at large, therefore, the appellant is liable to be punished. The learned Single Judge after considering the submissions of the parties came to the conclusion that from the allegations of the complaint, prima facie, ingredients for framing charge under Section 501 of the IPC are made out and held that the defence which has

been taken by the appellant herein in the said writ petition can be taken conveniently at the time of trial and in such a situation, the said defence can be considered during the course of trial.

3. Mr. V.G. Tamaskar, learned counsel for the appellant / petitioner, would submit that the learned Single Judge has fallen under a grave error by holding that prima facie case for charging offence under Section 501 of the IPC is made out. The writ petition filed is still pending consideration before this Court and in the said writ petition in the description of respondent No.7 it has only been mentioned that this Court can summon the record including the record of sessions trial pending since 1987 against respondent No.10. The case of the complainant is covered against him under clauses (1) and (7) of paragraph 102 of the decision rendered by Their Lordships of the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**¹, as immediately after receipt of notice of W.P.No.3333/2003, the complaint was lodged as a counter-blast and even otherwise, no offence under Section 501 of the IPC is made out being covered by the Ninth Exception to Section 499 of the IPC.

4. Mr. B.N. Mishra, learned counsel appearing for respondent No.5, would submit that the learned Single Judge has rightly held that prima facie, ingredients for framing charge under Section 501 of the IPC are available in the complaint and all the pleas raised are matter of defence which can be appropriately taken during the course of trial. The writ appeal as framed and filed is not maintainable in view of the decision rendered by the Supreme

¹ 1992 Supp (1) SCC 335

Court in the matter of Ram Kishan Fauji v. State of Haryana and others². The writ appeal deserves to be dismissed.

5. We have heard learned counsel for the parties and considered the rival submissions made herein-above and gone through the record with utmost circumspection.
6. A Division Bench of this Court on 22-2-2011 doubted the maintainability of this writ appeal and referred the matter to Full Bench, as to whether writ appeal is maintainable or not. The Full Bench by order dated 31-8-2017 held the writ appeal to be maintainable. Since, in the instant case, between the same parties, the Full Bench had already held the writ appeal to be maintainable, the objection raised qua the maintainability of writ appeal by respondent No.5 is hereby overruled.
7. Now, the question is, whether the learned Single Judge is right in holding that prima facie offence under Section 501 of the IPC is made out against the appellant?
8. Section 499 of the IPC defines defamation which reads 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 expected, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

² (2017) 5 SCC 533

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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."

9. Ninth Exception to Section 499 of the IPC, which is relevant to the present case, is quoted herein-below: -

"Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—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."

10. In order to attract the Ninth Exception to Section 499 of the IPC, the imputation must be shown to have been made (i) in good faith; and (ii) for the protection of person making it or for any other person or for public good.

11. Section 501 of the IPC deals with printing or engraving matter known to be defamatory, which reads as follows: -

"501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

12. "To publish" means to make known to others or to communicate to a third person. (See Webster's Comprehensive dictionary – International Edition). Publication will be complete if after making or printing the defamatory statement, it is made available to the public. (Vide Collector of Central Excise v. New Tobacco

Company and others³). Publication includes pleadings, affidavits etc. which are filed in Courts. (In Re Ajay Kumar Pandey, Advocate⁴). The Kerala High Court also in the matter of Prabhakaran v. Gangadharan⁵ has held that once a statement is filed in a Court of law such statement can be taken as published.

13. It is now well settled that if a party to a judicial proceeding is prosecuted for the criminal offence of defamation in respect of a statement made in such judicial proceeding either on oath or otherwise, his criminal liability must be determined by reference to the provisions of Section 499 of the IPC alone. The doctrine of absolute privilege is not recognised by the Indian Penal Code as applicable in the English common law beyond the limits of the Exceptions engraved in Section 499 of the IPC. Every defamatory statement not coming within any of the 10 Exceptions carved out under Section 499 of the IPC is punishable under Section 500 of the IPC. The question as to whether the statement in a given case falls under any of the ten Exceptions to Section 499 of the IPC will have to be decided only after trial and the burden to bring the libel or slander under any of those Exceptions is, by virtue of Section 105 of the Indian Evidence Act, on the accused.

14. In cases of qualified privilege, it is not enough if the plaintiff demonstrates that the offending statement was false and defamatory, but the plaintiff will have to further prove that the statement was made with express malice.

15. In view of the aforesaid analysis, reverting to the facts of the

3 (1998) 8 SCC 250

4 (1998) 7 Supreme 473

5 2006 (2) KLT 122

present case, it is quite vivid that the appellant herein has filed a writ petition under Article 226 of the Constitution of India before this Court on 14-1-2003 against respondent No.6 seeking quashment of his enrollment issued by the Bar Council of Delhi and also sought a direction to conduct a detailed investigation in relation to impersonation by respondent No.6 and in that case, notice was issued by this Court on 6-12-2003 to respondent No.6 herein. In the writ petition, in para 2, the appellant herein had stated about the particulars of the respondents. The High Court of Chhattisgarh has also been impleaded as a party respondent No.7 in which record of sessions trial under Section 395 of the IPC pending since 1987 against respondent No.10 therein before the Fast Track Court, Durg, has been sought to be called.

16. The aforesaid details of the record sought to be called in the writ petition in para 2 i.e. the particulars of the respondents has been made basis for filing complaint under Section 501 of the IPC. The copy of the writ petition was, according to respondent No.6, received on 18-12-2003 and he immediately filed a complaint stating as under: -

3. यह कि (रिट पीटिशनर) अभियुक्त अच्छी तरह से जानता था कि परिवादी के विरुद्ध धारा 395 भारतीय दण्ड संहिता का मामला किसी भी न्यायालय में न प्रस्तुत हुआ और न विचाराधीन है, अभियुक्त जानबूझकर परिवादी की साख को नष्ट एवं धूमिल करने के उद्देश्य एवं इरादा से कूटरचित एक रिट (याचिका) माननीय उच्च न्यायालय, छत्तीसगढ़ बिलासपुर में अपने अधिवक्ता श्री व्ही०जी० तामस्कर द्वारा प्रस्तुत कराया एवं जो डब्ल्यू०पी० नं०-3333/03 के अंतर्गत आर्टिकल 226 एवं 227 भारतीय संविधान के तहत पंजीबद्ध हुआ, जिसकी नोटिस एवं याचिका की प्रति परिवादी के कार्यालय में दिनांक 18/12/2003 को आयी और याचिका क्रमांक-3333/03 की पृष्ठ

क्रमांक-6 की ग्यारहवीं पंक्ति में यह अभिलिखित है कि उत्तरवादी क्रमांक-10 (जो परिवाद-पत्र का परिवादी है)

उपरोक्त तथ्य को पढ़कर परिवादी को आश्चर्य एवं मानसिक क्लेश भी हुआ साथ ही परिवादी के कार्यालय में बैठे दोनों पुत्रों को भी हैरानी हुयी कि 1987 से डकैती का मामला अन्तर्गत धारा 395 भा०दं०विधान के तहत एफ०एस०टी० न्यायालय में लंबित है और हम लोगों को मालूम भी नहीं । उस वक्त दो दीगर अधिवक्तागण ने पृष्ठ 6 की कण्डिका को पढ़ा उनके भी दिमाग में परेशानी हुयी और श्री प्रभात कुमार पाण्डेय अधिवक्ता, दुर्ग एवं श्री आर०एल० पाण्डेय, अधिवक्ता दुर्ग जाकर दोनों एफ०एस०टी० कोर्ट के मोहर्रर के रजिस्टर को भी देखे और पाये की कोई भी मामला अपराधिक अन्तर्गत धारा 395 भारतीय दण्ड विधान के तहत न प्रस्तुत है और न लंबित है । अस्तु परिवादी की साख उनके मातहत एवं परिचित अधिवक्ता के दृष्टि में भी कुछ देर के लिये प्रतिष्ठा धूमिल हुई ।

4. यह कि परिवादी नोटिस एवं याचिका क्रमांक 3333/03 की प्रति मय शपथ-पत्र युक्त की छायाप्रति इस परिवाद-पत्र के साथ प्रस्तुत कर रहा है जो अनुसूची "अ" है और इस परिवाद-पत्र का अंग माना जावे ।

17. A careful perusal of the aforesaid averments in the complaint would show that the appellant herein only stated about the description of record while giving particulars of the respondents. In fact, in the entire body of the writ petition, no statement has been made on oath that respondent No.6 is standing and facing trial for offence under Section 395 of the IPC. Merely giving description of record to be pending against respondent No.10 would not per se amount to making any defamatory statement against the complainant / writ petitioner.

18. As it has already been stated above, absolute privilege is not applicable to cases under the Penal Code in India but qualified

privilege applies. Thus if in a pleading of a party certain matters are alleged which may not strictly be correct but are made in good faith and are made to protect the interest of the maker they are privileged and the person making them cannot be prosecuted nor convicted for defamation.

19. In the matter of Baija v. Babu⁶, it has been laid down that a statement made by a party to a suit in good faith and for the protection of his interests, and which is relevant to the matter in issue, falls under Exception 9 to Section 499 of the Indian Penal Code and is privileged. In order to take such a statement out of the exception express malice must be proved.

20. The Full Bench of the Bombay High Court in the matter of Bai Shanta v. Umrao Amir Malik⁷ followed the decision of a Special Bench of the Calcutta High Court in the matter of Satish Chandra Chakravarti v. Ram Dayal De⁸ in which the Calcutta High Court has clarified the distinction between the position obtaining with regard to criminal prosecutions and the position obtaining with regard to civil actions as under: -

“Our conclusions then may be summarized as follows:

(i) If a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499, Indian Penal Code. Under the Letters Patent, the question must be solved by the application of the provisions of the Indian Penal Code and not otherwise. The Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in Section 499, Indian Penal Code.

6 AIR 1918 Nag 221(1)

7 AIR 1926 Bom 141

8 AIR 1921 Cal 1

(ii) If a party to a judicial proceeding is sued in a civil Court for damages for defamation in respect of a statement made therein on oath or otherwise, his liability, in the absence of statutory rules applicable to the subject must be determined with reference to principles of justice, equity and good conscience. There is a large preponderance of judicial opinion in favour of the view that the principles of justice, equity and good conscience applicable in such circumstances should be identical with the corresponding relevant rules of the Common Law of England. ...”

21. Thus, considering the legal position, the submissions of the parties and the facts noticed herein-above, it is quite vivid that there is no clear cut statement made on oath before the writ court in a writ petition filed by the appellant herein that respondent No.6 was standing trial for offence under Section 395 of the IPC and only some prayer has been made for requisitioning the record pertaining to respondent No.6, and particularly considering the fact that writ petition was pending on that day and is now being disposed of along this writ appeal, though by a separate order, it cannot be ruled out that the complaint is manifestly attended by mala fides and it can be said to be maliciously instituted with an ulterior motive for wreaking vengeance as held by Their Lordships of the Supreme Court in clause (7) of paragraph 102 of **Bhajan Lal's** case (supra) in which Their Lordships held that extra-ordinary power under Article 226 of the Constitution of India could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice and one of the categories pointed by Their Lordships is 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. Thus, we are of the considered opinion that the allegation made in the first complaint even if it is taken at its face value and accepted in its entirety, does not prima facie constitute any offence or make out a case against the appellant under Section 501 of the IPC.

22. Concludingly, the writ appeal is allowed and the order passed by the learned Single Judge is set aside. The appellant herein would stand discharged and Criminal Case No.833/2006 (Shri Prakash Choubey v. Mohd. Arshad Khan) pending in the Court of Judicial Magistrate First Class, Durg, including the order framing charge is hereby quashed.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge