

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11-11-2019

Delivered on 20-12-2019

CRMP No. 1374 of 2018

- Uttam Kumar Pandey S/o Late B. P. Pandey Aged About 62 Years Occupation Advocacy, R/o Kailash Nagar, Industrial Estate Bhilai, District- Durg, Chhattisgarh.,

---- Petitioner

Versus

- Uday Narayan Mishra S/o Late Rajdhar Mishra Aged About 70 Years R/o Village And Post Mangi (Wrongly Mentioned As Mani), Police Station Chakghat, Tahsil- Teonthar, District- Rewa, Madhya Pradesh.....(Accused),

---- Respondent

 For petitioner : Mr. Uttam Kumar Pandey, Advocate

For respondent/State : Mr. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV ORDER**

1. This petition is preferred under Section 378(3) of Cr.P.C.,1973 by the petitioner/complainant against the judgment of acquittal dated 8-5-2018 passed by the Judicial Magistrate First Class, Durg, in CIS (Case) No. 1457 of 2004 wherein the said court acquitted the respondent for charge under Section 500 of IPC, 1860.

2. In the present case, date of incident is 28-3-2002, 24-2-2002 and 3-11-2003 which are dates of filling of the applications under various Sections of Cr.P.C i.e., date of reply of the application and date of evidence. One Ashwani Bai filed an application under Section 125 of Cr.P.C., 1973 for grant of maintenance against her husband/respondent. In the said case, on 24-3-2003 evidence of Ashwani Bai was recorded and during that process, respondent's counsel named the petitioner as a person who instigated said Ashwani Bai to file an application under Section 125 of the Cr.P.C. The said allegation harmed the reputation of the petitioner that is why he issued a legal notice and thereafter filed an application under Section 500 of IPC against the respondent, but the trial court dismissed the same.
3. Learned counsel for the petitioner would submit as under:
 - i) Charge leveled against the petitioner for instigation to Ashwani Bai for filing maintenance application has caused harm to the reputation of the petitioner, but the trial court overlooked the same.
 - ii) The imputation was not made for public good and same is done in judicial process which is sufficient publication, but the trial court has not evaluated the same.

- iii) The act of the respondent is defamatory in nature for which no explanation has been offered by him, therefore, finding of acquittal recorded by the trial court is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered in this petition.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Petitioner recorded his evidence as PW/1 and his witness Pavitra Jha (PW/2). Both witnesses have deposed that Ashwani Bai filed an application for grant of maintenance under Section 125 of the Cr.P.C against the respondent in which it is questioned by the respondent's counsel from Ashwani Bai that she filed the case on advice/instigation of the petitioner. As per version of Uttam Pandey (PW/1) 40-42 years ago respondent had some land dispute with the family of the petitioner.

7. The question for consideration of this court is whether the the act of the respondent falls within mischief of defamation under Section 499 of the IPC. Section 499 of IPC may be read as under:

:Section 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.

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.

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”.

8. Admittedly, the petitioner is an advocate who is legally competent to advise others for taking legal action when one is having cause of action. In the present case, total evidence against the respondent is that he instigated one Ashwani Bai for filing an application under Section 125 of Cr.P.C against the respondent. In view of this court, defamation is an injury to ones reputation and reputation is what other persons think about him and not his own opinion about himself. The evidence, if accepted as it is, it is confined to a single case of maintenance filed against the respondent. It has nothing to do with other persons. If counsel is advising anyone for taking legal action, it will not bring down his reputation in the eyes of others because it is a matter of party of

litigation. Reputation is the standing which a person has with regard to his relation, friends, neighbours or business associates. Even if counsel advised anyone for filing a petition it could not harm his reputation because it is a matter related to his legal profession and he has all the right to advise any one for taking legal action, therefore, it is not a case to infer that words were uttered with intention of defaming. The words used against the petitioner may not have a good test, but by no reason of imagination, it could harm his reputation in any way.

9. In view of the above, the evidence falls short of requirement of Section 499 of IPC. The trial court recorded finding of acquittal. After assessing entire evidence, this court has no reason to take a contrary view.

10. Accordingly, the instant petition being devoid of merit is liable to be and is hereby dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju