

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 2376 of 2019**

Prem Singh Chouhan, Aged about 81 years, S/o Late D.S. Chouhan
R/o Smrati Bhawan, Near Green Chowk, Station Road, Durg,
Chhattisgarh.

---Petitioner

Versus

Lakhan Lal Sharma, Aged about 63 years, S/o Late R.K. Sharma,
R/o Subhash Nagar, Durg, Tahsil and Distt. Durg, Chhattisgarh.

---- Respondent

For Petitioner : Mr. Abhijeet Mishra, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/11/2019

1. The petitioner herein filed a criminal complaint against respondent No. 1 and his Advocate respondent No. 2 for offence under Section 500 read with Section 34 of the IPC for alleged defamatory statement made by respondent No. 1 in his reply filed before the civil Court which was drafted by his Advocate respondent No. 2. Learned trial Magistrate, upon going through the complaint allegations and supported documents, registered offence under Section 500 of the IPC against respondent No. 1 but did not register any offence against his Advocate respondent No. 2 against which petitioner preferred a revision which stood dismissed by the Court of sessions, being aggrieved by which this criminal miscellaneous petition under Section 482 of the Cr.P.C. has been preferred by the present petitioner.

2. Mr. Abhijeet Mishra, learned counsel for the petitioner would submit that respondent No. 2 has also acted irresponsibly in drafting the reply application branding the petitioner as a criminal knowing fully well that he is a peaceful citizen and is not a criminal as alleged by him, as such, offence against respondent No. 2 also ought to have been registered by the trial Court which has not been done by the trial Magistrate and illegality has been perpetuated.
3. I have heard learned counsel for the petitioner at length.
4. It is not in dispute that respondent No. 2 – Mr. Lakhan Lal Sharma has drafted the reply on behalf of respondent No. 1. From the perusal of the reply, it appears that he has drafted it on the instructions of his client i.e. respondent No. 1 herein and an Advocate acting under the instructions of his client and proceeding professionally while drafting the pleadings of his client cannot be prosecuted/punished for the offence of defamation under Section 500 of the IPC.
5. The issue involved in this petition has also been dealt by this Court in Cr.M.P. No. 1984/2018 (*Arun Thakur v. State of Chhattisgarh and Ors.*) decided on 10/05/2019 wherein the question involved for consideration is framed in paragraph 1 which reads as under :-

“Whether an Advocate, while acting under the instructions of his client and proceeding professionally, can be prosecuted / punished for the offence of defamation punishable under Section 500 of the Indian Penal Code is the precise question involved in this petition which arises for consideration on the following factual backdrop :-”

The above-stated question has been answered in Paragraph 26 of the said judgment which is quoted below :-

“Reverting to the facts of the case, from a careful perusal of the plaint supported with affidavit, it appears that all the

words found in the plaint including that respondent No. 2 herein is concubine of Ghanshyam Pandey have been averred only on the basis of instructions given by the plaintiff, as she being the daughter of late Shri Ghanshyam Pandey is claiming the suit property stating that Smt. Pratibha Pandey is not the widow of her father and she is only concubine and not entitled in discharge of professional duty on the instructions of his client incorporated the said averment in para 7 of the plaint filed in the civil suit. His acts are bona fide and he cannot be fastened with criminal liability. As such, imputation was made in good faith and on the basis of instructions of his client in order to protect her right to property which she is claiming, as right to property is a constitutional right under Article 330A of the Constitution of India and therefore does not constitute the offence of defamation under Section 499 of the IPC punishable under Section 500 of the IPC and falls within the Ninth Exception to Section 499 of the IPC. As such, an Advocate who has acted professionally and drafted plaint making averment as per the instructions of his client, cannot be held liable for the offence of defamation under Section 500 of the IPC.”

6. In view of the aforesaid, the revisional Court is absolutely justified in affirming the order passed by learned trial Magistrate of not registering offence under Section 500 of the IPC against respondent No. 2 i.e. Advocate of respondent No. 1, as such, I do not find any merit in this petition.
7. This Cr.M.P., being devoid of merits, deserves to be and is accordingly dismissed at the admission stage without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge