

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.12776 of 2018

ORDER:

The petitioner by name Sri Ramoji Rao, the Editor and Publisher of Eenadu Telugu Daily Newspaper, Abdullapurmet Mandal, Ranga Reddy district is A.2 including the A.1-Ms.Charu Sinha IPS in C.C.No.23 of 2011 for the offence punishable u/ sec.500IPC taken cognizance by the learned Judicial Magistrate of First Class, Mahaboobnagar, Telangana State, from the private complaint dt.13.10.2008 of the 1st respondent- by name M.Madhava Reddy Retired Addl. Superintendent of Police(ASP). Impugning the said cognizance, the present petition filed by the petitioner to quash the proceedings in the Calander Case supra against him.

2. The grounds urged in the quash petition are that the petitioner is innocent and the defacto-complainant filed O.S.No.69 of 2018 against the two accused before the 1st Addl.District Judge, Mahaboobnagar seeking damages of Rs.15lakhs for the malicious publication of the news item dt.12-10-2007, which is subject matter of C.C.No.23 of 2011 and the suit was dismissed on 29-8-2017 holding that the defacto-complainant failed to prove malice on the part of the accused and the publication was made based on a complaint given by one Dr.Karunakar Reddy and during the course of cross-examination in the suit, the defacto-complainant admitted to allegations made against him by Dr.Karunakar Reddy and his reputation was not lowered due to the publication of the news item and the petitioner-A.2 has no personal knowledge of the publication. The A-1 filed a petition U/ s. 482 of CrPC, before the High Court seeking to quash proceedings in C.C.No.23 of 2011 supra vide CrI.P.No. 13649 of 2011 and the same was since allowed on 4-10-2018 by referring to the judgment in O.S.No. 69 of 2008 dt.29-8-2017 and the proceedings against A-1 were quashed, the proceedings against the A.2 are also liable to be quashed as the allegations in the complaint disclose that the petitioner/ A.2 published the news item basing on the defamatory content provided by A-1. A perusal of the judgment in O.S.No.69 of 2008 reveals that the defacto-complainant failed to prove malice on the part of the petitioner and the

petitioner had knowledge about the contents of the news item dt.12-10-2007, failed to prove his reputation was lowered in society and failed to prove the contents of the news item were false and published in bad faith. The defacto-complainant failed to prove his case before the civil Court and the present complaint filed on the same set of facts, is also liable to be quashed. The allegation in the complaint is that the news item dt. 12-10-2007 was published basing upon interview given by A-1 wherein various allegations were levelled against the defacto-complainant. However during the course of trial in the O.S.No.69 of 2008, it was found that the news item dt.12-10-2007 was published basing on a letter given by one Dr.Karunakar Reddy touching upon the conduct of the defacto-complainant as a public servant for nothing to say the contents of said letter of Dr.Karunakar Reddy are false or fabricated much less to the knowledge of the publisher of the news item. It is already stated that the P.Ws.2 and 3 whose sworn statement were also recorded in the case already examined as witnesses in O.S.No.69 of 2008 and the evidence of those were already discussed in the civil Court judgment at para-19 and whose evidence did not prove reputation of the complainant was lowered in the society to attract the offence and the Apex Court in R.Raja Gopal Vs.State of Tamilnadu-AIR 1995 SC 264=1994(6) SCC 632 held that the remedy of action for damages is not available to public servant with respect to their acts and conduct relevant to the discharge of their official duties unless it is shown by the public servant of the publication made with a reckless disregard for the truth as he has no legal recourse. In the present case the contents of the news item published upon receiving a letter from one Dr.Karunakar Reddy, cannot be said to be false and malicious much less defames the complainant and M/S Ushodaya Enterprises Pvt. Ltd., a company that publishes the Eenadu Telugu Daily. M/S News Today Pvt. Ltd., is a company that supplies news to M/S Ushodaya Enterprises Pvt. Ltd., for publication in Eenadu Telugu Daily. The petitioner only lays down the policy of the newspaper and it is the team of the sub-editors Of 'News Today' that are responsible for publication of the news item made based on reliable material and made regarding the conduct and character of a public servant and it is therefore a privileged publication protected under the 2nd and 9th

exceptions of Section 499 of IPC, moreover, the petitioner had no personal knowledge about the publication of the news item. Hence to quash the proceedings.

3. The learned counsel for the petitioner/ A.2 reiterated the same seeking to quash the proceedings in the Calander Case supra against him. Whereas, the learned counsel for the defacto-complainant submits that the news items per se is defamatory and demeaning the complainant and it is without verification properly the news item made in disregard to truth. Thereby there is nothing to quash the proceedings merely because of the dismissal of civil suit, the A.2 cannot escape from the tooth of criminal law and sought for dismissal of the quash petition.

4. Before going into the merits, it is necessary to mention settled legal proposition with reference to Sections 40 to 43 of the Indian Evidence Act, that the finding of a civil Court is binding on the criminal Court on the factual scenario involved if same and such factual finding unless suspended or set aside by any appellate Court, Criminal Court has no right to ignore though not vice-versa the criminal observation will not bind on civil Court and the expression of the Apex Court in V.M.Shah Vs. State of Maharastra¹ reiterates the same.

5. Once such is the case, so far as the civil suit of self-same allegations for malicious prosecution for damages of Rs.15lakhs sought by the defacto-complainant in the criminal case as sole plaintiff against Ms.CharuSnha IPS (A.1 in the present Calander Case) and A.2 (the petitioner herein) that civil suit O.S.No.69 of 2008 was dismissed on 29.08.2017 by the learned I Addl.District Judge, Mahaboobnagar, where 5 issues viz: 1) *whether the first defendant gave interview on 11.10.2007 to the news reporter of Eenadu Telugu daily newspaper, being published by D.2 with defamatory statement against the plaintiff and that whether it was published in the newspaper on 12.10.2007,* 2) *Whether the presence of D.3 as proforma defendant is necessary in this suit?* iii) *Whether the plaintiff is entitled for damages from D.1 and D.2 as prayed for?* iv) *Whether the*

¹ 1995 (5) SCC 767

suit of the plaintiff is barred by limitation and any other law for want of sanction as contended by D.1? v) To what relief; were framed. So far as the issue No.4 of want of sanction u/ sec.197CrPC confined to A.1(1st defendant)-IPS officer and not to the petitioner/ A.2, where the news item is claimed criminally defamatory and the issue Nos.1 and 3 are concerned, thereby are relevant for the purpose of the case as it is touching self-same news item marked as A.2 therein dt.12.10.2007. The additional issues framed therein further were 1) *whether the suit is bad for non-joinder of parties*, 2) *whether the impugned publication is made in good faith and public interest* and 3) *whether the impugned publication was made on a privileged occasion without malice?*

6. Now coming to the original issues and additional issues 2 and 3, the same were discussed in the judgment in paras-11 to 22 from the factual matrix in depth and observed that based on the reports of the illegalities, irregularities and inaction complained of against P.W.1 in Exs.B.1 to B.6, the D.W.1-D.1 sent the reports to the Director General of Police, Hyderabad, under Exs.B.12 and 13 against the P.W.1 as part of her official duties as she was the then Superintendent of Police, Mahaboobnagar being superior to the plaintiff-P.W.1 and so far as the news item published by D.2, the evidence of D.W.2 shows it is on the basis of information received under Ex.B.14 from one Dr.Karunakar Reddy and the D.2-petitioner herein has no possibility to enquire every article published in the newspaper from publishing centres throughout the country and had no personal knowledge of Ex.A.2 and the plaintiff-P.W.1 admitted that he never knew D.2 personally and never contacted D.2 at any point of time and in view of that the D.2 cannot be expected to have personal malice against the plaintiff and ultimately held that the plaintiff failed to establish the crucial and indispensable fact that the image and reputation of the plaintiff had been lowered in the eyes of the public as a result of Ex.A.2 publication and further held that from the evaluation of the facts. Even the plaintiff-P.W.1-the defacto-complainant in the private complaint admitted of the statement given by Dr.Karunakar Reddy was published in the newspaper said Karunakar Reddy if at all by giving that statement

mainly liable for prosecution arrayed as accused in the private complaint case and leave it as it is, it is a publication of the information furnished against a public servant and if at all there is any reckless disregard of the truth in the statement of Mr. Karunakar Reddy, it is against Karunakar Reddy also to file a complainant and not against the publisher alone ignoring said Karunakar Reddy-informant. No doubt in the expression of the Apex Court *Mohamed Abdullah Khan Vs. Prakash K*², it was observed on the Section 499 and 500 IPC as to the offence of defamation how constitute and punishable in finding difference between making imputation and publishing the same and printing or engraving any defamatory material that , it was observed to constitute offence of defamation a person to make some imputation concerning any other person and such imputation must be made either with intention, or knowledge or having a reason to believe that such an imputation will harm the reputation of the person against whom the imputation is made and the imputation could be, by words, either spoken or written, or by making signs, or visible representations and imputation could be either made or published. The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made. Printing or engraving matter known to be defamatory u/sec.501 IPC and sale of printed or engraved substance containing defamatory matter u/sec.502 are different offences to Section 499 IPC punishable under Section 500 IPC where it is observed that each case to be decided on own facts. In *Gambhir sinh R.Dekare Vs. Fhalgunbhai Chimanbai Patel*³, the Apex Court observed that Chimanbhai later whose name appears in the newspaper is presumed to have published the entire content of the issue will be responsible unless, the presumption u/ Sec.7 of the Press and Registration of Books Act 1867 is rebutted as observed in *K.M.Mathews Vs. K.A.Abraham*⁴ in contra definition to earlier expression of *K.M.Mathews Vs. State of Kerala*⁵. No doubt therefrom the Editor of a newspaper for all purposes got deemed knowledge of the contents

² 2018 1 SCC 615

³ (2013) 3 SCC 697

⁴ 2002 6 SCC 670

⁵ 1992 1 SCC 217

published however the fact remains as referred supra, it is Dr.Karunakar Reddy who gave the written news item that was published in the newspaper and if at all there is any defamation, it is per se mainly against said Karunakar Reddy and along with him to fix any vicarious liability it is on the Editor and Publisher of the newspaper who is the A.2-the quash petitioner. As observed by this Court in M/s. Bennett Coleman & Co.Ltd. Mumbai Vs. Dr.K.Saratchandra, Hyderabad⁶ malice is essential for criminal defamation for law punishes those who are reckless in their act and cause harm or injury to another though malice is presumed existing in the law as there is intending cause to disrepute a person and to escape from a charge of defamation one amongst show that there is no malice on their part.

7. Here from the evidence in the cross-examination of P.W.1 and D.W.2 for D.2-the petitioner herein in that civil suit what is discussed supra of the evidence of the trial Court from the admissions of the defacto-complainant are crystal clear of there is no specific malice on the part of the petitioner-A.2 to demean or defame the defacto-complainant by publishing news item and there are no any circumstances or previous instances of acquaintance or prejudice admittedly between them. Coming to the exceptions, truth is justification and there is nothing to show said statement of Dr.Karunakar Reddy is per se false and unjustified and fair comment in defence is a justification that too in the public interest and there is nothing to show said statement of Karunakar Reddy is contrary to it and once such is the case without impleadment of said Karunakar Reddy whose statement was published in the newspaper, the Editor and Publisher of the news item is not liable for criminal defamation from any exoneration of Karunakar Reddy, the very prosecution is implied consent to the contents as non-defamatory automatically deemed consent for petitioner even apart from same facts under exception-1 deferred it as exceptions of Section 499 IPC, leave about exceptions 2 and 3 also speaks any information respecting conduct of a public servant and in discharge of his functions or respect in his character not defamatory if it is in good faith. Even otherwise from the civil Court judgment what 9th exception otherwise says the

⁶ 2016 2 ALT CrI.AP 106

accusation preferred in good faith and 9th exception of imputation made in good faith to protect others interest.

8. Once such is the case, in view of the civil Court judgment binding on the criminal Court and equally therefrom though not in so many years back the prosecution against the A.1 covered by W.P.No.13649 of 2011 in C.C.No.23 of 2011 were quashed by another Bench of this Court referring to the civil Court decree in O.S.No.69 of 2008 equally prosecution against the petitioner/ A.2 in the C.C.No.23 of 2011 is liable to be quashed.

9. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner/A.2 in C.C.No.23 of 2011 on the file of the Judicial Magistrate of First Class, Mahaboob Nagar, and he is acquitted. His bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Date: 18.03.2019
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Dr. B. SIVA SANKARA RAO J,

