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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd January, 2019

+ CRL.M.C. 76/2018 and Crl.M.A. 331/2018

MADANJIT KUMAR Petitioner

Through: Mr. Alok Tripathi, Advocate

versus

J P SINGH & ORS. Respondents

Through: Mr. H.S. Phoolka, Senior Advocate
with Mr. Kunal Sharma, & Ms. Shilpa
Dewan, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was employed in Central Electronic Limited (CEL, the fourth respondent) on 10.12.1993 as Senior Technical Assistant. Over the period of his service in the said organization, he came to be promoted initially to the post of Manager (Public Relations) and later to the position of Senior Manager (Public Relations). It is his case that on account of certain efforts made by him to approach the Chairman-cum-Managing Director (CMD) in the context of some open letter that had been circulated, in his perception it not being in the interest of the company, the CMD had started to nurse personal grudge which resulted in his transfer from Sahibabad (U.P.) to Bangalore office. It is his case that on account of domestic compulsions he was constrained to make certain requests for return transfer from Bangalore but his endeavor did not bear any fruit. He

alleges that against this backdrop, on 08.06.2012, he was served with a charge sheet under the cover of “*an open letter*”, the documents and backgrounds whereof were explained only after he had approached this court in writ jurisdiction, the charges brought against him being to the effect of he having engaged in pornography, flesh trade, etc. through the internet. It is his case that he filed first information report (FIR) No.416/2012 alleging offences under Section 66 (a) of the Information Technology Act, 2000 having been committed by someone, the subject matter being the content of the material on the website on the basis of which he was facing disciplinary action. The FIR, it is his own case, did not result in any prosecution as the police filed a closure report, the matter in that regard having attained finality, the petitioner not having pursued it further.

2. The departmental charge sheet dated 08.06.2012 for disciplinary action concededly resulted in report dated 04.01.2014 of the inquiry officer that led to penalty of “*censure*” being imposed against him, his appeal there against having been later allowed and he being exonerated, all service benefits having been restored by order dated 07.08.2014.

3. After the said conclusion of the disciplinary action in which the private party respondents herein are stated to have participated by some role or the other, the petitioner filed the criminal complaint (CC No.9191/1/2014) alleging that by the abovementioned acts of commission and omission concerning the disciplinary proceedings initiated against him through the letter dated 08.06.2012, he had been

defamed, the offence punishable under Section 500 of Indian Penal Code, 1860 (IPC) having been committed.

4. The Metropolitan Magistrate took cognizance and held pre-summoning inquiry. Concededly, in the said inquiry, the petitioner examined himself as the solitary witness (CW-1) to affirm on oath the above mentioned facts. The Metropolitan Magistrate, by order dated 01.06.2017, found no grounds to proceed further, holding that no sufficient material had been adduced to summon the respondent as accused and, thus, dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

5. The petitioner challenged the above mentioned conclusion of the Metropolitan Magistrate in the court of sessions invoking its revisional jurisdiction by Criminal Revision Petition No.25/2017 which was dismissed by the said court, by judgment dated 09.10.2017, upholding the view taken by the Metropolitan Magistrate.

6. Aggrieved by the two above said consistent orders of the courts below, the present petition has been filed invoking inherent power and jurisdiction of this court under Article 227 of the Constitution of India read with Section 482 Cr.P.C., the contentions being that the evidence adduced by the petitioner has been glossed over and that a proper case had been made out to show the respondents having committed the offence of defamation punishable under Section 500 IPC for which they ought to have been summoned. Reliance is placed on judgment of a learned Single Judge of this court in *Arundhati Sapru vs. Yash Mehra*, *Crl.M.C.581/2013*, decided on 12.11.2013.

7. Having heard the learned counsel and having gone through the record, this court finds that the present matter raises questions of law identical to those which had come up for scrutiny in *S.T.P. Singh vs. Tarsem Singh & Ors.*, *Crl.M.C. 4514/2015*, decided on 03.07.2018 [2018 SCC Online Del 9978] .

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. The core issue that arises is as to whether any evidence has been led to show the imputation to have been “*published*” within the mischief of Section 499 IPC. In this context, the relevant law, as

noted by this court, in *S.T.P. Singh* (supra) may be quoted with advantage, it reading as under:-

“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 Crl. 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 CrLJ 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.”

10. It is noted that in *Arundhati Sapru (supra)*, the law to above effect was not noticed.

11. Given the fact that the petitioner did not examine any other person to whom the incriminating material may have been published, the view taken by the courts below cannot be faulted.

12. The petition is devoid of substance and is dismissed. This disposes of pending application as well.

R.K.GAUBA, J.

JANUARY 23, 2019

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