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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th January, 2019

+ CRL. M.C. 1326/2016

SURENDER SINGH KASANA

..... Petitioner

Through: Mr. Rajesh Anand, Mr. Gaurav
Adlakha, Ms. Radha & Mr.
Manjeet Gulliya, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. K.S. Ahuja, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was married to Sidharth Kasana, son of the petitioner, on 15.02.2010, but the marriage ran into rough weather and she statedly left the matrimonial home. Eventually, she filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (DV Act, for short) on 26.06.2014, attributing certain acts of commission, *inter alia* to the petitioner (father-in-law), others impleaded in the said proceedings being inclusive of the husband, the mother-in-law, sisters-in-law etc. In the said petition under DV Act, she levelled certain allegations against the petitioner as well.

2. Referring to the said allegations terming them as false and concocted, the petitioner filed a criminal complaint in the court of

Metropolitan Magistrate alleging offence under Section 500 of Indian Penal Code, 1860 (IPC) having been committed. It may be mentioned here that the other persons who were impleaded as respondents in the petition under DV Act also filed similar complaints, all the said complaints having been inquired into under Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.) by the Metropolitan Magistrate. In each criminal complaint, including the one preferred by the petitioner, alleging offence under Section 500 IPC, the respective complainant appeared as the solitary witness (CW-1).

3. The Metropolitan Magistrate dismissed all the abovesaid complaints, by order dated 20.08.2015, *inter alia*, observing that the same were premature, the falsity or otherwise of the allegations of domestic violence attributed by the second respondent in the proceedings under DV Act being a matter yet to be adjudicated upon.

4. The petitioner and other similarly placed complainants assailed the aforesaid order dated 20.08.2015 in the court of Sessions, the challenge by the petitioner being through Crl. Rev. 47/2015. By common order dated 30.09.2015, the revisional court upheld the view taken by the Metropolitan Magistrate observing that the complaints were “premature” and, thus, declining to interfere.

5. Aggrieved by the said result of the complaint, and the revision petition, the petitioner approached this Court by the petition at hand invoking the inherent power and jurisdiction under Section 482 Cr.P.C.

6. The petition has been resisted by the second respondent. During the course of arguments, it was brought to light that aside from

his own statement that the averments in the petition under DV Act were false, motivated and designed to tarnish his reputation, the petitioner has not made any averments about the publication of the impugned averments in the petition to any third person much less any third person having brought in the witness box to affirm such publication as had the effect of lowering the reputation of the petitioner in the estimation of others. The petitioner, however, places reliance on view taken by a learned single judge of this court in Crl.M.C. 447/2013 titled *Bikramjit Ahluwalia & Ors. vs Simran Ahluwalia & Ors.* decided on 01.05.2015, particularly the observations in para 26 of the said decision, to the effect that the pleadings form part of judicial records and, thus, are in the nature of “public documents” and “anything stated in such pleadings amount to publication of the defamatory statements”.

7. More or less similar issue had arisen in the context of another criminal complaint alleging offence of defamation punishable under Section 500 IPC in Crl.M.C. 4514/2015 titled *S.T.P. Singh vs. Tarsem Singh & Ors.* decided by this Court on 03.07.2018. As noted in the said decision, the offence of defamation is defined in Section 499 IPC, which, to the extent necessary, reads thus:-

“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.

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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)

8. Construing the above provision and taking note of the relevant case law on the subject, this Court in *S.T.P. Singh* (supra) held 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 CrL. LJ 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.

9. In the considered opinion of this Court, more than the reasons set out by the courts below in the impugned orders, the complaint instituted by the petitioner against the second respondent does not call

for any further action in the nature of issuance of process under Section 204 Cr.P.C. because there is neither any averment nor any evidence showing that the defamatory material was published to an individual other than the person allegedly defamed.

10. For the foregoing reasons, the petition is dismissed.

R.K.GAUBA, J.

JANUARY08, 2019

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