

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPEAL NO. 455/2008.**

Ramesh s/o Kisan Kothale,  
Aged about 46 years, Occupation  
Legal Practitioner, resident of 22-A  
Saikrupa Layout, Narendranagar,  
Wardha Road, Nagpur.

... **APPELLANT.**

**VERSUS**

Rajendra Gangotri,  
President – Rakshak Bhakshak Brasatachar  
Lalfita Shahi Viruddh Polkhol  
Sanghtana, Krantiveer Dr.Kankhojenagar,  
Manewada Road, Nagpur.

... **RESPONDENT.**

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Shri A. Shelat, Advocate for the Appellant.  
Ms. S.P. Meghe, Advocate h/f. Shri P.D. Meghe, Advocate  
for Respondent.  
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**CORAM : VINAY JOSHI, J.**

**CLOSED FOR JUDGMENT** : 02.12.2020.  
**JUDGMENT PRONOUNCED ON** : 04.12.2020.

**JUDGMENT** :

Heard learned Counsel for the parties.

2. This is an appeal challenging the order of acquittal dated 13.11.2007, passed by the Additional Chief Judicial Magistrate, Nagpur in S.C.C. No. 1383/2003, whereby and under which the respondent/accused was acquitted for the offence punishable under Section 500 of the Indian Penal Code.

3. The appellant/complainant has termed the impugned judgment as perverse, against the provisions of law and illegal. According to the appellant, learned Magistrate erred in law in acquitting the accused by misinterpreting the evidence on record. It is the submission of the appellant that despite sufficient material about publication of defamatory article in the newspapers, the trial Court acquitted the accused on sheer technicalities. It is his submission that the respondent/accused has very much admitted in the evidence that, on the basis of his information the concerned news items were published and therefore, there was no escape. Moreover, it is submitted that the accused failed to bring the material on record to cover his case within the exceptions carved out under Section 499 of the Indian Penal Code.

4. As against this, the learned Counsel for the respondent has fully supported the reasoning and finding recorded by the trial Court. It is submitted that the accused has acted bonafidely and

provided the available information to the newspaper. There was no ill intention of the accused to defame the appellant, but, the information was transmitted to the editor of the newspaper in public interest. Moreover, it is submitted that the appellant failed to establish the exact material which the accused has transmitted to the newspaper publisher. Lastly, it is canvassed that without joining the Editor or the Publisher of the newspaper the criminal action for defamation would not stand.

5. At the inception it is advantageous to make brief reference of the undisputed facts. The appellant/complainant was a practicing Advocate of Nagpur city. He was acting as a Secretary of one Vikas Shikshan Mandal of Nagpur. Besides that he holds a post of Secretary in other organization and had also contested election of Legislative Assembly. As against this, the respondent/accused who was resident of Nagpur was acting as a President of some social organization. It is not in dispute that on the basis of some information transmitted by the accused relating to Vikas Shikshan Sanstha, news article has been published in daily Marathi newspaper namely – Tarun Bharat on 01.03.2003, 13.03.2003 and 17.03.2003. Likewise, on the basis of same information transmitted by the accused, news item was published in daily Marathi

newspaper – Lokmat on 13.03.2003 and 17.03.2003. Moreover, it is admitted that after publication, complainant issued legal notice to the accused calling upon him to tender an apology, however, the later did not.

6. In order to establish the case of defamation, complainant Ramesh led evidence at Exh.25 and examined two witnesses on the point, that after reading news item, they expressed dissatisfaction to the complainant by letters. The complainant has produced copies of the news item at Exh. Nos.26 to 30 and office copy of notice issued to the accused. In defence, the accused has stepped into the witness box (Exh.38) and examined two witnesses to justify the information which he transmitted to the publisher.

7. On appreciation of evidence, the learned Magistrate has acquitted the accused primely on the ground that the complainant has not prosecuted the prime accused i.e. editor or publisher of the newspaper and secondly, there is no material to understand as to exactly what information was passed by the accused to the publisher which was converted into news item. Moreover, it is held that there is no material to hold that the accused has intentionally acted in bad faith, while supplying the information.

8. The learned counsel for the appellant has straneously criticized the impugned judgment of the lower Court. It is his submission that right to reputation is an integral part of Article 21 of the Constitution for which he relied on the decision of the Hon'ble Supreme Court in case of **Om Praksh Chautala .vrs. Kanwar Bhan and others – (2014) 5 SCC 417**. It is his submission that when the publication is defamatory, it is for the accused to show that he is protected by the explanation. According to him, the accused has to prove strictly the allegations leveled against the complainant. In this regard he has relied on the decision of Punjab and Haryana High Court in case of **Harbhajan Singh .vrs. The State – AIR 1961 Punjab 215**. Lastly, the learned Counsel for the appellant by placing reliance on the decision of this Court in case of **Kailas Sizing Works .vrs. Municipality of Bhivandi and Nizampur – AIR 1969 Bombay 127**, has stressed that the term 'good faith', has been interpreted in such a manner that it would cover the act of the accused.

9. The Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is based. Though there is no limitation or restrictions on exercise of such power, however, the presumption running in favour

of the accused which was strengthened by way of acquittal has to be borne in mind. The Hon'ble Supreme Court in a reported case of **State of Rajasthan .vrs. Naresh @ Ram Naresh – 2009 (11) SCALE 699**, has examined the earlier judgments and laid down that the order of acquittal should not be lightly interfered with, even if the Court believes that there is some evidence pointing finger towards the accused. In another decision in case of **Arulvelu and another .vrs. State - 2009 (10) SCC 209** the Hon'ble Supreme Court has ruled that the Appellate Court should be very slow in setting aside the judgment of acquittal, particularly in case where two views are possible. The judgment of trial Court cannot be set aside, because the Appellate Court's view is more probable. Thus, the appellate Court would not be justified in setting aside the trial Courts judgment unless it arrives at a clear finding that the judgment of trial Court is either perverse or wholly unsustainable in law. Bearing in mind the limited scope of this appeal, the entire evidence and documents were visited.

10. The accused in his evidence has stated that one of the teacher namely Shri Choudhari attached to Vikas Vidyalaya made written complaints to him. He deposed that after receiving various complaints, they have written to the education officer as well as the

Deputy Director of Education about alleged malpractices of the school, and for taking necessary action. Moreover, the accused had filed a Public Interest Litigation due to which a criminal case for cheating, was registered against the authorities of the School. The learned counsel for the appellant submitted that the appellant was discharged by the Sessions Court, however, the fact that criminal case was registered and charge sheet was filed, has not been denied.

11. It has come in the complainants' cross examination that in assembly session there was a question and motion regarding irregularities of the concerned school. He admits that one Mr. Choudhari has filed a complaint regarding the school and in the year 2004 School was debarred from examination center. Moreover, he admits that in Crime No.69/2005, he was arrested for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code. He further admits that by virtue of Public Interest Litigation filed by the accused, FIR was registered against him. It reveals that there were complaints about mismanagement and malpractices against the school for which the matter was reported to the Education Department and criminal complaint was filed. In such a background, the news items (Exhs. 26 to 30) were to be gone into. Almost all the news are on similar line wherein it is published that

accused who is connected with social organization has demanded enquiry against the school on the allegation of malpractices. The news item is in the form that accused has demanded for initiating enquiry for alleged malpractices. The news item reveals that it was an allegation of accused which has been published.

12. Undeniably Public Interest Litigation as well as Criminal case was filed about which the matter was reported to the Education Department. These instances are sufficient to claim exception regarding the truth of information which was about accusation only. The news item only speaks about allegations made by the accused and demand of enquiry.

13. Looking the matter from another angle, it is not on record as to what sort of exact information was supplied by the accused to the editor or publisher. Pertinent to note that though the disputed news item was published in the newspaper, the editor or the publisher was not prosecuted. In fact the publisher of the newspaper is responsible for defamatory matter, if any, published in such a paper. The press bears great responsibility to take care and caution while transmitting the information into newsitem. The editor or publisher has to take care before publishing the news which tends to harm the reputation of a person. What was the

information given by the accused, has not been established. On what basis the news was prepared has also not come on record. The editor and publisher may have various sources for collecting the information. Since the editor or publisher were not made party for the reasons best known to the complainant, the said aspect remained undisclosed. The complainant has not satisfactorily explained as to why the prime responsible persons i.e. the editor or publisher was excluded from the prosecution.

14. On careful marshaling and re-appreciation of the entire evidence and documents on record, irresistible conclusion emerges that the view taken by the trial Court is a possible and plausible. The judgment of the trial Court cannot be termed as perverse. It is settled position of law that in appeal against acquittal, an order of acquittal should not be lightly interfered with even if the Court believes that other view is also possible. The view expressed by the trial Court is probable, which calls for no interference. In view of above, the appeal being devoid of merit stands dismissed.

**JUDGE**

Rqd.