

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 129 of 2009****Judgment reserved on 21.09.2021****Judgment delivered on 08.10.2021**

Vijay Kasar, S/o, late Shri Chhotelal Kasar, Aged about 32 years,
Occupation – Advocate, R/o, Temerpara, Durg (C.G.)

---- Petitioner/Complainant**Versus**

1. Smt. Sushma alias Vinita, W/o, Vinod Kumar Tamrakar, S/o late Shri Shivnarayan Kasar, Aged about 35 years, R/o, Gandhibagh, Jalalpura, Sharda Chowk, In front of Flag, Nagpur, (Maharashtra) Presently R/o, Santosh Sathya (Kasar), Urla Road, Gaya Nagar, Durg (C.G.)

2. Santosh Sathya (Kasar), S/o, Late Shri Purshottam Lal, Aged about 38 years, R/o Sathya Niwas, Urla Road, Gaya Nagar, Durg (C.G.)

----Respondents/Accused

For Petitioner	:	Mrs. Fouzia Mirza, Senior Advocate assisted by Mr. Naveeh Shukla, Advocate.
For Respondent	:	Mr. Dashrath Kushwaha, Advocate on behalf of Mr. P.K. Patel, Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**JUDGMENT [C.A.V.]**

(1) This appeal has been preferred against the judgment of acquittal dated 13.02.2009 passed by Judicial Magistrate, First Class, Durg in Complaint Case No. 439/08 whereby respondents/accused have been acquitted of the charge under Section 500 of the Indian Penal Code (henceforth “the IPC”).

(2) Facts of the case, in brief, are that appellant/complainant filed compliant case under Sections 193, 196 & 500 of the IPC against the respondents/accused before Chief Judicial Magistrate, Durg stating that respondent No. 1 had filed MJC Case

No. 157/98 against her husband to grant her maintenance under Section 125 of the CrPC. In that case, appellant/complainant, being an Advocate, defended her husband, thereafter, respondent No. 1/accused filed another complaint being Complaint case No. 368/98 under Sections 494, 498, 323, 506-A of the IPC before the Judicial Magistrate, First Class, Durg against her husband and his family members. In that case, respondent No. 1 *malafidely* impleaded appellant/complainant and his mother & brother only because appellant had defended her husband in the aforesaid maintenance case. In Complaint Case No. 368/98, she has falsely implicated the appellant/complainant and given false statement before the Court that appellant was part of second marriage of Smt. Gayatri (Accused No. 4) and they are her relatives whereas neither they are relatives of Smt. Gayatri nor they have performed her second marriage, thereby, she has fabricated false evidence. Complaint case No. 368/98 had been registered against accused persons including appellant and his mother & brother also. On being summoned by the Court, they appeared and filed their preliminary objection against the registration of the case against appellant and his mother & brother. Their preliminary objection was allowed by the Judicial Magistrate, First Class, Durg and vide order dated 26.5.1999, they were discharged from the complaint Case No. 368/98. Revision preferred against that order was also dismissed by Third Upper Sessions Judge, Durg vide order dated 4.12.1999.

(3) Thereafter, the appellant/complainant filed present Criminal Complaint Case No. 439/08 stating that since respondent No. 1 had created and given false evidence against him in complaint case No. 368/98 and respondent No. 2/accused,

who is brother-in-law of respondent No. 1, had commented knowingly on the profession of the appellant/complainant that since in the case of maintenance filed by her sister in law (respondent No. 1), appellant/complainant had defended her husband, therefore, they have pulled them [appellant & his mother & brother] in the court and now his advocacy will be ruined and colour of his coat would be fade. Due to false complaint filed and false statement given in the Court by respondent No. 1 and also statement made by respondent No. 2 between member of their society, appellant/complainant was insulted in his Society and his reputation between his colleagues and society was tarnished and thereby respondents/accused defamed his social and professional status.

(4) Learned trial Court, after registering the complaint case No. 439/2008 filed by the appellant/complainant under Section 500 of IPC, summoned the respondents, substance of accusation under Section 500 of IPC was read and explained to the respondents/accused, which they denied by stating that they have been falsely implicated in the Case. Respondents were examined under Section 313 of the Code, in which, they denied circumstances appearing against them and pleaded innocence and false implication. The respondent No. 1/accused has also stated that complaint case (No. 368/98) filed by respondent No. 1 has not been decided yet, therefore, this case is not maintainable being a premature case.

(5) In order to prove the guilt of respondents/accused, the appellant/complainant has examined as many as 4 witnesses whereas respondents/accused have not examined any witness in support of their defence.

(6) After hearing learned counsel for the parties, vide impugned judgment dated 13.02.2009, learned Judicial Magistrate, First Class, Durg held that the appellant/complainant has not proved his case beyond reasonable doubt, therefore, the respondents/accused have been acquitted of the charge under Section 500 of IPC by extending the benefit of doubt. Hence, this revision.

(7) Learned counsel for the appellant/complainant would submit that respondent No. 1 has filed criminal complaint case No. 368/98 against the appellant/complaint only because he has defended her husband in the case of maintenance under Section 125 of the Code, in which, he and his mother & brother were discharged by the Court below. She further submits that filing of aforesaid criminal complaint against the appellant itself amounts to defame him, malign him and to tarnish his reputation in the Society and lower the estimation as a lawyer in public. She further submits that respondent No. 1 has not only falsely stated in her complaint that appellant/complainant was part of second marriage of Gayatri (accused No. 4), which was solemnized with her husband but such fact had also been stated by her in the court statement and respondent No. 2 has stated before the member of their society that since appellant has defended husband of respondent No. 1, therefore, they have pulled him in the court case, and his advocacy will be ruined and colour of his black coat would be fade. Aforesaid facts have been proved by appellant/complainant and his witnesses also, despite that learned court below without appreciating those evidence properly, acquitted the respondents/accused of the charge under Section 500 of IPC. She placed reliance upon the judgment of the

Supreme Court in the matter of ***Sahib Singh Mehra v. State of U.P.***¹, ***Sukra Mahto v. Basudeo Kumar Mahto and another***² and ***M.A. Rumugam v. Kittu @ Krishnamoorthy***³ in support of her submissions.

(8) Per contra, learned counsel for the respondents while supporting the impugned judgment would submit that the impugned judgment is based on well reasoned evidence, which does not call for any interference by this Court.

(9) I have heard learned counsel for the parties and perused the material available on record of court below including impugned judgment with utmost circumspection.

(10) Complainant – Vijay Kasar (CW-1) has stated in his deposition that in complaint (Ex.P-1) case filed by respondent No. 1, she has contended that her husband – Vinod Kumar has solemnized second marriage with Gayatri with support of appellant and his family members. She has also falsified these facts in her court statement (Ex.P-2). Since they have falsely impleaded in that case, therefore, on being preliminary objection filed by them, they were discharged and the case was dismissed against them vide order dated 26.5.1999 (Ex.P-4), which was upheld by Third Upper Sessions Judge, Durg vide order dated 4.12.1999 (Ex.P-6). He has further stated in his deposition that on the death of his relative, several persons of their society were appeared where in front of them, respondent No. 2 had stated that since he (appellant) defended husband of his sister-in-law (respondent No. 1) in the case, he has pulled him in the Court and, therefore, his advocacy will be ruined

1 AIR 1965 SC 1451

2 AIR 1971 SC 1567

3 JT (2008) 11 638

and colour of his black coat would be fade. He has also stated that due to false implication in the complaint case by respondent No. 1 and false statement made by her in that case and defamatory statement made by respondent No. 2, his reputation in the Society was tarnished and also his social status and professional status was maline in front of his friends, colleagues and social members and thereby he got defamed.

(11) Basant Kasar (CW-2), who is cousin brother of complainant, has supported the statement made by complainant Vijay Kasar (CW-1). He has also stated that respondent No. 2 has made aforesaid statement in his presence.

(12) Neeraj Choubey (CW-3) & S. Mirza (CW-4), who are colleague advocates of appellant/complainant – Vijay Kasar (CW-1), have stated in their statement that due to complaint filed by respondent No. 1, reputation of appellant/complainant got reduced in their mind. They have also stated about the alleged comment made by respondent No. 2 against the appellant/complainant.

(13) Statements of Vijay Kasar (CW-1) and his brother Basant Kasar (CW-2) would show that both the parties are of same community and resident of same place i.e. Durg. Aforesaid facts show that Vinod Kumar Tamrakar, who is husband of respondent No. 1, performed second marriage with Gayatri Bai. As per deposition of Vijay Kasar (CW-1), respondent No. 1 had contended in her complaint and deposed in her court statement that her husband has performed second marriage with help of him and his relatives. This fact does not seem defamatory because such things generally happens in the life of a common man and people say / talk

about it. Ordinarily marriage takes place with someone's help, therefore, saying such fact could not seem to be defamatory. As per explanation 4 of Section 499 of the Cr.P.C. any word spoken or written would not be defamatory unless it has been done with an intention to harm the reputation of such person, which has not been proved in this case.

(14) So far as alleged comment made by respondent No. 2 is concerned, deposition of Vijay Kasar (CW-1) shows that alleged comment was not made in presence of him, whereas his cousin brother Basant Kumar (CW-2) has stated in his deposition that respondent No. 2 had stated in front of him and other society members that he will pull the complainant and his family members in the Court and ruin his advocacy because he had represented husband of his sister-in-law in the case. Aforesaid statement of Basant Kasar (CW-2) shows that when alleged statement was made by respondent No. 2, complaint case against the appellant and his family members was not filed whereas, as per deposition of Vijay Kasar (CW-1) when the comment was made by respondent No. 2 till that complaint case had been filed. This contradiction creates doubt in truthfulness regarding making of alleged comment by respondent No. 2. It is doubtful also because the alleged comment has not been made in presence of appellant/complainant Vijay Kasar himself and as per his statement, it was made in presence of Jagdish, Leela, Sanjay Verma and other society members but he has not stated that at that time, his cousin brother Basant Kasar (CW-2) was also there. If the alleged comment would have been made in presence of Bansant Kasar (CW-2), then complainant - Vijay Kasar (CW-1) would have stated about his presence in his statement.

(15) To prove the aforesaid fact, appellant/complainant should have examined independent witnesses of their Society, who were present at the time of making of alleged comment but such independent witnesses have not been examined. Other two witnesses i.e. Neeraj Choubey (CW-3) and S. Mirza (CW-4) are hearsay witness, therefore, their statements in this regard do not have any evidentiary value.

(16) The aforesaid factual discussion would show that alleged comment had not been made by respondent No. 2, in presence of appellant/complainant Vijay Kasar (CW-1) and making of such comment in presence of his brother Basant Kumar (CW-2) is not found reliable. None of the independent witnesses have been examined by the complainant in this regard, therefore, making of such comment by respondent No. 2 has not been proved in this case.

(17) Appellant/complainant – Vijay Kumar (CW-1) is an Advocate by profession. He has not stated anything in his statement that due to alleged case filed by respondent No. 1 and alleged comment made by respondent No. 2, although it has not been proved, his profession of advocacy had got any negative effect and any clients have taken back his case/brief from him whereas he has admitted in his cross examination that he is doing his profession/work after getting discharge from the case also and he has been appointed as Government Advocate also and getting respect of that post.

(18) Since making of defamatory statement and comment by respondents/accused against the appellant has not been proved in this case, therefore, in the fact situation, judgments cited by the learned counsel for the

applicant do not helpful to the applicant in this case.

(19) Filing of complaint case No. 368/98 by respondent No. 1 impleading him as a party may be a case of civil liability against respondent No. 1 but it does not found to be a case of criminal defamation. Thus, I do not find any infirmity or illegality in the impugned order acquitting the respondents of the offence under Section 500 of IPC.

(20) As a fallout and consequence of the aforesaid discussion, acquittal appeal, being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(N.K. Chandravanshi)
Judge

D/-