

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 303 of 2014

Satyajit Ray

Vs.

The State of West Bengal & Ors.

For the Appellant : Mrs. Chandreyi Alam.

For the State : Mr. P.K. Dutta,
Mr. S. Roy.

Heard on : 10.11.2022

Judgment on : 17.11.2022

Shampa Dutt (Paul), J.:

The Criminal Appeal is against an order/Judgment of acquittal dated 13.01.2014 passed by the Learned Judicial Magistrate, 9th Court, Alipore in C-2382 /2003 under section 500 of the Indian Penal Code.

The Appellant/complainant's case in short is that the complainant is the tenant of premises no. 46/2, Gariahat Road, Kolkata – 700 029 where he runs his institute named and styled as Institute of Export Management. The landlady filed an eviction suit against this complainant and during pendency of the suit, the present accused persons claiming to be relatives of the landlady filed a complaint case against this complainant alleging that he threatened them with dire consequences. The complaint case being No. C 860/97 was tried by the Ld. 5th J.M. Alipore and the Ld. J.M. acquitted him. The Complainant has a high status and a reputed person and in this way the prestige and status of the complainant has been lowered down and for this complainant feels ashamed to mix with friends and relatives and also suffered acute mental depression and heart ailments. The complainant has lost his business to the tune of Rs. 10,00,000/-.

Hence he filed this complaint before the Ld. Chief Judicial Magistrate Alipore, against the accused persons u/s 500 IPC The Complainant was examined u/s 200 Cr.P.C. and process were issued against the accused persons for the offence punishable u/s 500 I.P.C.

On completion of trial, the Learned Magistrate, 9th Court, Alipore has been pleased to acquit both the accused persons namely Kalpita Chakraborty and Swarnila Chakraborty, of the charge under section 500 of the IPC. Hence this appeal.

There being no representation on behalf of the Appellant, **Smt. Chandreyi Alam, Learned Legal Aid Counsel, from the panel of the High Court, legal service authority has been appointed to represent the Appellant.** Smt. Alam submits on behalf of the Appellant that the Ld. 9th Judicial Magistrate at Alipore, passed an erroneous judgment in C 2382/2003 u/s 500 I.P.C. without scanning the evidence and exhibits properly though an Institutional head has been defamed by the act of the respondents. Whether any defamation in respect of a teacher/professor of a valid recognized Institution has been caused has not been taken into account by Learned Magistrate even when the false case filed against the Complaint/Appellant/Petitioner, clearly failed.

It is further submitted that the ingredients required to constitute an offence u/s 500 of the Indian Penal Code was present but the Learned Magistrate did not take that into account and passed an erroneous judgment, which is liable to be set aside for its inherent defects.

P.K. Dutta Learned Counsel for the State and respondent no. 2 and 3 submits that the judgment and order under Appeal along with all evidence on

record may be considered by this court and necessary decision may be taken in the interest of Justice on the basis of materials on record.

Evidence on Record

The Appellant/Complainant examined four witnesses before the trial court.

Prosecution witness no. 1 Satyajit Ray is the Complainant/Revisionist. He has deposed that he is a tenant and has been defamed by the opposite parties no. 2 & 3 by way of a criminal case being filed against him.

- a) He has lost students.
- b) His social reputation has been hampered.
- c) He is looked down upon by his friends and family members.
- d) Due to the shock (of being defamed) he has suffered diseases of heart and blood sugar.
- e) He is being ignored by big organizations and has suffered a loss of Rs. 10 lacs.

He has been acquitted in the said Criminal Case (C – 860/1997) by the Court of Judicial Magistrate, 5th Court, Alipore.

On being cross examined, he has admitted that:-

- (1) 'Students of 46/2 Gariahat Road now visit his Institution at 125, Rashbehari Avenue

- (2) He has no papers/documents to show his previous and present income as they are stolen. He has no license nor does he pay tax.
- (3) There is a civil dispute (tenancy) between the parties and the Appellant is the defendant in that case.
- (4) He did not file any medical papers.
- (5) As the accused /opposite party no. 2 and 3 alleged that he had said that he would cut them into pieces, he has been defamed.
- (6) As they alleged that he (the appellant) was harassing them, his character had been assassinated'

Prosecution witness No. 2 Srabani Mukherjee is an employee of the complainant. This witness has stated that the landlady has filed several cases against their Institution for eviction.

She has totally corroborated the case of the complainant and is the only witness in support of the Appellant / Complainant. The only document exhibited in the written Complaint is marked exhibit 1. From the copy of the **Judgment in C-860/97** passed by the Learned Judicial Magistrate, 5th Court, Alipore, the following facts have come before this court.

- (i) The Parties are in a relationship of landlord (accuseds)/respondents no. 2 & 3 and tenant (Complainant/Appellant). The tenant is using the premises for commercial purpose and causing disturbances.
- (ii) The Complainant/Appellant changed the nature and character of the disputed property without permission by putting up big sign boards

causing damage to the building. The Magistrate held that as the tenancy under whom, was not clear and documents were not produced the accused tenant, (Complainant/Appellant herein) in C-860197 was acquitted.

Hence, the Complaint was filed in the present case by the appellant under section 500 of the Indian Penal Code against the respondent no. 2 and 3 (landlords) herein.

The relationship of land lord and tenant is admitted by the complainant/appellant.

Section 499 of the Indian Penal Code lays down as follows:-

“Section 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 case hereinafter excepted, to defame that person.*

Explanation 1.— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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.

First Exception.— *Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

Second Exception.— *Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

Third Exception.— *Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.*

Fourth Exception.— *Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of*

Justice, or of the result of any such proceedings. Explanation.— A Justice of the Peace or other officer holding an enquiry in open court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.— *Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.*

Sixth Exception.— *Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.*

Explanation.— A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.— *Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

Eighth Exception.— *Accusation preferred in good faith to authorized person.—It is not defamation to prefer in good faith an*

accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.— *Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

Tenth Exception.— *Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”*

Section 500 of the Indian Penal Code lays down as follows:-

“Section 500. Punishment for defamation.— *Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Scope.— *The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the 14 imputation will harm the reputation of such person.*

Ingredients of offence.— *The offence of defamation consist of three essential ingredients, viz.:*

(1) Making or publishing any imputation concerning any person;

(2) Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and

(3) Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.”

Prima facie this is a Landlord Tenant dispute. The Criminal complaint C – 860/97 against the appellant was under Section 427/506 Indian Penal Code.

Section 427 IPC – is the offence of **Mischief** causing damage to the amount of fifty rupees.

Section 506 IPC lays down the punishment for **Criminal Intimidation**. The Appellant herein was acquitted as no documents of tenancy had been filed by the landlords (opp. 2 & 3 herein).

The case of the complainant/appellant in this case is that admittedly he is a tenant in the premises under dispute.

In 2014, Dr. Subramanian Swamy made corruption allegations against Ms. Jayalathitha. In response, the Tamil Nadu State Government filed defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the Indian Penal Code (IPC). A two-judge bench of the Supreme Court comprising Justices Dipak Misra and P. C. Pant decided the case.

Section 499 defines defamation and Section 500 prescribes the punishment. Defamation is defined as spoken or written words or visible representations, concerning any person intended to harm his/her reputation. Exceptions to this include an 'imputation of truth' required for a 'public good', or the conduct of any person touching any public question, or expressing opinions on a public performance.

The challenge before the Court was twofold – first, whether criminalising defamation is an excessive restriction on freedom of speech, and second, whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.

On 13 May 2016, the Court held that Section 499 is not an excessive restriction under Article 19(2). It held that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public wrong. It held that criminal defamation is not a disproportionate restriction on free speech, because protection of reputation is a fundamental right as well as a human right.

The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under Article 21. Using the principle of 'balancing of fundamental rights', the court held that the right to freedom and speech and expression cannot be "allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area".

Further, the Court held that Sections 499 and 500 IPC are not vaguely worded or ambiguous. Using the Constituent Assembly Debates to understand what the framers of the Constitution meant by the word “defamation” in Article 19(2), the Court held that the word is its own independent identity. It stands alone and defamation laws have to be understood as they were when the Constitution came into force.

The Supreme Court in Subramanian Swamy vs. Union of India, Ministry of Law and others (2016) 7 SCC 221 while deciding the case the Court held:-

*“We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in **Section 202** Cr.P.C. which stipulates about the residence of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of **Section 499** Cr.P.C. are satisfied. Application of mind in the case of complaint is imperative.*

*We will be failing in our duty if we do not take note of submission of Mr. Bhambhani, learned senior counsel. It is submitted by the learned senior counsel that Exception to **Section 499** are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in M.A. Rumugam (supra) that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to **Section 499** IPC, it would be necessary*

for the person who pleads the Exception to prove it. He has to prove good faith for the purpose of protection of the interests of the person (1998) 5 SCC 749 making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of the issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same.

*In view of the aforesaid analysis, we uphold the constitutional validity of **Sections 499** and **500** of the Indian Penal Code and **Section 199** of the Code of Criminal Procedure. During the pendency of the Writ Petitions, this Court had directed stay of further proceedings before the trial court. As we declare the provisions to be constitutional, we observe that it will be open to the petitioners to challenge the issue of summons before the High Court either under **Article 226** of the Constitution of India or **Section 482** Cr.P.C., as advised and seek appropriate relief and for the said purpose, we grant eight weeks time to the petitioners. The interim protection granted by this Court shall remain in force for a period of eight weeks. However, it is made clear that, if any of the petitioners has already approached the High Court and also become unsuccessful before this Court, he shall face trial and put forth his defence in accordance with law.”*

The court further held :-

“The court while deciding over the matter considered various landmark judgments including the Gian Kaur v. State of Punjab (1996) 2 SCC 648, Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others (1983) 1 SCC 124 to come to the peroration of inclusion of the right to reputation under Article 21. Over the issue of the exaggeration of ‘defamation’ under the restrictions of Article 19(1)(a) the court referred to the speech of Dr. B. R. Ambedkar and pointed out the intention of drafters to include reasonable restrictions on free speech and expression through the means of Article 19(2) without specifically defining the terms like ‘defamation’, ‘public order’ etc. and left it to the courts to decide what would constitute as restriction and what not so as to not restrict the meaning of any such term.

The court disregarded the dissection of rights and their enjoyment under Article 19 and 21 as contested by petitioners while holding that every citizen enjoys every right under the constitution simultaneously and took reference from Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305 and the Maneka Gandhi v. Union of India and another (1978) 1 SCC 248. To decide upon the constitutionality of Section 499 and its exceptions the bench, while individually determining each exception and various clauses in the provision, clearly enunciated that there is no vagueness in the whole section. The argument of petitioner over the ‘public good’, the court referred the argument as unnecessary and concluded that what can be termed as a public good is a subject matter of facts and has to decide on a case-to-case basis. The court declared section 499 of IPC, as well as Section 199 of Cr.P.C. constitutional as it being a subject matter of magistrate to ensure that the judicial process doesn’t become a tool of harassment and inherent duty of the magistrate to take care

of it and concluded that the judiciary is independent of the political stigma, therefore, the arguments of petitioners stand void.”

Conclusions :-

From the materials and evidence on record and the judgment under appeal it is found that:-

- (a) The Complainant /Appellant could not produce any document to show that he suffered any disease of income for the incident in this case
- (b) No medicals papers were proved to support the ailments suffered due to the incident herein.
- (c) Admittedly all his students shifted from the institution at 46/2 Gariahat Road to his another premises at 125, Rash Behari Avenue where the Complainant runs another class.
- (d) Both his institutions are still functioning.
- (e) No documents to prove his loss of students.
- (f) The Complaint against the appellant in C 860/1997 clearly falls within the fifth, eighth and ninth exception to Section 499 of the Indian Penal Code and the offence alleged could not be proved.

The Learned Magistrate findings are in accordance with law and needs no interference

The appeal CRA 303 of 2014 thus stands allowed.

The appellant is accordingly acquitted of all charge and discharged/released from his Bail bond.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)