

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3250 of 2008

AVEEK SARKAR & ORS.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Somopriyo Chowdhury, Adv.
Mr. Soumitra Datta, Adv.

For the Opposite Parties : Mr Dipanjan Chatterjee, Adv.

Hearing concluded on : 10th November, 2022

Judgement on : 17th November, 2022

Siddhartha Roy Chowdhury, J.:

1. “Suddenly a bullfrog leapt forward. He wore a turban with a shiny badge on it. Lifting a wooden ruler he announced, “A defamation suit.”

A huge burn-owl wearing a black robe flew in, sat on a huge stone and then began to drowse. A stinky black mole fanned him with a dirty hand-fan.

The fox resumed the cross-examination. He asked Hij Bij Bij, “Do you know anything about a legal case?”

“I know everything,” boasted Hij Bij Bij. “There is a plaintiff and his lawyer. And there is the defendant and his lawyer. There are ten witnesses on each side, and a judge who sits and dozes.”

The owl retorted, “I’m not sleeping. My eyes are shut because I have an ailment.”

HBB said giggling, “I’ve seen many judges. All of them give the same excuse. Ho ho ha ... hoo hoo ...”

*(“Ha Ja Ba Ra La” by Sukumar Roy)*¹*

This book was published in 1921 and during last one hundred years neither any individual nor any class of people is found to have said that depiction of such court room narrative exposes them to ridicule or public hatred.

2. Mr. Rangan Chakraborty wrote a travelogue after visiting Masaimara and it was published in Bengali Daily Anandabazar Parika on 27th July, 2008. In his Travelogue Sri Chakraborty wrote about Secretary Bird that he found while visiting the jungle. He drew a simile by saying that Secretary Bird resembles the lawyer of Alipore Lower Court-solemn but amusing. This article came to the notice of Mr. Aminuddin Seikh., the practicing Advocate of Alipore Police Court with a standing of 32 years. Mr. Aminuddin Seikh read the article and felt insulted. On 29th July, 2008 client of Aminuddin Seikh, Sri Pramathesh Chakraborty came to him while he was sitting in the Bar Association Room to discuss his case. Sri Chakraborty used to address him as “Ukil Babu” but on that date Sri Chakraborty addressed him as “Secretary Bird” to the hearing of Sri Ashoke Chatterjee, Sri Gopal Mukherjee, Sri Bechu Mondal. Mr. Aminuddin Seikh voiced his protest to such conduct of his client and Mr. Pramathesh Chakraborty told him that he came to know the term “Secretary Bird” after reading the

Anandabazar Patrika. However, Sri Chakraborty tendered his apology. According to Mr. Khan, by publishing the said article the Editor, the Author, the Printer became instrumental in lowering down the prestige of the entire lawyer community before the public in general and filed a petition of complaint under Section 500/501/34 of the I.P.C. against Sri Aveek Sarkar, the Editor, Sri Bijit Kumar Basu, the Printer, Sri Rangan Chakraborty, the Reporter of Anandabazar Patrika which was registered as Complaint Case No. 5730 of 2008.

3. On 31st July, 2008 learned Chief Judicial Magistrate, Alipore examined the complainant under Section 200 Cr.P.C. and was pleased to issue process under Section 500/501/34 of the I.P.C. upon the accused persons.
4. Challenging the legality of the said order of learned Chief Judicial Magistrate, Alipore, South 24 Parganas the accused persons preferred this application for quashing of the proceeding in connection with Complaint Case No. 5730 of 2008 pending before the learned Chief Judicial Magistrate, South 24 Parganas.
5. Assailing the impugned order Mr. Sandipan Ganguly, learned Senior Counsel submits that to constitute of offence of defamation as provided under Section 499 of the I.P.C. there has to have an imputation and such imputation shall have to be made with the intention of harming or knowing or having reason to believe that it would harm reputation of the person or group of person about whom it is made. The travelogue was published with no such ill intention on the part of the Author. In fact Mr. Ganguly argued, no imputation was made as such by the Author of the travelogue while drawing a simile

between the Secretary Bird and a lawyer in robe who normally maintains a serious look but very witty in nature. There is nothing to brand such description as imputation, deletion or reprehension so as to lower down the prestige of lawyers as community in public estimation. Therefore, in the absence of basic ingredients required to constitute offence under Section 499 of the I.P.C. learned Chief Judicial Magistrate had no reason to issue process under Section 500/501/34 of the I.P.C. against the petitioners.

6. Refuting such argument of Mr. Ganguly, Mr. Dipanjan Chatterjee learned Counsel, representing the Opposite Party submits that a lawyer has a standing in the society and by writing this travelogue the Author, Mr. Rangan Chakraborty practically toyed with the dignity of each and every lawyer as community while comparing a Secretary Bird with a lawyer. Therefore, at this stage instead of interfering with the order of learned Chief Judicial Magistrate, 24 South Parganas, this Court may allow the proceeding to continue and let the learned Trial Court decide after considering the evidence to be adduced by the parties whether there exist any ingredient of offence within the meaning of Section 499 of the I.P.C.

7. Section 499 of the I.P.C. defines defamation.

“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 expected, 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 inquiry 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 substituted 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 authorised 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. Illustration If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

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."

8. It is trite to say that to constitute an offence within the meaning of Section 499 of the I.P.C. there has to be imputation which is the basic

requirement and such imputation shall have to be made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the imputation of a person is the basis on which this offence of defamation is founded and like every criminal proceeding mens rea is a condition precedent to constitute such offence. It cannot be held to be defamation per se.

9. Upon perusal of statement made by the Opposite Party as Complainant before the learned Chief Judicial Magistrate, I do not find anything to suggest that the petitioners had intended or known or had reason to believe that the Travelogue penned, edited and published would harm reputation of a lawyer like Mr. Khan or lawyers as community in general.
10. The criminal offence, it goes without saying emphasis on the intention of harm. Section 44 of the Indian Penal Code defines injury and it denotes any harm whatever illegally caused any person in body, mind, reputation or property. In the absence of any ingredient prima facie to show the mens rea of the accused persons to have the intention, knowledge or reason to believe that the simile drawn by the author between a lawyer of Alipore Police Court and Secretary Bird would affect the dignity of a lawyer, the simile drawn by author between the Secretary Bird and a lawyer or the appearance of a lawyer, an offence within the meaning of Section 499 of the I.P.C. cannot be said to have been made out.
11. Therefore, in my humble opinion learned Chief Judicial Magistrate, South 24 Parganas has failed to exercise jurisdiction vested upon him

by issuing the process against the petitioners which amounts to abuse of process. The order impugned should not be allowed to remain in force and should be set aside which I accordingly do by exercising the inherent jurisdiction conferred upon this Court under Section 482 of the Cr.P.C. With this observation this Criminal Revision is disposed of.

12. Let a copy of this judgement be sent to learned Chief Judicial Magistrate, South 24 Parganas for information and taking necessary action.
13. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)

^{*1} *Phoney Phantasma – (Translation of “Ha Ja Ba Ra La” by Pratima Gupta)*