

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-AS-55-2022

Date of Decision: 18.04.2022

KANTA DEVI

... APPELLANT

VERSUS

HARWINDER SINGH SAGGU AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by: Mr. G.S. Dhaliwal, Advocate
for the appellant.

VINOD S. BHARDWAJ, J.

1. The instant appeal has been preferred against the judgment dated 02.02.2018 passed by the Judicial Magistrate Ist Class, Jagraon, whereby the respondents-accused persons had been acquitted in a complaint bearing criminal case No.291 instituted on 15.09.2009 titled as Kanta Devi Versus Harwinder Singh Saggu and others.

2. That a brief factual matrix leading to filing of the instant appeal and as stated by the appellant in the complaint is that the appellant belongs to a reputed family and was working as officiating Principal of a Government School. It was alleged in the complaint that a false and defamatory news item had been published against the son of the appellant-complainant by the accused persons in connivance with each other in their respective newspapers namely, "Daily Punjab Jagbani", "Ajit Samachar" and "Peharedar" on 22.07.2009 with an intent to lower the status and dignity of the appellant-complainant and the members of her family in the eyes of her relatives and general public. The

neighbours of the appellant-complainant, namely, Buta Singh and Manjeet Kaur are stated to have furnished information to the appellant-complainant about publication of the said false news item against her son and, thereafter, various relatives of the appellant-complainant and inhabitants of the area started enquiring from her in relation to the said news item causing mental agony, humiliation and embarrassment to the appellant-complainant. Resultantly, a legal notice dated 30.07.2009 was got served by the appellant-complainant upon the respondents-accused persons but the respondents-accused persons failed to respond the said legal notice or tender any apology. Consequently, the complaint in question was instituted.

2.1 Notice of accusation was served upon the respondents, whereafter, the complainant Kanta Devi appeared herself into the witness box as CW1 and reiterated the contents of her complaint. She also tendered copies of legal notice as Ex.CW1/D and Ex.CW1/E, receipt as Ex.CW1/F and copies of news item as Mark-CW1/A to CW1/C and copy of kalendra bearing DDR No.11 of 2014 as Marks X & Y.

2.2 On conclusion of the evidence of the complainant, statements of accused persons were recorded under Section 313 of the Cr.P.C., wherein they pleaded false implication and asserted their innocence. However, no evidence was led in defence.

Upon consideration of evidence as well as the rival submissions advanced by the respective parties, the Judicial Magistrate Ist Class, Jagraon came to a finding that the appellant-complainant failed to prove the allegations levelled against the respondents-accused persons beyond a shadow of reasonable doubt and failed to establish the necessary ingredients for the

commission of offence under Section 500 of the IPC. The respondents-accused persons were, accordingly, acquitted by the trial Court.

3. Aggrieved thereof, the instant appeal had been preferred.

ARGUMENTS:

4. Learned counsel for the appellant-complainant has vehemently argued that the defamatory news item was published in the newspaper which upon a bare reading suggested that the same was related to the son of the appellant-complainant, as a very clear indication of the locality was given alongwith the reporting that both the parents of the boy were working. It has been argued that as the appellant-complainant and her husband are employed and used to reside in the same locality, hence the defamatory news item was clearly intended to malign the image and reputation of the appellant-complainant. The allegations are ill-founded; ill-conceived and have lowered the image of the appellant-complainant in the eyes of general public. Learned counsel further contends that the burden of proving necessary ingredients for commission of the offence stood duly discharged and that the Judicial Magistrate Ist Class, Jagraon was clearly in an error while acquitting the respondents-accused persons in the proceedings initiated against them.

7. I have heard the learned counsel for the appellant-complainant and have gone through the judgment passed by the Judicial Magistrate Ist Class, Jagraon.

ANALYSIS

8. The complaint in question had been instituted under Sections 499, 500, 501 and 502 of the IPC and the relevant statutory provisions are extracted as under:

“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 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.

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.

Section 501. Printing or engraving matter known to be defamatory.—Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Section 502. Sale of printed or engraved substance containing defamatory matter.—Whoever sells or offers for sale any printed or engraved substance containing defamatory

matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

9. A bare perusal of the definition pertaining to defamation shows that as per Explanation-IV, an imputation cannot be said to harm the reputation of a person unless said imputation directly or indirectly lowers the moral or intellectual character of that person in the estimation of the others.

10. It is evident from a perusal of the proceedings that the neighbours or any other member of the general public did not step into the witness box to support the allegations of the appellant-complainant or even to suggest that the reputation and image of complainant was lowered in their mind. Even though the complainant had alleged that the neighbours, namely, Buta Singh and Manjeet Kaur had given information about the publication of the defamatory content, however, even the said neighbours did not step into the witness box to substantiate that any imputation had in fact lowered the image and reputation of the appellant-complainant or that the news item clearly established the identity of the appellant-complainant.

11. It is also evident that the appellant-complainant could also not exhibit and prove the publication of the defamatory news item and that the alleged news items were only marked documents. Even from a perusal of the said news item, it could not be determined that the news item pertained to the appellant-complainant. It is only an inference of the appellant-complainant that the defamatory news item did relate to her family members from the bare reading of the same. Even otherwise it is not disputed that the news item does not name the appellant-complainant or any other member of her family. It is also not established by the appellant-complainant that it is only the family of the appellant-complainant which falls within the alleged particulars of the

family mentioned in the news item and that there is no other family in the said locality where both the husband and wife are working. Hence, the appellant-complainant failed to establish the following essential aspects in the proceedings before the Trial Court:

- A) The appellant-complainant failed to establish and prove the publication of the news item in the concerned newspapers and that the documents are only marked documents.
- B) The appellant-complainant failed to establish that the reference made in the published news item related to the appellant-complainant and her family alone and that there was no other family in the neighbourhood that fell in the description mentioned in the said news item.
- C) That the appellant-complainant also failed to establish the lowering of the reputation of her family in the eyes of general public. No witness from the public or neighbourhood has been examined to establish and prove that they could identify that the news item pertained to the appellant-complainant and her family and that the said news item was defamatory leading to the said witnesses to lower the regard they had for the appellant-complainant.
- D). That the Judicial Magistrate Ist Class, Jagraon also duly considered all the surrounding circumstances and notice as under:

“12. All these points are taken up together. Considered. Accused are charged for the offence punishable under Section 500, 501, 502 IPC with the allegations that on 22.07.2009 all the accused got published the defamatory news item in newspapers “Punjab Jagbani”, “Ajit Samachar” and “Peharedar” against son of the complainant and her family members with an intention to cause harm to the reputation and

prestige of the complainant in public at large and sold the afore-said news-papers by publishing defamatory news item to public at large.

13. *The present case for defamation has been filed against accused on the basis of allegedly defamatory news items mark CW-1/A to CW-1/C. In order to succeed in the present complaint, firstly complainant was required to prove the news items as per provisions of law but complainant has failed to prove the same. It is settled law that marked document can not be said to be proved and as the alleged defamatory news items have not been exhibited, the present case is bound to fail on this score.*

14. *Secondly, complainant was required to prove that the defamatory content of alleged news items was referred to complainant or her family. Perusal of the news items Mark CW-1/A to CW-1/C reveal that neither name of complainant nor any of her family member has been mentioned therein. Thus, complainant has failed to prove that alleged news items referred to or relate to complainant or her family members.*

15. *As per case of complainant, with the publication of alleged defamatory news items, the reputation and prestige of her and her family has been lowered in the eyes of her relatives and general people but she has not examined any such person, in whose eyes, the reputation of her and members of her family lowered. Apart from sole statement of complainant, there is no other oral evidence on record. The argument of learned counsel for the complainant that accused were served with legal notices Exs.CW-1/D and CW-1/E through postal receipts Exs.CW-1/F, vide which, they were called upon to pay Rs.5,00,000/- as defamatory charges but accused failed to reply to said legal notice, and thus it is to be presumed that there is merits in the case of complainant, is not tenable as mere failure of accused to reply to the notice issued by complainant can not be made sole basis for conviction of accused particularly, when complainant*

has failed to prove her case and more particularly, the alleged defamatory news items.”

Conclusion

11. It is evident from a perusal of the above that the appellant-complainant has failed to established the necessary ingredients for successfully proving the commission of the offence by the respondents-accused persons. Learned counsel appearing on behalf of the appellant-complaint could not indicate any material as would establish that the conclusion drawn by the Trial Court suffers from perversity, illegally, non-appreciation or mis-appreciation of the documentary as well as oral evidence led by the appellant-complainant.

The instant appeal, thus, lacks merit and is accordingly dismissed and the judgment of the Judicial Magistrate Ist Class, Jagraon dated 02.02.2018 is upheld.

(VINOD S. BHARDWAJ)
JUDGE

April 18, 2022
rajender

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>