IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 123 of 2020

United Bank of India & Ors.

Vs.

Mr. Debasis Sarkar

For the Petitioners : Mr. Pankaj Kumar Mukherjee,
Mr. Indrajit Bhattacharya,
Ms. Swagata Biswas,
Mr. Subir Bera.

For the Opposite Party/State : None.

Heard on : 06.06.2023

Judgment on : 20.06.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of Complaint Case No. CS/25013/19 under Sections 500/501/34 of the Indian Penal Code, 1860 and all orders passed therein including order dated 26.06.2019 passed by the Learned Chief Metropolitan Magistrate at Calcutta thereby taking cognizance and order dated 15.07.2019 passed by the Learned Metropolitan Magistrate, 11th Court at Calcutta thereby issuing process against the petitioners.

2. The petitioners' case is that petitioner No. 1 is a nationalized bank having its corporate finance office. The petitioner No. 2 is presently the Managing Director and CEO of the petitioner No. 1 and the petitioner No. 3 is the Assistant General Manager of the petitioner No. 1.

3. The accused No. 3 in the petition of complaint namely Pawan Bajaj was the erstwhile Managing Director and CEO of the petitioner No. 1. However, he has expired on or about 17.02.2019.

4. **The petitioner No. 1 through petitioner No. 3 had lodged a complaint dated 21.10.2016 with the Central Bureau of Investigation against one M/s. Ramsarup Utpadak (Unit II) of Ramsarup Industries Limited and its Directors inter alia on the premises of fraud perpetrated upon the Corporate Finance Branch of petitioner No. 1 for diverting a sum of Rs.130.95 crores from the account of Ramsarup Industries to one M/s. RAV Dravya Limited.**

5. Vide letter No. 311/RSBSK 2013E0011 dated 20.01.2017, the **Superintendent of Police & HOB, CBI, BS & FC, Kolkata directed the petitioner No. 3 to file the address of the Directors of the said accused company as per the records of the Bank along with other details.**

6. Upon receipt of such letter **in due compliance thereof the office of the petitioner no. 1 sent to the investigating authority a fresh complaint along with the detailed list of the directors and the addresses of the said Ramsarup Industries Limited** vide their letter dated 04.05.2017 which was registered as FIR No. RCBSK2017E0002 dated 12.06.2017

7. Vide e-mails dated 20.06.2017, 01.07.2017, 07.07.2017 and 09.08.2017 the opposite party informed the petitioners that he was only a nominated director of Ramsarup Industries Limited on behalf of IDBI Bank.

8. **That vide letter dated 08.09.2017 despatched on 22.09.2017 the petitioner no. 3 had informed the Superintendent of Police, Central Bureau of Investigation about the fact that the opposite party herein was a nominee Director of IDBI Bank Limited and that he was not connected either directly or indirectly with the day to day financial dealings of the company.**

9. The petitioners were shocked and surprised to receive a letter dated 26.04.2019 from one Mr. Kausik De, Learned Advocate claiming to act on behalf of the opposite party herein whereby the petitioners were put on notice to (a) withdraw within 10 days the name of the opposite party from the complaint dated 04.05.2017 before the Superintendent of Police, Central Bureau of Investigation, Bank Securities and Frauds Cell, C.G.O. Complex, DF Block, F-Wing, 1st Floor, Salt Lake City, Kolkata-700 064, (b) issue an unconditional apology to his client or his family members for their disrepute, social humility, etc. in widely circulated national newspaper, (c) compensate adequately commensurate to the status of his client.

10. That vide letter dated 24.05.2019 addressed to Mr. Kausik De, Learned Advocate, the petitioner No. 1 being represented by Mr. Ratnesh Kr. Rai, Learned Advocate had replied to the said letter dated 26.04.2019 thereby stating that the **petitioner No. 1 had taken prompt steps** to issue an intimation dated 08.09.2017 to the Central Bureau of Investigation, when it was brought to the notice of the petitioner No. 1 that the opposite party

herein was not involved in the day to day financial dealings of the company and requested the Central Bureau of Investigation to take the correct facts on record and that the petitioner No. 1 has performed its obligations under law to the fullest extent.

11. The opposite party has preferred the instant complaint before the Learned Chief Metropolitan Magistrate at Calcutta being Complaint Case No. C/25013/2019 under Sections 500/501 of the Indian Penal Code, 1860.

12. The Learned Chief Metropolitan Magistrate, Calcutta vide order dated 26.06.2019 was pleased to take cognizance and transferred the case to the file of Metropolitan Magistrate, 11^{th} Court, Calcutta.

13. Vide order dated 15.07.2019 the Learned Metropolitan Magistrate, 11^{th} Court, Calcutta was pleased to issue process against the petitioners herewith along with one Pawan Bajaj.

14. The said Mr. Pawan Bajaj who was previously the Managing Director of the petitioner No. 1 has expired on 17.02.2019.

15. **Mr. Panjak Kumar Mukherjee, learned counsel for the petitioners** has submitted that the petitioners are absolutely innocent and have been falsely implicated in the instant case.

16. That for the purpose of invoking the provisions of the Indian Penal Code the **'mens rea'** of the alleged accused is a sine qua non which is clearly **absent in the instant case**.

17. The alleged incident is of June, 2017 and the instant complaint has been lodged in June, 2019, after a lapse of two years and no plausible explanation has been provided by the complainant for such delay.

18. The petitioners have neither defended the opposite party nor is there any allegation of malafide on the part of the petitioners in the facts and circumstances of the instant case and hence the initiation and continuation of the instant proceeding is bad in law and liable to be quashed.

19. **That in view of the defalcation of a huge sum of Rs.130.95 crore, the petitioner No. 1 was within its right to lodge a complaint with the appropriate authority and by no stretch of imagination can it be said that lodging of criminal complaint per say amounts to defamation.**

20. The petitioner No. 2 was the Executive Director of the petitioner No. 1 during 2017 when the complaint was lodged. He is not associated or involved with the filing of complaints with various investigating agencies which is usually done by the respective branches. His role is to ensure the overall growth and development of the bank. Petitioner No. 3 was the Assistant General Manager of Corporate Finance Branch of petitioner No. 1. His role was to monitor all the loans and advances, follow up with the borrowers for timely recovery and present slippage of accounts from turning NPAS etc.

21. **In spite of due service there is no representation on behalf of the opposite party.**

22. **From the materials on record the following facts are before this Court:-**

    (i) The complainant has alleged that the petitioners complaint with the CBI, contained several defamatory and derogatory statements against the opposite party herein.

(ii) The complaint was against M/s. Ramsarup Utpadak (Unit II) of Ramsarup Industries Limited and it's Directors regarding fraud upon the Bank's Corporate Finance Branch, Kolkata by diverting Rs.130.95 crores from the account of Ramsarup Industries Limited to M/s RAV Dravya Private Limited.

(iii) The complainant was named as one of the directors, following which raid was conducted by the CBI in the house of the opposite party and other directors. News of such search conducted and the loss caused to UBI was widely published. As a result the opposite party and his family members had to face severe social humility, disrepute, disrespect, defamation, mental agony, trauma etc.

23. It is the case of the complainant that his name was listed as IDBI's Nominee Director in the Board of Ramsarup Industries Limited on July 30, 2010 and that he was not a director of the company in respect of its day to day affairs.

24. It appears from the materials on record that when the said fact was brought to the notice of the petitioners they immediately informed the CBI that the complainant was not involved with the day to day affairs of the company.

25. **It appears that the total mis-understanding occurred as the complainant was appointed to the Board of Ramsarup Industries Limited as a Nominee Director and held the said position when the complaint was lodged by UBI with CBI, for the fraud committed by Ramsarup Industries Limited to the tune of Rs.130.95 crores.**

26. **The petitioners are the office bearers of UBI, a nationalized bank.**

27. The present case is under Sections 500/501/34 of the Indian Penal Code.

28. **Section 500 of the Indian Penal Code, lays down:-**

> *"**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.*
>
> ***Ingredients of offence.–** The essential ingredients of the offence under Section 500 are as follows:-*
>
> *(1) The accused made or published any imputation concerning any person;*
> *(2) Such imputation was made by words either spoken or written with intent to be read, or by signs, or by visible representations,*
> *(3) Such imputation must have been made with intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned."*

29. **Section 501 of the Indian Penal Code, lays down:-**

> *"**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.*
>
> ***Ingredients of offence.–** The essential ingredients of the offence under Section 501 are as follows:-*
>
> *(1) The accused printed or engraved a defamatory matter;*

(2) The accused knew or had reason to believe that the matter was defamatory in character."

30. **Section 499 of the Indian Penal Code, lays down:-**

*"**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 lothsome 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."*

31. **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.

32. 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.

33. 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.

34. 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.

35. 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".

36. 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.

37. **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 resident 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."

38. **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."*

39. **In the present case, the alleged incident is of June, 2017** and the instant complaint has been lodged in June, 2019, after a lapse of two years and no plausible explanation has been provided by the complainant for such delay.

40. **The petitioners are the office bearers of UBI, a nationalized bank.**

41. **It appears that the total mis-understanding occurred as the complainant was appointed to the Board of Ramsarup Industries**

Limited as a Nominee Director and held the said position when the complaint was lodged by UBI with CBI, for the fraud committed by Ramsarup Industries Limited to the tune of Rs.130.95 crores.

42. It is the case of the complainant that his name was listed as IDBI's Nominee Director in the Board of Ramsarup Industries Limited on July 30, 2010 and that he was not a director of the company.

43. **It appears from the materials on record that when the said fact was brought to the notice of the petitioners they immediately informed the CBI that the complainant was not involved with the day to day affairs of the company.**

44. From the materials on record, prima facie the present case falls under the second and fourth exception to explanation 4 under Section 499 of the Indian Penal Code, there was no making or publishing of any imputation concerning the complainant. There was no intention to harm the reputation of the complainant. There was no defamatory matter printed or engraved by the petitioners. They had no belief that the matter was defamatory in character. The complainant admittedly was a Nominee Director in the Board of Ramsarup Industries Limited where an alleged fraud of 130.95 crores had taken place and as such the total matter was placed before the CBI. It is clear from the materials on record that the petitioners had no intention to harm the reputation of the complainant in any manner whatsoever. As such there being no prima facie case against the petitioners in respect of the offences alleged the proceedings before the Trial Court is quashed and accordingly allowed.

45. **CRR 123 of 2020 is allowed.**

46. The proceedings being Complaint Case No. CS/25013/19 under Sections 500/501/34 of the Indian Penal Code, 1860 and all orders passed therein including order dated 26.06.2019 passed by the Learned Chief Metropolitan Magistrate at Calcutta thereby taking cognizance and order dated 15.07.2019 passed by the Learned Metropolitan Magistrate, 11th Court at Calcutta thereby issuing process against the petitioners, is hereby quashed.

47. No order as to costs.

48. All connected applications, if any, stands disposed of.

49. Interim order, if any, stands vacated.

50. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

51. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)