

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice AnanyaBandyopadhyay

C.R.A. 191 of 2005

Sri Manas Kumar Chakraborty

-Vs-

Sri Subrata Sarkar &Anr.

<i>Amicus Curiae</i>	: Mr. Aritra Bhattacharya
For the Respondent	: Mr. BhaskarProsad Banerjee Mr. ParasharBaidya
For the State	: Ms. Faria Hossain Mr. AnandKeshari
Heard on	: 03.07.2023, 27.07.2023, 19.09.2023
Judgment on	: 14.12.2023

AnanyaBandyopadhyay, J.:-

1. This appeal is preferred against an order of acquittal dated 05.10.04 passed by the Learned Judicial Magistrate, 1st Class, Additional Court, Raiganj, Uttar Dinajpur, acquitting the opposite party no. 1, from the charges under Sections 500/501/502 of the Indian Penal Code in C.R. Case No. 384 of 1997 and T.R. Case No. 185 of 1997.
2. Precisely the facts of the case constituted the complainant/appellant Sri Manas Kumar Chakraborty to have lodged a written complaint against one Subrata Sarkar.The complainant/appellant had received a letter

from his client Smt. Jharna Sarkar, who happened to be the Secretary of Vivekananda Anath Ashram informing him about false and defamatory statements being published serially against her in the Prachar Patrika, maliciously requesting him to issue a notice to the Editor-cum-Publisher of the Prachar Patrika. Therefore, the complainant/appellant sent a Lawyer's notice dated 17.07.1997 to the Editor-cum-Publisher of the Prachar Patrika on behalf of his client Smt. Sarkar to discontinue such type of publication against her and claimed compensation at the tune of Rs. 5,00,000/- (Rupee Five Lacs). The said notice was received by the Publisher of the Patrika on 21.07.1997. Nonetheless, defamatory statements were published on 30.07.1997 and 01.08.1997, in the said Patrika against the complainant, claiming the Lawyer's notice to be a threat and described the complainant as co-accused with Smt. Jharna Debi, circulated and sold the Patrika in open market with an intention to harm the reputation of the complainant's profession. Subsequently the complainant was criticized as a abettor which affected his profession.

3. The Learned Magistrate took cognizance of the offence under Sections 500/501/502 of the Indian Penal Code.
4. The complainant examined six witnesses and proved several documents from Exhibit-1 to Exhibit-5.
5. The Learned Magistrate by order dated 05.10.2004, acquitted the accused/opposite party no. 1 from charges under Section 500/501/502 of the Indian Penal Code.

6. Learned Advocate for the petitioner submitted that –

- i. The news published in Prachar Patrika dated 30.07.1997, marked as Exhibit-4 in the case display defamatory statements published by the accused detrimental to the interest of the appellant and prejudicial to his status in the society.
- ii. Exhibit-5 the “Prachar Patrika” portrayed that the clients through their lawyer demanded huge compensation and as such it could not be said to be a general remark as it appeared from the Records of the Case that it was this Patrika which was published on 01.08.1997, specifically indicated the present complainant and the offence committed by him.
- iii. PW-3 is Niladri Sarkar, deposed the news item dated 30.07.97 was defamatory against the complainant/appellant and consequently Manas Babu lost his prestige, practice and also his status in the society PW-3 was not cross-examined by the defence which evinces the fact that the prosecution was successful to bring home the charge against the accused persons.
- iv. The complainant/appellant stated in his evidence that he was lowered in the eye of public and was affected economically and mental agony due to such publication in the Prachar Patrika and this was also corroborated by the other witnesses and therefore prosecution was successful to bring home the charge against the accused persons and the order of acquittal must be set aside.
- v. The impugned order of Acquittal is otherwise bad-in-law.

7. Heard the submissions of the Ld. Amicus Curiae as well as the Ld. Advocate for the State.
8. The evidence adduced by the prosecution did not express any form of imputation against the appellant to have been published in the aforesaid magazine in any manner to harm or impair the reputation of the appellant to his prejudice.
9. The elements to constitute an offence under Sections 500/501/502 IPC are absent.

Section 500 read as follows-

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 read as follows-

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 read as follows-

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.

10. In the case of **Gambhirsinh R. Dekare Vs. Falgunbhai Chimanbhai Patel and Another¹**, the Hon'ble Supreme Court held as follows:

“19.2. In K.M. Mathew case [(1992) 1 SCC 217 : 1992 SCC (Cri) 88] the accused was the Chief Editor of Malayalam Manorama and there was no allegation against him in the complaint regarding knowledge of the objectionable character of the matter published. In

¹ (2013) 3 SCC 697

the absence of such allegation, the Magistrate decided to proceed against the Chief Editor. On an application by the Chief Editor, the process issued against him was recalled. The High Court, however, set aside the order of the Magistrate and when the matter travelled to this Court, it set aside the order of the High Court. This Court made distinction between “Editor” and “Chief Editor”. In no uncertain terms the Court observed that the Press and Registration of Books Act recognises “Editor” and the presumption is only against him. The Act does not recognise any other legal entity viz. Chief Editor, Managing Editor, etc. for raising the presumption. They can be proceeded against only when there is specific allegation.”

11. In view of the above discussions, the instant criminal appeal is dismissed.

12. There is no order as to cost.

13. I record my appreciation for the able assistance rendered by Mr. Aritra Bhattacharya, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

14. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

15. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(AnanyaBandyopadhyay, J.)