

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2465 of 2010

SMT. NABANITA NANDY @ RUPALI NANDI
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioner	: None appears
For the State	: Mr. N.P. Agarwala, Adv. Mr. P. Bose, Adv.
Hearing concluded on	: 31 st January, 2023
Judgement on	: 31 st January, 2023

Siddhartha Roy Chowdhury, J.:

1. None is found present on behalf of the petitioner. This criminal revisional application pending since 2009. Therefore, I propose to dispose of the application, based on the materials available with the record.
2. By filing an application under Section 482 of the Code of Criminal Procedure, the petitioner Smt. Nabanita Nandy @ Rupali Nandi is seeking an order of quashment of proceeding being CR 404 of 2010 pending before the learned Judicial Magistrate, 4th Court, Paschim Medinipore.
3. Briefly stated the opposite party No.2, Sri Kartick Chandra Dhar, filed a petition of complaint under Section 500/501/506 of IPC before learned Chief Judicial Magistrate, Paschim Medinipore stating, *inter*

alia, that he came to know Smt. Nabinita Nandy through his employee Sri Goutam Nandy. Smt. Nandi used to meet the complainant, while he used to come to Kolkata to meet his daughter. Being requested by Smt. Nandi, complainant made an attempt to save her from the flesh trade racket, run by one Debrabrata Baidya, but ultimately he found himself in the custody of police. On 24th of Mach, 2009, when he was rounded up by police and then only complainant came to know that the accused Smt. Nandi and Debrabrata Baidya have been working in tandem. However, the complainant by filing an application before the Deputy Commissioner of Police (South) Park Street requested the police authority to make an enquiry as to whether Smt. Nandi and Debrabrata Baidya are running a flesh trade racket in disguise of Massage Parlour. The police having found substance in his information registered a case under I.T (P) Act and arrested several male and female persons. Subsequently the complainant came to know that Smt. Nandi, the accused person, made false and defamatory statements to the police by saying that the complainant took service from her as she is a physiotherapist by profession, while she was serving in the Massage Parlour of Debrabrata Baidya, and he made "illegal proposal to her". After conclusion of enquiry, the Joint Commissioner of Police (A), Kolkata and State Public Information Officer sent the report along with written papers of the accused person by post to the complainant vide Memo No.

14187/ RPT + RTI = Enclo dt. 24.8.09 and

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vide Memo No. 17191/R.P.T. + R.T. + Enclo dt. 14.10.09.

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4. The staff of the complainant after opening the envelope read the content in presence of witnesses, who have heard and also gone through the content of the papers and became astonished to see and hear the allegations made by the accused persons. The complainant further came to know that Smt. Nandi submitted an application before the Commissioner of Police, Kolkata with copy to Tallygunge police station and Tiljola police station. In her application Smt. Nandi made certain statement indicating that Sri Kartick Chandra Dhar used to come to the Parlour where Smt. Nandi was engaged as Physiotherapist. Sri Dhar started inducing the lady and gave illicit proposal. Smt. Nandi, however, refused to accede to the request of Mr. Dhar and did not indulge in immoral activities and thereby incurred his displeasure, who started abusing her over telephone.
5. Learned Chief Judicial Magistrate, Paschim Medinipore, after taking cognizance transferred the petition of complaint to the court of learned 4th Court, Paschim Medinipore and the learned 4th Court of Chief Judicial Magistrate, Paschim Medinipore after complying with the provision of Section 200 of Cr. P.C. was pleased to issue process under Sections 500/501/506 of IPC.
6. 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.”

7. 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.
8. The report sent to the complainant by the police officer or by the State Public Information Officer was supposed to be read by the complainant. It cannot be considered to be an act of publication per se within the meaning of Section 499 of the I.P.C. The staff of the complainant, if acted contrary to basic ethics and courtesy and invaded into private space of the complainant, reading the content of the material primarily sent for his eyes only, the accused person cannot be held responsible. In the similar manner as a citizen the accused person has every right to inform the police about any issue and it is the duty of the police to look into the complaint and to take steps accordingly. Mere filing of an application containing certain

allegations cannot be considered to be act of defamation; as alleged by the complainant. Mens rea is glaringly absent.

9. Under such circumstances, I am of the view that criminal complaint before the learned 4th Court, Judicial Magistrate Paschim Medinipore is the manifestation of abuse of process of law, attended with malafide, which should not be allowed to remain enforce.
10. Accordingly I am inclined to quash the proceeding being C.R. 404 of 2010 pending before the learned Judicial Magistrate, 4th Court, Paschim Medinipore under Sections 500/501/506 of the Indian Penal Code.
11. Thus the criminal revisional application stands disposed of. The proceeding being C.R. 404 of 2010, pending before the learned 4th Court of Judicial Magistrate, Medinipore stands quashed. Order of stay if any stands vacated.
12. Let a copy of the order be sent to the learned Trial Court for information and necessary action.
13. Urgent certified copy of this judgement, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)