

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

CRR 23 of 2023

M/S. JAGARAN PRAKASHAN
Vs.
THE STATE OF WEST BENGAL & ANOTHER

For the Appellant : Mr. Avrojoyti Das
Ms. Pratusha Dutta Chowdhury
Mr. Rajdeep Das

For the State : Mr. Aditi Shankar Chakraborty
Mr. Kallol Acharjee

Heard on : 29.8.2023

Judgment on : 29.8.2023

The Court:

1. This application under Section 482 of the Code of Criminal Procedure is filed by the petitioner seeking an order of quashment of the proceeding being C.R. Case No. 71 of 2021 under Sections 385/500/120B of the Indian Penal Code pending before the learned Court of Judicial Magistrate, 1st Court, Siliguri and all consequential orders passed in connection therewith.

2. Briefly stated, one Sri Gouri Sankar Goyal filed a petition of complaint before the learned Additional Chief Judicial Magistrate, Siliguri on 03.2.2021 alleging *inter alia* that he is a man of repute in the society. Sri Mohan Jha being the reporter of daily Hindi newspaper with wide circulation published one news

articles on 29.12.2020 and on 10.01.2021 against the complainant with dishonest intention for wrongful gain. The news item was published as follows :

“PUB KE MALIK AVOM TATHAKATHI SAMAJSEVI GOURI SANKAR GOYAL AUR UNKE BETE PAR MARPIKA AAROP HAI. YEH MAMLA SAMNE ANE KE BAAD SE SILIGURI SAHAR KE LOGON KA GUSSA LAGATAR BARRH RAHA HAI. ISKE ALAVA DODINPAHLE HI DESH KE WIVINNA HISSON SE NABALIK LADKI KO LAAKER BARMEE SARAAB PAROSANE AUR DEH VYAPAR ME DHAKELANE KA MAMLA SAAMNE AYA HAI”.

3. The sole object of such publication was to defame the complainant. Learned Additional Chief Judicial Magistrate, Siliguri after complying with the provision of Section 200 of Cr.P.C. issued process against the accused persons under Sections 385/500/120B of the Indian Penal Code. Aggrieved by the said proceeding being C.R. Case No. 71 of 2021 and the orders passed by the learned Jurisdictional Magistrate, the petitioner filed this application under consideration.

4. Heard Mr. Das, learned counsel appearing on behalf of the petitioner and Mr. Acharjee, learned counsel representing the State.

5. Despite service, none is appearing on behalf of the private opposite party.

6. My attention is drawn to the F.I.R. lodged by one Smt. Snigdha Saha which was the triggering point of controversy. The informant was disturbed by an advertisement displayed inside the Café-cum-Pub under the name and style as 'Worth The Hype'. Having noticed such Bill inside the pub the lady voiced her protest. She was accompanied by her father. Both of them were manhandled and roughed up of by the owner of the Pub the opposite party no. 2 Sri Gouri Sankar Goyal and his son. This incident found place in the newspaper. News paper before the Court is the juristic person of M/S. Jagran Prakashan, arrayed as accused no. 4. A juristic person by no stretch of imagination can be said to have the *mens rea*

to commit any offence within the meaning of Section 499 of the Indian Penal Code punishable under Section 500 of the Indian Penal Code.

7. There is nothing to show that accused had any intention to expose the complainant to public hatred or ridicule. The report published in a newspaper, in my humble opinion is a piece of objective journalism and not defamation per se. 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.

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 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 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.

9. The criminal offence, it goes without saying emphasises 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 report published in the daily newspaper, an offence within the meaning of Section 499 of the I.P.C. cannot be said to have been made out.

10. In my humble opinion learned Judicial Magistrate has failed to exercise jurisdiction vested upon him by issuing the process against the petitioner which amounts to abuse of process.

11. Therefore, I am of the view that in order to avert the abuse of process of law, the proceeding against the juristic person, M/S. Jagran Prakashan, cannot be allowed to remain in force and should be quashed *qua* the petitioner accused no. 4 before the learned Trial Court.

12. With this observation this Criminal Revision is disposed of.

13. Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)

Item No. 18