

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 464 of 2008

**Smt. Sandhya Chakraborty
-Vs-
Smt. Ashalata Pal and Anr.**

For the Appellant : Mr. Amartya Ghosh
(*Amicus Curiae*)

For the Opposite Parte No.2 : Mr. Sujan Chatterjee
(*Amicus Curiae*)

For the State : Mr. Narayan Prasad Agarwala

Heard on : 29.11.2023, 07.01.2024

Judgment on : 15.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the order dated 16.05.2008 passed by the Learned Judicial Magistrate, 6th Court, Paschim Midnapore in C.R. Case No. 248 of 2004 which corresponds to T.R. 242 of 2004 thereby recording an order of acquittal in favour of the accused/opposite parties.
2. The C.R. Case No. 248 of 2004 which corresponds to T.R. 242 of 2004 was registered on the basis of a petition of complaint filed by the petitioner before the Court of the Learned Judicial Magistrate, Paschim Midnapore on 04.05.2004, inter alia, disclosing commission of offences punishable under Section 500/290 of the Indian Penal Code by the accused/opposite parties.

3. The averments made in the said petition of complaint in brief are to the effect that the accused/opposite party no. 2 was the son-in-law of the petitioner while the accused/opposite party no. 1 was his mother. The accused persons had kidnapped her minor daughter and used to abuse and threaten her.
4. In such circumstances, the complainant/petitioner filed a case under Section 107 of the Code of Criminal Procedure and warrant of arrest was issued against the accused/opposite party no. 2. Consequently, the accused persons on 18.04.2004 at about 04:00 P.M., came in front of the house of the petitioner and abused her in filthy languages which harmed her reputation in the society.
5. The accused/opposite parties appeared before the Learned Court and pleaded not guilty to the charges framed against them and claimed to be tried.
6. The Learned Judicial Magistrate, 6th Court, Paschim Midnapore, upon perusal of the materials on record and after hearing all the parties, was pleased by his order dated 16.05.2008 to find the accused/opposite parties not guilty of the offences punishable under Sections 500/290 of the Indian Penal Code and accordingly acquitted from the instant case.
7. The petitioner stated that it was pertinent to mention herein that the opposite party no. 2, i.e. Dilip Pal, had kidnapped the minor daughter of the petitioner with an unlawful purpose and married her. Against such abduction, the petitioner filed a complaint before the Kotwali Police Station which was registered as Kotwali Police Station Case No. 217 of 1997 dated 27.07.1997 under Sections 363/366 of the Indian Penal Code. In the said

case, the opposite party no. 2 was arrested and was in custody for about 14 days. However, subsequently, the opposite party no. 2 was acquitted from the said case. After the acquittal, the said Dilip Pal and the daughter of the petitioner had requested to accept their marriage but the petitioner strongly refused the same and it is the origin or pivot of the instant prosecution case. At present the complainant/petitioner and other family members have been living jointly and happily except Papia causes which creates the enviousness of the accused persons and out of this grudge, said Dilip Pal has been trying to teach a good lesson to the petitioner by threatening and chasing her for assault and sometimes said Dilip had disclosed that he would murder the petitioner and her other family members. The said fact was also reported to Kotwali Police Station which was registered as G.D. Entry No. 1551 dated 22.08.2003 and 2012 dated 29.08.2003 and after enquiry, police submitted NGR No. 1582 of 2003 before the Learned Executive Magistrate, Midnapore being NGR No. 390 of 2003 under Section 107 of the Code of Criminal Procedure against the accused/opposite party no. 2. Not only that, the accused no. 2 used to threaten and abuse the complainant/petitioner with filthy languages over phone and under such condition, the petitioner became bound to leave their said phone. On the report of the aforesaid case, Learned Executive Magistrate was pleased to pass an order on 27.07.2004 with an observation that the State Prosecution establishes his case beyond reasonable doubt and as such the Learned Magistrate was satisfied that serious breach of peace may occur at any time by the opposite party no. 2 and the Learned Magistrate was further pleased to pass an order that the

opposite party no. 2 was directed to execute a bond of Rs.1,000/- with one local surety of like amount for keeping peace for a period of one year but unfortunately the opposite party no. 2 violated the said order and warrant was issued against him. The said order was challenged by the opposite party no. 2 before the Sessions Court and the Learned Sessions Judge allowed the prayer. Challenging the said order, the petitioner filed a revisional application being Criminal Revision No. 2627 of 2005 before this Hon'ble Court and which was pleased to uphold the order of the Learned Executive Magistrate on 07.07.2004. Thereafter, on 18.04.2004 at about 04:00 P.M., being aggrieved by the aforesaid order, both the opposite parties came to the gate of the petitioner and started to abuse her with filthy language. Their activities were enough for tarnishing the reputation of the petitioner in the open road.

8. A circumspection of prosecution witnesses revealed as follows:-

- i. PW-1 Sandhya Chakraborty, in her examination-in-chief, deposed that she had filed this case against Ashalata Pal and Dilip Pal. She stated that the incident took place on 18.04.2004 at 4 P.M. in front of her house on the road within Sukanta Sarani, Keranitola. The accused persons started abusing her in filthy languages. One warrant was issued against the accused Dilip Pal in a case under Section 107 of the Code of Criminal Procedure and as such they were furious. She was hurt mentally and physically. She used to reside in a sophisticated locality. She had also filed a civil suit for defamation. Sk. Hasnad, Jubeda Bibee, Anil Maity, Ali Md. saw the

incident. Her husband also came on hearing the ruckus. She was an assistant teacher working at Dewanbari Primary School and her husband was a Government employee. She stated that Papia Chakraborty was her eldest daughter and Dalia was the next daughter. Dalia was given marriage. Papia was kidnapped by accused Dilip Pal being inspired by Ashalata Pal. Over that issue a case was filed. Basudev Chakraborty was their only son who was also threatened.

- ii. During cross-examination, PW-1 stated that the house of Dr. Prasanta Pal and Shiba Prasad Sarkar were located by the side of their house. The house of Biswasar Sarkar was located by the side of the house of Shiba Prasad Sarkar. He was a renowned artist and used to stay with his family. No students used to come to his house for taking lessons. Towards back portion of their house, one Sukhsagar Sao, a C. A. used to reside with his family members. She did not know whether Dilip Pal was acquitted in that kidnapping case or not. She deposed in that case with her husband and others, which was a G.R. case. Besides that, her husband filed a C. R. case against Dilip and Papia for cheating. She could not say as to whether the case was pending or not. She could not say whether Dilip used to come to his house or not. The place of occurrence was not a busy place. The persons she named as witnesses were not residents of their locality. She had cordial relationship with her neighbours. The incident lasted for 15/20

minutes. The accused persons were shouting. None of the neighbour came to the place of occurrence. During further cross-examination, PW-1 stated that her house was located in the street of Dr. Anadi Roy. Family of Dr. Anadi Roy consisted of his wife, two daughters and himself. There were 3 /4 servants in his house. She could not say whether there was chamber of Dr. Anadi Roy or not, but there was his chamber. Dr. Roy was a Gynecologist. There was a shop namely 'Medinipur Paper House' of Tapan Kumar near her house. At the time of the incident, she and her husband were employed. Before the date of incident, both of her daughters were married. Her daughter Papia used to stay with her husband and a son of 7 years at a rental house at Palpara. She had heard that the mother of Dilip was an employee of Midnapore Sadar Hospital cum Medical College and she stayed at Hospital Quarter with Dilip. There was no publication of the incident nor it was telecasted. She stated that her school was at a distance of 10/15 minutes on walk. None of her colleagues were present at the time of the incident. She could not produce any businessman or shopman of the locality as a witness to this case. She never regarded Dilip as her son-in-law nor she regarded her son as her grandson.

- iii. PW-2 Ashish Chakraborty in his examination-in-chief stated that PW-1 was his wife and she filed this case against Dilip Pal and Ashalata Pal. Dilip Pal was present that day (identified on dock). He might not identify Ashalata Pal. The incident took place on

18.04.2004 on a Sunday at Sukanta Sarani, Keranitola at about 4 P.M. The accused person suddenly came in front of her house. Their house was a two storied building. The accused persons started knocking the door. He woke up and his wife came to the verandah of the 1st floor. Seeing his wife, the accused persons started abusing her in filthy languages. One warrant was issued against Dilip Pal in a proceeding under Section 164 of the Code of Criminal Procedure in pursuant to a diary lodged by his wife for which they became furious. His wife got mental shock and he then took her inside the house.

- iv. During cross-examination, PW-2 stated that he was telling about the fact before the Court for the first time. (Then he said that he had narrated the incident to his neighbour). His neighbour came to learn about the fact from him. He stated that he was an employee of Health Department. Before the incident, his youngest daughter was married and she used to stay at her in-laws' house and she was residing peacefully. His eldest daughter left his house on 25th July, 1997. After that she resided elsewhere with accused Dilip. His eldest daughter Papia gave birth to a son. Paia, Dilip and their son were staying at a rental house at Panpara. He and his wife never interfered into the family life of Dilip and Papia. They could never regard Dilip as their son-in-law. Before the marriage of Papia, Dilip went to their house. Dilip, himself and Papia participated in some cultural function.

- v. PW-3 Sk. Hasnad in his examination-in-chief stated that he knew the complainant Sandhya Chakraborty and he also knew the accused Ashalata Pal and Dilip Pal who were present before the Court (identified on dock). Incident took place about one year and 8/9 months back near the house of Anadi Roy at Sukanta Palli. His house was by the side of Sukanta Palli. He was going to purchase medicine at afternoon and saw the complainant was standing on her roof and one man and one woman were abusing her. Later she stated that the man was her son-in-law and the lady was her sister-in-law (Bain). The accused persons were uttering abusive words. Then the husband of the complainant took her inside by pulling her and she was crying. He could not give the reason for the same. He then went away to purchase medicine.
- vi. During cross-examination, PW-3 stated that he did not get any summons from the Court. The complainant took him to that Court. He could not produce any document to show his identity before this Court at this stage. He was deposing on behalf of the complainant. He could not specifically say the surrounding houses of the complainant except the house of Anadi Roy. He could not give the exact date of the incident. The distance between the house of the complainant and the medicine shop was 3 minutes on foot. One could (illegible) the medicine shop through main road from his house at Momin Mohalla. On that date, he did not have any discussion with the complainant nor he had any discussion with

her at any later date. After seeing the incident, he just passed by the place. Many persons of the locality saw the incident but he could not give their names as none of them were known to him. Between his house and that of complainant, there were about 10 houses. The complainant asked him to depose in this case.

9. The Learned Amicus Curiae representing the appellant submitted the PW-1, and husband/PW-2 along with an independent witness PW-3 alluded to the fact of an incident resulting in a heated exchange of words between the appellant and the opposite parties.
10. It was further submitted that apart from a quarrel to have occasioned between the parties. None of the witnesses mentioned or cited any instance or an individual whereby the appellant's reputation and image had been lowered in any manner.
11. Perused the evidence of the defence witness.
12. Evidently, the appellant and her husband extremely annoyed with the marriage of their daughter/DW-1 with one Dilip Pal against their will due to difference in the caste of the husband of DW-1. The appellant and her husband infuriated and instituted several cases against the said Dilip Pal, alleging to have kidnapped their daughter. The aforesaid daughter had a son of 7 years and leads a married life against the will and desire of her parents. The incident if at all alleged to, had taken place is devoid of the ingredients to constitute the offence of defamation.
13. Section 499 of the Indian Penal Code states as follows:-

“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 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 loathsome state, or in a state generally considered as disgraceful.

Illustration

(a) A says— “Z is an honest man; he never stole B's watch”; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions. c) A draws a picture of Z running away with B's watch,

intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

*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 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.*

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

*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.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which express of Z's character, is an opinion not founded on Z's conduct as a witness.

*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.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) *An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.*

(d) *A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.*

(e) *But if A says "I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.*

*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.*

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders, a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier- are within this exception.

*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 accuses 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, a 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.*

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

*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."*

14. The dispute in the instant case restricted to certain people alleged to have been engaged in verbal aberration owing to rancour and hatred. The alleged act of the opposite parties cannot be said to have lowered the reputation, character or image of the appellant in the absence of proper evidence. The evidence of PW-3 appeared to be tutored. The appellant did not cite any incident whereby any third person intended to harm or impute her reputation in public or through any kind of publication. The incident is the

consequence of differences between two families, moreover, on the part of the appellant to have hurt her ego and trust by the daughter of the appellant.

15. The Learned Trial Court has rightly acquitted the opposite parties and accordingly the instant criminal appeal is dismissed.

16. There is no order as to costs.

17. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Amartya Ghosh, and Learned Advocate, Mr. Sujan Chatterjee as Amicus Curiae in disposing of the appeal.

18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

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

(Ananya Bandyopadhyay, J.)