

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. No. 3901 of 2011

**Kanchan Kumari Lodha & Ors.
-Vs-
State of West Bengal and Anr.**

For the Petitioner : Mr. Subrata Bhattacharya
Nos. 2 to 4 : Mr. Indranuj Dutta

For the Opposite : Mr. Joydeep Biswas
Party No. 2 : Mr. Kaushik Ghosh

For the State : Mr. N.P. Agarwala
: Mr. Pratick Bose

Heard on : 08.02.2024, 25.04.2024

Judgment on : 22.05.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners praying for quashing of the impugned proceeding of C.R. Case No. 788 of 2009 under Sections 500/120B of the Indian Penal Code pending before the Learned Judicial Magistrate, 3rd Court, Durgapur, District- Burdwan (now Paschim Bardhaman).
2. The petitioner stated that the petitioner no. 1 is aged about 75 years and she is widow mother of the complainant/opposite party no. 2 who has filed this

complaint before the Learned Additional Chief Judicial Magistrate, Durgapur by praying to issue process against the instant petitioners.

3. The Learned Advocate for the petitioners submitted as follows:-

- i. The said opposite party no. 2 alleged in the petition of complaint that the petitioners made a criminal conspiracy amongst them and started publishing circulating and displaying false, frivolous and defamatory statements and advertisements through the T.V. channels of the authorized dignitary against the opposite party no. 2 and his business intending to harm the reputation of the opposite party no. 2 and in such process by such false, fabricated, defamatory imputation through widely circulated newspapers and local T.V. channels directed lowered down the moral and intellectual character of the opposite party no. 2 and his business in the estimation of the public and customers causing serious harm in the body and mind of the complainant and discredited by pre-meditated conspiracy by the petitioners in making the widow mother, Kanchan Kumari Lodha (petitioner no. 1 herein, the mother of the opposite party no. 2 since deceased) as instrumental in the hands of the petitioner nos. 2 to 4 has practically mislead her and confined her in their custody; That on 10.10.2009 the opposite party no. 2 noticed that the petitioners circulated and exhibited the false and fabricated statements against the opposite party no. 2 and the opposite party no. 2 became mentally depressed and also suffered huge monetary loss by such intended false and libel circulation and propaganda by the

petitioner no. 1 and his appointed agents; That on 14.10.2009 and 10.11.2009 the opposite party no. 2 issued notice upon the petitioner nos. 2, 4 and 5 and the T.V. channels respectively through the electronics media.

- ii. The petitioner no.1 is the mother of the said opposite party no. 2 and the said petitioner no. 1 expired 30.12.2018. It is a fact that the opposite party no. 2 harassed her mother during her life time and damaged the property of the said petitioners by way of defamatory imputation through widely circulated newspapers and local T.V. channels and in the photographs to lower down the business of the said petitioners whereby the said petitioner No. 1/mother of the said opposite party no. 2 got mental shock and paid agony during her life time which is very much required to interfere into the said matter for the ends of justice.
- iii. The petitioner no. 1 is the widow mother (since deceased) and the other petitioners are the brothers of the opposite party no. 2 and since the petitioner no. 1 filed a Title Suit, being Title Suit No. 205 of 2001, which is still pending before the Learned Civil Judge, Junior Division, 1st Court, Durgapur for appropriate relief, the opposite party no. 2 filed the instant case as a counter blast just to grab the entire property of the petitioner no. 1.
- iv. There is no ingredient to constitute the offence of defamation under Section 499 of the Indian Penal Code, 1860 in the instant case,

inasmuch, as there is no false statement made by the petitioners, nor any harm to the reputation of opposite party no. 2 by any statement of the petitioners, nor any intention on the part of the petitioners to cause harm to the reputation of the opposite party no. 2 by any statement made by them.

- v. The genesis of events, especially the factum of the pendency of the Title Suit No. 205 of 2001, which was pending before the Learned Civil Judge, Junior Division, 1st Court, Durgapur makes it amply clear that instant case was manifestly attended with mala fides and was maliciously instituted by the opposite party no. 2 with an ulterior motive of wrecking vengeance on the petitioners and with a view to spite them due to private and personal grudge and to harass them.
 - vi. The said opposite party no. 2 is just to harass the said petitioners and indirectly threatening the said petitioners without substantiating any cogent evidence and the said cognizance as taken by the said Learned Magistrate of the Court below which is totally bad in law and cannot sustain in the eye of law and therefore the said impugned proceeding as pending before the Learned Magistrate of the Court below is liable to be quashed for the ends of justice otherwise the said petitioners will suffer irreparable loss and injury.
4. The instant dispute between the parties who are the family members involving the mother being the PW-1 and her son the opposite party no. 2. Petitioner no. 2 and 4 are the sons of petitioner no. 1 and petitioner no. 3 is

the son of PW-2. The opposite party no. 2 has filed the instant proceeding against the aforesaid petitioners concerning a family business. The opposite party no. 2 alleged to have been involved in a family business dealing in furniture in the name and style of "Subhash Enterprise and Pattern Makers". He thereafter instituted a shop to deal with cloth and astro gems which flourished to a great extent. On the advice of certain astro gems for a better prospect, the opposite party no. 2 inserted a name as 'Udayan' and continued operating the mega shop of astro gems since the year 1981 at Durgapur Benachiti in the same place. The elder brothers of the complainant subsequently returned to Durgapur and worked as salaried employee and used to look after the business of 'Udayan'. Persuading his father opposite party no. 2 identified a second shop at Benachiti in the year 1992 in his own name as 'Udayan' and started functioning therefrom. However, the ownership of the said shop was allotted in favour of his father the petitioner no. 1 herein. The aforesaid shop at Benachiti was established exclusively at the cost of the opposite party no. 2 in exclusion to the others. Failing to devoid time at the business at Durgapur Bazar 'Udayan' the responsibility of functioning the 'Udayan' shop at Benachiti was bestowed on his mother and brothers. Subsequently he learnt that the representative of his mother accused no. 1, i.e. petitioner no. 2 herein, was taken into jail custody for selling artificial gems to the customers which prompted him to sever his relationship with his mother and brothers in order to safeguard his own interest. The opposite party no. 2 suffered huge financial loss for segregating

himself from the business at Benachiti 'Udayan' the reputation of the shop at Benachiti 'Udayan' deteriorated for selling artificial gems to the customer amongst the public inside and outside Durgapur respectively. The petitioners herein incurred a heavy loss in their business and diverted their attention towards a business of the complainant with a motive to harm the same by publishing bogus publication in various newspapers but in vain. The petitioners herein thereafter circulated that the shop at Durgapur Benachiti 'Udayan' was not established by the complainant being a joint family property which was false and concocted. The criminal conspiracy entered into by the petitioners was protested by the opposite party no. 2 and intimated to the newspapers who repented and avowed not to publish any further information regarding the shop in future.

5. The opposite party no. 2 further complained that on several dates, there were defamatory imputations widely through newspapers, local TV channels to his disrepute which caused serious harm in body and mind of the opposite party no. 2 lowering his moral integrity and character amongst the public at large. Such false and fabricated imputations were circulated on 10.10.09, 14.10.09 and 10.11.09 and hence he was compelled to lodge the instant complaint before the Court of A.C.J.M., Durgapur.
6. Heard the submission of Learned Advocates for both the parties and perused the materials on record.
7. The opposite party no. 2 apart from general and omnibus allegations did not cite any specific newspaper, TV channel to have published any defamatory

imputations falsely endangering, deprecating or degrading his life and character in the eyes of the general public at large.

8. A civil suit was instituted being Title Suit No. 205 of 2001 by PW-1 against the opposite party no. 2 which, inter alia, stated that the PW-1 was unable to look after the business regularly and engaged her son Subhash Lodha the present opposite party-complainant and PW-2 Ashok Lodha to look after the business on station bazaar branch. The opposite party no. 2 taking advantage of the old age of his mother declared himself to be the proprietor of the business of 'Udayan' at station bazaar Durgapur, however declaring himself to be Shri Udayan Lodha and published advertisements in the daily newspapers and printed handbills and circulated the same in local electronic media and/or TV channel regularly affecting the goodwill of the petitioner no. 1 mother of the opposite party no. 2 in her business praying for an injunction to restrain the opposite party no. 2 from claiming himself to be the sole proprietor of the aforesaid business. The title suit as aforesaid incidentally was dismissed.
9. The disputes between the parties are apparently civil in nature. The allegations and counter-allegations have not been assuaged or ventilated in its proper perspective.
10. 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.

Illustrations

(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."*

11. Section 500 of the Indian Penal Code states as follows:-

"Section 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."*

12. The ingredients to constitute the offence under Section 499 of the Indian Penal Code have not been prima facie projected in the complaint near vague allegations apart from concrete supplementation to the same will result in abuse of the process of law if such allegations are acted upon to the detriment to either of the parties wasting Court's time.

13. The dispute between the parties are private in nature to be tried if at all by a Court of competent jurisdiction having the power and authority to determine

the right, title, interest in the shop in question. Criminal proceedings could not be an avenue to satiate individual grudge taking advantage of the criminal jurisdiction. The opposite party no. 2 failed to substantiate his claim justifiably and the internal feud in the family should not be encouraged to be dealt through a criminal proceedings without any intent of criminality. PW-1 has expired.

14. Under such facts and circumstances, the proceedings being C.R. Case No. 788 of 2009 under Sections 500/120B of the Indian Penal Code pending before the Learned Judicial Magistrate, 3rd Court, Durgapur, District-Burdwan (now Paschim Bardhaman) is quashed against the PW-2, PW-3 and PW-4.
15. In view of the above discussions, the instant criminal revisional application is allowed.
16. Accordingly, the instant criminal revisional application being CRR 3901 of 2011 is disposed of.
17. There is no order as to costs.
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.)