

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51194 of 2022

Arising Out of PS. Case No.-1135 Year-2016 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

Mr. Shashi Shekhar Son Of J.P. Chaturvedi Presently Working As Editor-In-Chief At Hindustan Mediaventures Ltd. At Hindustan Times House, 18-20, Kasturba Gandhi Marg, P.S.- Connaught Place, New Delhi- 110001

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. SOHAN CHOUDHARY, SON OF LATE DIGAMBAR CHOUDHARY R/O MOHALLA BHATIYARISARAI, P.S. LEHERIASARAI, DISTRICT -DARBHANGA, BIHAR.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opposite Party/s	:	None

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 24-04-2025 Heard learned counsel for the petitioner and learned APP for the State. None appears on behalf of the opposite party no. 2 despite valid service of notice.

2. The present application has been filed for setting aside the order dated 18.05.2022 passed by Additional Sessions Judge-V, Darbhanga in Criminal Revision No. 141/2017 wherein the Court had allowed the Cr. Revision application which was directed against the order of dismissal dated 23.02.2017 passed by the A.C.J.M., in turn wherein the Complaint Case No. 1135 of 2016 has been dismissed.

3. The case emanates from a complaint preferred by the complainant who is arrayed as respondent no. 2 herein. The complaint which came to be registered as Complaint Case No.



1135/2016 against the petitioner and two other officials of the Hindustan Media Ventures Ltd. alleging publication of defamatory article which caused damage to the reputation of the complainant. The learned Magistrate, Darbhanga after taking cognizance of the offence had transferred the case for further inquiry u/s 192(2) of the Cr.P.C., 1973.

4. The facts of the complaint case relevant for the present petition is that the complainant namely Sohan Choudhary had alleged that an article was published by the petitioner on 08.05.2016 on page no. 01 of the Darbhanga edition of the Hindustan Times regarding suspension of the Complainant from the post of In-charge Engineer, Lalit Narayan Mithila University (LNMU) which according to the complainant was defamatory and was published without verifying the correct facts since the suspension of the complainant was illegal and the complainant was taking all necessary steps in lieu thereof. The complainant had further alleged that the said publication was a deliberate attempt and rather a conspiracy on the part of the petitioner to defame and malign the reputation of the complainant and his family among the general public.

5. On the basis of the aforesaid complaint petition preferred by the complainant, the complainant case 1135 of



2016 under sections 500, 501(B) read with 120B of the Indian Penal Code. Was instituted.

6. It is submitted that in support of the complaint, besides the solemn affirmation of the complainant, two inquiry witnesses namely one Sushi Choudhary and one Ram Lbhit Das were also examined.

7. Thereafter vide order dated 23.02.2017, the learned Court of A.C.J.M.-VII, Darbhanga dismissed the Complaint Case, upon finding that no case was made out against the opposite parties named in the complaint petition including the petitioner herein.

8. Learned counsel for the petitioner submits that the complainant/opposite party no. 2 herein after dismissal of the Complaint Case No. 1135 of 2016 filed a Criminal Revision bearing no. 141 of 2017 u/s 397 and 399 of the Cr.P.C., 1973 before the Learned Court of Session Judge, Darbhanga for setting aside the aforementioned dismissal order dated 23.02.2017. It is submitted that the Local Editor, Hindustan Office who was arrayed as Opposite Party no. 4 to the Revision Application being an official of the Company, filed his reply on behalf of the Company stating that the news article published by the newspaper was based on true facts as informed to the



concerned officials of the newspaper and same was justified as facts of the case and was merely a fair comment on the matter of public interest and thus cannot be characterized as defamatory in nature as is being alleged.

9. The learned counsel further submits that in the Criminal Revision No. 141/2017, upon receiving of notice, the present petitioner who was arrayed as Opposite Party no. 2 therein had filed a detailed reply.

10. Learned counsel further submits that the news item published in Hindustan daily newspaper, Darbhanga Edition on 08.05.2016 regarding suspension of complainant who was the In-charge Engineer at Lalit Narayan Mithila University was based upon the notification issued by the competent authorities of the aforesaid University. It is submitted that the Addl. Sessions Judge, V, Darbhanga while passing the order dated 19.5.2022 had ignored the fact that the news item published on 8.5.2016 was based on true facts, which is quite apparent from Office Order issued by the Registrar, Lalit Narayan Mithila University, Darbhanga vide Memo No. 6538-132/16 dated 07.05.2016. It is submitted by the learned counsel that, disregarding the factum of the publication being based on the true fact was evidenced from the office order issued by the



Registrar, LNMU, the Criminal Revision was allowed observing that the Court below requires to have a fresh look on the facts of the case as mentioned in complaint petition. Therefore, being aggrieved by the order dated 18.05.2022, passed by Addl. Sessions Judge-V, Darbhanga the petitioner has approached this Court by way of the instant application.

11. Learned counsel further submits that the petitioner who has been arrayed as accused no. 1 in the complaint petition is the Editor-in-Chief of Hindustan Media Ventures Ltd. and is stationed in the Delhi office of the Company and is not involved in the day-to-day functioning of the company. The publication of news article in a publishing house being a day-to-day function and the petitioner being at such a senior position is not involved in selection, publication and circulation of each and every news article. Further the complainant has not even whispered any specific allegation against the petitioner in the entire complaint and merely because the petitioner is the Editor-In-Charge i.e., an employee of the Company, his name has been arrayed as accused no. 1 in the Complaint so as to put undue pressure on the company and possibly to make mala fide gains from the Company. The learned counsel has reiterated that the petitioner has no role whatsoever in connection with the present



complaint case. Evidently, arraying the petitioner as an accused is nothing but an abuse of the process of the law.

12. The learned Counsel next submits that the impugned order dated 18.05.2022 suffers from glaring illegality and is therefore bad in the eyes of law in as much as the same is arbitrary and passed in a mechanical manner without application of judicial mind. It is submitted that even if the entire allegation made in the complaint case is taken to be true still no criminal offence is made out against the petitioner. From the plain reading of the averments made in the complaint petition, it is quite apparent that necessary ingredients of offence u/s 500 of Indian Penal Code is lacking against the petitioner. The impugned news/article dated 08.10.2016 was published on the basis of the information received and a news article/report based on the information received, which was believed to be true and correct cannot be termed as defamatory in any sense whatsoever and the allegations of the Opposite Party no. 2 are solely on the basis of averments which are vague bald, speculative and lacking in any particular merit. It is therefore submitted by the learned counsel for the petitioner that the publication of the news report/article being based on the credible information was justified in the facts of the case and was merely a fair comment



on a matter of public interest/concern. The learned counsel vehemently argues that any news publication based on truth or having proper justification or being a fair comment can never be considered to be defamatory.

13. The learned counsel placing reliance on the case of *R Kalyani v. Janak C. Mehta and others* reported as (2009) 1 SCC 516 has submitted that if a person has to be proceeded with as being vicariously liable for the act of the company, the company must be made an accused, which the complainant has failed to do in the present case therefore, in light of the above, the order dated 23.02.2017, passed by the Court of ACJM, VII, Darbhanga in Complaint Case No. 1135 of 2016 dismissing the complaint filed against the petitioner was correct and justified.

14. Learned counsel further submits that order dated 18.05.2022 passed by the learned Court of Sessions Judge, Darbhanga allowing the revision application of the opposite party no. 2 and setting aside the aforementioned order dated 23.02.2017 is bad in the eyes of law and fit to be set aside. The learned counsel submits that it appears from the statement of inquiry witnesses, complaint petition and S.A. of the Complainant that the complainant and inquiry witnesses have stated that after reading the newspaper daily Hindustan dated



08.05.2016, they came to know that a news was published regarding suspension of the complainant from the post of In-charge Engineer at LNMU and after reading the aforesaid news they were deeply hurt. Upon perusal of the complaint petition it further appears that admittedly the complainant had made a representation before the competent authority of the University, however the news published in the daily newspaper was based only on the facts available at the point of time which was the information which the order of suspension issued by the Registrar of the University.

15. It is further submitted by the counsel that the ACJM, VII, Darbhanga vide order dated 23.02.2017 had rightly observed that upon perusal of documents supplied by the complainant it also appears that on the basis of representation given by the complainant his suspension was revoked by the University vide order dated 05.10.2016 which was after the publication of the news article, thus, it is clearly established that the news which was published after suspension of the Complainant was a fact which was made available at that particular point of time and said news article was reporting of facts on the basis of materials and information gathered. It is further emphasized that the ACJM VII, Darbhanga vide order



dated 23.02.2017 while dismissing the complaint case had rightly observed that summoning of an accused in a criminal case is a serious matter and care should be taken by the Courts not to proceed without just and cogent reasons and therefore after considering the facts and circumstances of the case and finding that no sufficient materials to summon the accused in available, the Magistrate had rightly dismissed the complaint case u/s 203 of the Cr.P.C., 1973. It is therefore reiterated that the order passed by the ACJM VII, Darbhanga was correct, legal and proper and it had been passed after duly considering the materials placed on record and deposition of the complainant and other witnesses produced by the complainant.

16. The learned counsel has next submitted that while allowing the revision application and reinstating the complaint case, the Court of Addl. Sessions Judge-V, Darbhanga did not consider the fact that the present case is a malicious prosecution with *malafide* intention to wreak vengeance upon the petitioner. Next, it is submitted that the learned Court of Sessions Judge, Darbhanga failed to take into consideration the fact that the petitioner is an official of a company and cannot be held liable in his individual capacity for the acts. Furthermore, it is submitted that the petitioner had not formed or expressed his



opinion in the impugned article and the said article was a general article/news carried without any malice or ill will against the Opposite Party no. 2 and cannot therefore be termed as defamation. It is submitted by the learned counsel that the Court of Sessions Judge, Darbhanga while passing the impugned order dated 18.05.2022 ought to have considered the fact that complaint is mischievous, *malafide* and an abuse of the process of law and had been filed with a ulterior motive of restraining the petitioner and the Company from bringing to the knowledge of the general public at large the issues of public importance and interests. The investigation being carried out against the Opposite Party No. 2 are of public importance since he is a known personality in Darbhanga and the public has every right to know about the same.

17. Learned counsel further submits that the Court of ACJM VII Darbhanga in its order dated 23.02.2017 in Complaint Case 1135 of 2016 while dismissing the complaint case has rightly observed that summoning of an accused in a criminal case is a serious matter and care should be taken by the Courts not to interfere with the liberty of an individual lightly and without just and cogent reasons and therefore after considering the facts and circumstances of the case and finding



no sufficient material to summon the accused, the Learned Magistrate rightly dismissed the complaint case u/s 203 of the Cr.P.C., 1973. The order passed by the Learned Court of ACJM VII, Darbhanga was correct, legal and proper and it has been passed after duly considering the materials placed on record and deposition of the complainant and other witnesses produced by the Complainant.

18. Learned counsel further submits that in the instant case, all the facts have been reported with due diligence without any ill will or malice towards Opposite Party no. 2. Hence, the imputation of the opposite party no. 2 against the petitioner by attributing motives for printing and publishing the impugned news article are both offensive and defamatory to the petitioner.

19. The news article as impugned by the opposite party no. 2 cannot be at any rate termed as bringing disrepute and stated to be defamatory. The petitioner has not deliberately defamed the opposite party no. 2 or his reputation in any manner.

20. Learned counsel further submits that the petitioner further state that no specific allegation has been made out against the petitioner further state that no specific allegation has been made out against the petitioner as to how the offence has



been committed by the petitioner or how the petitioner vicariously liable. It is further submitted that Court of Sessions Judge, Darbhanga has ignored the fact that even from a plain reading of the allegations made in the complaint case it is apparent that the present case is *malafide*, vexatious and motivated and has been instituted only to prevent the news of public importance from being disseminated to the public at large by the media.

21. Learned counsel further submits that in the light of above points, it is evident that the petitioner is not involved in any act of defamation and nothing which has been published by the Company or the petitioner to defame or being disrepute to the opposite party no. 2. The initiation of criminal case and its continuance against the is patently a gross abuse of the process of the Court and hence the complaint and the proceedings initiated are liable to be quashed and the impugned order be set aside on the following grounds.

22. Learned counsel for the petitioner further relied upon a Judgment of Hon'ble Supreme Court in the case of ***IVECO MAGIRUS BRANDSCHUTZTECHNIK GMBH vs. Nirmal Kishore Bhartiya and Another (2024) 2 SCC 86***, in support of his submission.



23. The learned APP for the State has supported the revisional order.

24. I have considered the submission of parties and perused the materials available on record.

25. The Hon'ble Supreme Court in the case of **IVECO MAGIRUS BRANDSCHUTZTECHNIK GMBH** (supra) in Paragraph nos. 60, 62 and 63 had observed as under:

“60. What the law imposes on the Magistrate as a requirement is that he is bound to consider only such of the materials that are brought before him in terms of sections 200 and 202 as well as any applicable provision of a statute, and what is imposed as a restriction by law on him is that he is precluded from considering any material not brought on the record in a manner permitted by the legal process. As a logical corollary to the above proposition, what follows is that the Magistrate while deciding whether to issue process is entitled to form a view looking into the materials before him. If, however, such materials themselves disclose a complete defence under any of the Exceptions, nothing prevents the Magistrate upon application of judicial mind to accord the benefit of such Exception to prevent a frivolous complaint from triggering an unnecessary trial.

62. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and



other material (obtained through the process referred to in section 200/section 202 as to whether 'sufficient ground for proceeding' exists as distinguished from 'sufficient ground for conviction', which has to be left for determination at the trial and not at the stage when process is issued. Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to section 499 IPC is attracted, there is no bar either. After all, what is 'excepted' cannot amount to defamation on the very terms of the provision. We do realize that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to section 499 IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons.

63. Adverting to the aspect of exercise of jurisdiction by the High Courts under section 482, Cr. PC, in a case where the offence of defamation is claimed by the accused to have not been committed based on any of the Exceptions and a prayer for quashing is made, law seems to be well settled that the High Courts can go no further and enlarge the scope of inquiry if the accused seeks to rely on materials which were not there before the Magistrate. This is based on the simple proposition



that what the Magistrate could not do, the High Courts may not do. We may not be understood to undermine the High Courts' powers saved by section 482, Cr.PC; such powers are always available to be exercised ex debito justitiae, i.e., to do real and substantial justice for administration of which alone the High Courts exist. However, the tests laid down for quashing an F.I.R. or criminal proceedings arising from a police report by the High Courts in exercise of jurisdiction under section 482, Cr. PC not being substantially different from the tests laid down for quashing of a process issued under section 204 read with section 200, the High Courts on recording due satisfaction are empowered to interfere if on a reading of the complaint, the substance of statements on oath of the complainant and the witness, if any, and documentary evidence as produced, no offence is made out and that proceedings, if allowed to continue, would amount to an abuse of the legal process. This too, would be impermissible, if the justice of a given case does not overwhelmingly so demand."

26. Therefore, the essential ingredients for defamation can be summarized as:-

i. Making or publishing any imputation concerning any person.

ii. Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations.

iii. Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.

27. In my opinion, the impugned order passed by the



Revisional Court has considered a subsequent fact/development, i.e., the final order dated 05.10.2016 passed by the Chancellor. This final order dated 05.10.2016 was issued much later in time after the article in question was published in the newspaper. The newspaper had reported the suspension of the petitioner which is evident from the office dated 07.05.2016 issued by the Registrar of the University.

28. It is not the case of the complainant that he was never suspended from his post. On the contrary, it is an admitted position that upon the representation made by the complainant the suspension of the complainant was revoked and a final order was passed by the Chancellor on 05.10.2016.

29. The reporting of the events stood as it were on the date of reporting. It would be improper for the reporting/article to be tested based on a subsequent development and fasten criminal liability thereto. Since the newspaper on 08.05.2016 had merely reported the truth based on the office order dated 07.05.2016 issued by the Register, therefore the publication in the present case would squarely fall under the exception carved under section 499. The complainant had also not been able to establish that the petitioner had a specific malice while making the said publication.



30. In these circumstances, this application is allowed.

31. The order dated 18.05.2022 passed by learned court of Additional Sessions Judge-V, Darbhanga in Criminal Revision No. 141/2017 is hereby set aside and the order of learned Magistrate dismissing the complaint is restored.

(Sandeep Kumar, J)

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