
(2013) 05 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal M. No. M-5480 of 2011 (O and M)

Ashwini Kumar

APPELLANT

Vs

Subhash Goyal

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 19(2)
Penal Code, 1860 (IPC) — Section 198, 499, 500, 500

Citation : (2013) 05 P&H CK 0067

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Sumeet Goel, for the Appellant; N.S. Shekhawat, for the Respondent

Judgement

Mahesh Grover, J.—The petitioner prays for quashing of Criminal Complaint No. 239-1 dated 18.12.2010 (Annexure P-1) u/s 500 I.P.C. and other proceedings arising therefrom. The respondent filed the aforesaid complaint against the present petitioner offended by a write-up that appeared in "Punjab Kesari", a Hindi daily newspaper allegedly having wide circulation throughout the country including the States of Haryana, Punjab, Rajasthan, U.P. and Delhi. The petitioner is said to have authored this write-up titled "Chautala ke Gunda Raj ki Yad Aye", the translated version of which is extracted here below:-

Ruchika Girotra had said Goodbye to the world 19 years ago. No other girl child should be victim of such crime again and for this it is necessary to show the truth behind the system which instead of punishing the person held guilty namely, Ex-DGP-Rathore got him the President Police Medal. The sorrow of S.G. Girotra, father of sexual harassment victim Ruchika came out in form of tear and he held responsible the Ex-Chief Minister of Haryana Om Parkash Chautala and entire Haryana Administration for the suicide his daughter and harassment to the entire family. Upon this accusation being raised the Ex-Chief Minister and Chief of Indian National Lok Dal Om Parkash Chautala started giving his clarification (safai) in front of the media "I do not save Rathore, Bansilal and Bhajan Lal

saved him, we got the DGP was already made."

Various examples can be given of the politician speaking lies without shame. The family of Ruchika knows that Chautala was one of the main person standing with Rathore. This episode has removed the veil not only from Chautala but all other Ex-Chief Minister who had been given the title of development man (Vikas Punish). The remaining was done by the statement (Khulasa) of the Ex-Chief Minister of Himachal Pradesh and senior BJP Leader Shanta Kumar. It makes no difference to the people who are already shameless (hamam me nange). During the storm on the Ruchika episode the CBI has charge sheet in the matter of disproportionate assets against both the sons of Om Parkash Chautala i.e. Ajay and Abhey Chautala. The CBI had sent report to the Speaker of Haryana Vidhan Sabha and asked for permission to file sheet against Om Parkash Chautala. It is said that God's action is slow but the action is definitely there. I feel the God's action is taking place. Some years ago, the person who was wearing Lakhani Chappal and travelling in buses and was fighting for 50 paisa/25 paisa with the Rickshaw pullers was none else but the politician Om Parkash Chautala.

Till 1987, this view the seen by the general public of Haryana with their own eye. Today this very person is the owner of big commercial institutions, shopping malls, hotels, big palaces, farm houses, jewellery, expensive cars and big bank accounts. When the coalition Govt. of INLD of Om Parkash Chautala and BJP came into power in the election held on 22.2.2000, at that time, the desires of Chautala crossed all limits. Haryana came under eclipse. The common man felt such bite of corruption which was ever felt by anyone. The industrialists started leaving. The farmer of the village was already suffering from shortage of light and electricity and the bureaucracy was pushing him towards suicide. All builder mafia, land mafia came to be seen in "Abhey" situation as if they had become "Ajay" i.e. nobody could win them. Crime crossed all limits in Haryana Chautala Administration. There was terror every where of the Chautala's personal army i.e. green brigade. Haryana Pradesh Congress at that time had given to the then Governor A.R. Kidwai a charge sheet against Chautala which was published in serial from by Punjab Kesari Delhi and had given complete details of the Gunda Raj of Chautala along with property with pictures and Chautala had got very angry at that time. I was given many threatenings. So much so, such oral orders were given that there be barricading at the borders of Haryana so that the vehicles having Punjab Kesari newspapers should not be allowed to enter the State. The Chautala Administration had got the name of ABC Government, i.e. Ajay Billu and Chautala Govt. Punjab Kesari Delhi had published the Ruchika suicide matter in headlines. Chautala's image had become that of villain after the Maham Chaubishi episode. There was big time scam in the recruitments/jobs. In the end the ballot culture defeated the bullet culture. The public bearing the bite of corruption told that-

Tum sunar ke tarah ho janta thaith luhar, Aek Lehar me jo kare, sab ka beda paar.

The ship of Chautala Govt. had become so heavy by its own sins that it could

take even one stroke. In the light Vidhan Sabha election the INLS of Chautala got more seats than expected and INLD became a strong opposition but for this the wrong tickets distribution of Congress was responsible. Had the public forgot the bite then Chautala again would have come to power. The horse knows its rider and therefore, Bhupinder Singh Hooda created history by again becoming Chief Minister.

In the Ruchika episode there was nude dance of brutality (danavata) on the chest of manavta (humanity) but Haryana remained neutral. Justice and truth was laughed upon. There is still time left whether it is Rahore or Chautala family, personal enmity should be kept aside and punishment given to people who are doing immoral acts. The Central Govt. and Haryana Govt. will have to protect the faith of the public.

2. The complainant proclaimed himself to be an activist of a political party named Indian National Lok Dal whose leader was Shri Om Parkash Chautala against whom the aforesaid write-up was directed when he, was heading the Government of the State of Haryana. The complainant further alleges that he was a Minister in the Government headed by Shri Om Parkash Chautala and held numerous positions in the hierarchy of the party. He alleges that Shri Om Parkash Chautala and his father were known political personalities, who had sacrificed a lot for the country and the State, having an immense social and political standing and therefore, the article has offended not only the sensibilities of the persons named therein, but has also lowered their image in the eyes of the public and the petitioner was confronted by numerous members of the society with the contents of the said article.

3. The petitioner was summoned by virtue of Annexure P-4 on 7.1.2011 by the Court of the J.M.I.C., Hansi. On the subsequent date, non-bailable warrants were issued to procure the presence of the petitioner which order (Annexure P-5) has also been impugned herein.

4. The petition has been strenuously opposed by the respondent who has justified the complaint and the consequent proceedings.

5. The arguments raised by the learned counsel for the petitioner would reveal a challenge on the following grounds:-

(1) That the complainant had no locus to initiate the complaint u/s 500 I.P.C., even if it is accepted that the contents of the complaint were defamatory because the allegations if at all, would refer to a particular person and the misdoings by the Government he headed and the petitioner being merely one of the activists of the party, would not be an affected person.

(2) The write-up is an expression of a journalist and protected by the fundamental right to speech as contained in Chapter-III of the Constitution of India.

(3) The article merely refers to an accurate reporting with the accompanying

opinion of a journalist which is the hall-mark of a freedom to speech and expression.

In support of his pleas, learned counsel for the petitioner has placed reliance on the following judgments:-

1. G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa,
2. Barjinder Singh Hamdard v. Mohinder Singh, 1997 (3) RCR (Crl.) 326.
- 3 National Bank of Oman Vs. Barakara Abdul Aziz and Another,
4. Shivjee Singh Vs. Nagendra Tiwary and Others,
5. S.K. Bhowmik Vs. S.K. Arora and Another,
6. Prem Kaur @ Premo Vs. Balwinder Kaur,

6. On the other hand, learned counsel for the respondent has referred to the complaint and the write-up to say that a bare reading of the same would reveal a defamatory intent and content and therefore, the complaint and the consequent summoning order are justified.

7. I have heard the learned counsel for the parties and perused the complaint as also the write-up in question.

8. The first question that would need to be determined is as to whether the complainant had any locus to question the write-up being defamatory and file a complaint? Section 499 I.P.C. and the relevant Explanations Exceptions would be necessary to be extracted here below:-

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 intended 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 this 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.

9. If the write-up is perused and for the sake of argument, it is assumed that there are defamatory imputations, then the entire thrust centers around Shri Om Parkash Chautala; the Government he headed and the Administration that he ran during his tenure as a Chief Minister. The alleged protection given to the D.G.P. involved in a case revolving around the suicide of a young girl; the involvement of Shri Om Parkash Chautala in a case of disproportionate assets and certain misdoings of the Government are the essential highlights of the write-up.

10. Therefore, the person most affected by such utterances in writing could be Shri Om Parkash Chautala himself or his immediate family members, but not a person from an association or a political party headed by Shri Om Parkash Chautala.

10A. The nearest that the respondent can get to offset this legal impediment is to rely upon Explanation-2 which may for the sake of argument, be extracted once again:-

Explanation 2. It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

11. The write-up does not relate even remotely to the association or collection of persons which may in this case by implication mean the INLD, a political party of which the complainant was a member. Therefore, by no stretch of imagination, can it be perceived that the complainant has any locus even to initiate the complaint.

12. The Hon''ble Supreme Court in G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa, observed that the complainant who was the Chairman of the Reception Committee of a conference organized by a political party namely Dravida Kazhagam, was not competent to institute the complaint where the impugned news item related to a comment on the party which had organized a

conference. The Hon"ble Supreme Court observed as under:-

13. On these contentions, the principal question for determination is whether the respondent could be said to be an aggrieved person entitled to maintain the complaint within the meaning of S. 198 of the Code. That section lays down that no magistrate shall take cognizance of an offence falling inter alia under Ch. XXI of the Penal Code (that is, Ss. 499 to 508) except upon a complaint made by some persons aggrieved of such offence. Section 198, thus, lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

14. Prima facie, therefore, if S. 198 of the Code were to be noticed by itself, the complaint in the present case would be unsustainable, since the news item in question did not mention the respondent nor did it contain any defamatory imputation against him individually. Section 499 of the Penal Code, which defines defamation, lays down that whoever by words, either spoken or intended to be read or by signs etc. makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that the imputation will harm the reputation of such person, is said to defame that person. This part of the section makes defamation in respect of an individual an offence. But Explanation (2) to the section lays down the rule that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. A defamatory imputation against a collection of persons thus falls within the definition of defamation. The language of the Explanation is wide, and therefore, besides a company or an association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where explanation (2) is resorted to the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where writing inveighs against mankind in a general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. (1699) 3 Balk 224, cited in Ratanlal and Dhirajlal, Law of Crimes (22nd d.) 1317. In England also, criminal proceedings would lie in the case of libel against a class provided such a class is not indefinite, e.g. men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middle sex. (See Kenny's Outlines of Criminal Law 19th ed. 235). If a well-defined class is defamed, every person of that class can file a complaint even if the defamatory imputation in question does not mention him by name.

13. In view of the above, I am of the considered opinion that the complainant has no locus to institute a complaint which does not even remotely affect him or even the association or the political party to which he belongs.

14. That leaves us with the larger question to be examined i.e. the write-up/editorial and its scrutiny in terms of the definition of defamation given in Section 499 of the I.P.C. and reconcile it to the freedom of speech and expression, one of the sacred fundamental rights so relevant in a democratic set up as long as it is exercised subject to reasonable restriction contained in Article 19(2) of the Constitution of India.

15. The Hon"ble Supreme Court in Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and Cinemart Foundation, observed as follows:-

5. Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquired on birth. It is, therefore, a basic human right. "Everyone has the right to freedom of opinion and expression, the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights (1948). The People of India declared in the Preamble of the Constitution which they gave unto themselves their resolve to secure all citizens, liberty of thought and expression. This resolve is reflected in Article 19(1)(a) which is one of the articles found in Part III of the Constitution which enumerates the Fundamental Rights. That article reads as under:-

19(1). All citizens shall have the right-

(a) to freedom of speech and expression; Article 19(2) which has relevance may also be reproduced:

19(2). Nothing in sub-clause (a) of clause (a) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India), the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence.

6. A constitutional provision is never static, it is ever evolving and ever changing and, therefore, does not admit of a narrow, pedantic or syllogistic approach. If such an approach had been adopted by the American Courts, the First Amendment - (1791) - "Congress shall make no law abridging the freedom of speech, or of the press" - would have been restricted in its application to the situation then obtaining and would not have catered to the changed situation arising on account of the transformation of the print media. It was the broad

approach adopted by the court which enabled them to chart out the contours of ever expanding notions of press freedom. In *Dennis v. United States*, (1950) 341 US 494, Justice Frankfurter observed:

.....The language of the First amendment is to be read not as barren words found in a dictionary but as symbols of historic experience illuminated by the presuppositions of those who employed them.

Adopting this approach in *Joseph Burstyn, Inc. v. Wilson*, (1951) 343 US 495, the Court rejected its earlier determination to the contrary in *Mutual Film Corporation v. Industrial Commission of Ohio*, (1914) 236 US 230 and concluded that expression through motion pictures is included within the protection of the First Amendment. The Court thus expanded the reach of the First Amendment by placing a liberal construction on the language of that provision. It will thus be seen that the American Supreme Court has always placed a broad interpretation on the constitutional provisions for the obvious reason that the constitution has to serve the needs of an ever changing society.

... ..

8. The words "freedom of speech and expression" must, therefore, be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel e.g. the radio and the television. Every citizen of this free country, therefore, has the right to air his or her views through the printing and/or the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gainsaid that modern communication medium advances public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered significant for the vibrant functioning of a democracy. Therefore, in any set up, more so in a democratic set up like ours, dissemination of news and views for popular consumption is a must and any attempt to deny the same must be frowned upon unless it falls within the mischief of Article 19(2) of the Constitution. It follows that a citizen for propagation of his or her ideas has a right to publish for circulation his views in periodicals, magazines and journals or through the electronic media since it is well known that these communication channels are great purveyors of news and views and make considerable impact on the minds of the readers and viewers and are known to mould public opinion on vital issues of national importance. Once it is conceded, and it cannot indeed be disputed, that freedom of speech and expression includes freedom of circulation and propagation of ideas, there can be no doubt that the right extends to the citizen being permitted to use the

media to answer the criticism leveled against the view propagated by him. Every free citizen has an undoubted right to lay what sentiments he pleases before the public; to forbid this, except to the extent permitted by Article 19(2), would be an inroad on his freedom. This freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardize public interest. It is manifest from Article 19(2) that the right conferred by Article 19(1)(a) to subject to imposition of reasonable restrictions in the interests of, amongst others, public order, decency or morality or in relation to defamation or incitement to an offence. It is therefore, obvious that subject to reasonable restrictions placed under Article 19(2) a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend Article 19(1)(a).

16. In *Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union of India and Others*, , it was observed as follows:

In today's free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non formal education possible in large scale particularly in the developing world where television and other kind of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities. The authors of the articles which are published in the newspapers have to be critical of the action of the government in order to expose its weaknesses. Such articles tend to become an irritant or even a threat to power.

17. The courts cannot lose sight of the fact that in a democracy, the performance of a Government headed by an elected political dispensations and the administration so run by them necessarily need to be circumscribed to scathing debates at the hands of either its own political opponents or the Press.

18. Dissent and criticism often gives way to fertile breeding of an intelligent opinion generating healthy friction between various sections of a polity, and opinions, generated, often clash of the truth are extremely necessary for an intellectual debate for the growth of a democratic society apart from ensuring accountability by putting the actions of persons in power to swords of dissection. A candid expression of an opinion often spouts another either confrontational or platitudinous, but always enlightening. In any case an intelligible opinion of one does not necessarily mean the conviction of the other. So there is no need to discourage it.

Article 19(1)(a) of the Constitution of India is extracted here below:-

19. Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right-

(a) to freedom of speech and expression;

Article 19(2) of the Constitution of India is extracted here below:-

19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

19. The attempt to curb the freedom to speech, the freedom of Press and the power of the pen therefore, needs to be discouraged and rather, complaints such as these ordinarily should be viewed as attempts of a prudish mind of the complainant's orchestrator showing complete sub-versiveness and servility of character, and displaying an aversion to criticism over a preference to a parroted existence.

20. The complaint merely opinionates with reference to utterances of a political personality involved regarding his role qua the D.G.P. in the case of a suicide by a young girl Ruchika Girotra and the remaining aspects to the fact of registration of a case of disproportionate assets and the alleged misdeeds of the Government which is partly factual and partly only a matter of opinion and may vary from person to person, citizen to citizen and group to group. The write-up also is contemptuous of the political class in general and the erstwhile personalities who were at the helm of affairs as Chief Minister of the State of Haryana. It concludes by making an appeal that the Central Government and the Haryana Government will have to protect the faith of the public.

21. It is thus a mix of fact and perception. If fact is accepted then it is certainly exempt from the concept of defamation and opinion, as observed earlier is not necessarily the conviction of the other and in any eventuality, it falls well within the permissible restriction envisaged in Article 19(2) of the Constitution of India.

22. The aforesaid contents of the article would, therefore, be protected by the first, second and third exceptions carved out in Section 499 I.P.C. where an imputation is made concerning any person for the public good or an expression in good faith of any opinion regarding a public servant in the discharge of his public functions or an expression in good faith of an opinion by respecting the conduct of any person touching any public question. Apart from this, the opinion expressed would certainly be protected by Article 19(1)(a) of the Constitution of India and such free speech which intelligibly questions a performance of the Government and the persons running it, cannot be termed to be defamatory. Hence such an opinion can at best be seen to be a dissent or disagreement with the prevailing system and thus in a larger interest has to be tolerated no matter how unpalatable it is.

23. The court is thus, of the opinion that the entire reading of the complaint does not disclose any defamatory content and rather, squarely falls within the exceptions carved out in Section 499 I.P.C. and protected by the sheath of Article 19(1)(a) and Article 19(2) of the Constitution of India. Therefore, the petition is accepted and the complaint Annexure P-1 and the consequent summoning order and all other proceedings arising therefrom are hereby quashed.