

(2010) 04 PAT CK 0189
In the Patna High Court

Chandra Prakash Gupta and Others

APPELLANT

Vs

The State of Bihar and Mrs. Noor Phatima

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 509

Citation : (2010) 04 PAT CK 0189

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioners, learned Counsel for the State and learned Counsel for the Complainant- Opposite Party No. 2 in both these quashing applications which have been heard together as they relate to and are directed against same order of cognizance dated 11-6-1998 passed by Judicial Magistrate, Patna whereby he has taken cognizance against all the seven accused persons named as accused in Complaint case No. 512 (c) of 1998. Against such cognizance and order for issuance of summons, except the principal accused, Mahesh Kumar Jha described as reporter/ storey writer and alleged to be author of the defamatory story published in the Hindustan Hindi Daily dated 4-12-1997, all other six accused persons are petitioners before this Court through the two quashing applications. In Cr. Misc. No. 22655/1998 two petitioners are Chandra Prakash Gupta, Resident Editor, Hindustan Hindi Daily and Anil Vibhakar, Senior Sub Editor of the said daily published from Patna. The four petitioners in the other quashing application include Vice Chairperson, Hindustan Times Ltd., New Delhi, General Manager, The Hindustan Times Ltd., Patna and Lucknow editions, a Former Executive President, The Hindustan Times Ltd., New Delhi and General Manager (North) The Hindustan Times Ltd., New Delhi.

2. Learned Counsel for the petitioners submits that the defamatory writing is not in the form of a news item but has been included in a story written by accused Mahesh Kumar Jha who is not a petitioner in these two applications. The story

was published purely as a fiction and, therefore, except the writer no other accused can be charged with the offence of defamation or for offence u/s 501(6), 509 and 120B of the Indian Penal Code. According to learned Counsel for the petitioners, a reading of whole complaint petition does not make out any offence against these six petitioners and hence, the order of cognizance should not have included these accused persons and there should not have been any direction for issuance of summons against them.

3. On behalf of the complainant the aforesaid submission was strongly refuted. It was submitted that besides filing the complaint case the complainant, who is a respectable lady and herself a journalist, also filed a complaint before the Press Council of India. The order of the Press Council of India was produced in court to show that the defence of Mr. Mahesh Kumar Jha that the story is supposed to be a pure fiction was not accepted and an order of censure was passed against the newspaper and the writer and the same was ordered to be published in the concerned daily. It was further submitted on behalf of the complainant that in paragraphs 9 and 10 of the complaint petition there are materials showing involvement of the petitioners also in publication of the defamatory story and at this stage no interference is required with the order of cognizance.

4. In reply learned Counsel for the petitioners has submitted on the basis of annexure-2 that the management of the newspaper, once it was convinced that story in question may cause hurt to the feelings of some persons published an item in respect of the story in question and asserted that the published story was based upon characters and situations which were fully fictional and non existent and the purpose of the story was not to hurt the feelings of anyone.

5. It was further pointed out that in paragraph 9 the complainant has made a simple assertion that on the next day of the publication of the story, she sent a notice to the management through a lawyer for damages and for publication of a contradiction which was not done. It was pointed out that this statement is not directed against any particular accused persons or the petitioners. However, in respect of allegations made in paragraph 10 which are specifically directed against accused/petitioner Anil Vibhakar, Senior Sub Editor of the Hindustan Hindi Daily, no satisfactory explanation could be furnished because in paragraph 10 there is a categorical allegation that this accused was Incharge of items as published in page 7 of the edition dated 4-12-1997 with a further allegation that he also had been harbouring feelings of malice, jealousy, hatred and anger due to the fact that in 1987 the complainant played a lead role in a drama. According to the allegations petitioner/accused Anil Vibhakar deliberately and wrongly passed a story for publication and also captioned it making imputation against the character of the complainant. In this paragraph the complainant has admitted that on her complaint the management debarred the accused Anil Vibhakar for some time to handle the concerned page of the Hindustan (Hindi Daily).

6. Having considered the rival contentions and on going through the materials on

record including the petition of complaint it is found that in the entire complaint petition there is no allegation making out any offence against the four petitioners of Cr. Misc. No. 22396/2000 or against petitioner No. 1, Chandra Prakash Gupta of Cr. Misc. No. 22655/1998. However, against petitioner No. 2 of the aforesaid criminal case namely, Anil Vibhakar, Senior Sub Editor there are specific allegations and order of cognizance cannot be held to be bad against him for lack of allegations in the complaint petition. Hence, the prayer of all the four petitioners in Cr. Misc. No. 22396/2000 and prayer of petitioner No. 1 in Cr. Misc. No. 22655/1998 are allowed but the prayer for quashing of the criminal case/ order of cognizance against petitioner No. 2, Anil Vibhakar of Cr. Misc. No. 22655/1998 is dismissed.

7. Learned Counsel for the petitioners has submitted that he has information that the complainant is dead and on that account the complaint case cannot proceed any further in the court below. On this issue, it will not be proper to analyze the legal position and take any decision as the issue can be raised before the court below at appropriate stage by the accused person against whom no relief has been granted. He may raise such plea before the court below at appropriate stage which shall be considered in accordance with law.