
(2014) 10 AP CK 0122

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 8717 of 2011

Doodala Suryanarayana Murthy

APPELLANT

Vs

Osuri Devendra Phanikar and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 136

Criminal Procedure Code, 1973 (CrPC) — Section 200, 468, 482

Penal Code, 1860 (IPC) — Section 499, 500, 501, 52

Citation : (2014) 3 ALT(Cri) 218

Hon'ble Judges : T. Sunil Chowdary, J

Bench : Single Bench

Advocate : C. Raghu, Advocates for the Appellant; S.R. Sanku, Advocates for the Respondent

Judgement

T. Sunil Chowdary, J.—This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner in C.C. No. 646 of 2011 on the file of Additional Judicial Magistrate of I Class, Narsapur of West Godavari District. Sri C. Raghu, the learned counsel for the petitioner submitted that institution of criminal proceedings against the petitioner is not maintainable for the following grounds, viz., 1) The complaint is barred by limitation, 2) The allegations made in the complaint do not constitute the offences alleged against the petitioner; and 3) the allegations made in the complaint fall within the ambit of exception 9 of Section 499 IPC.

2. Per contra, Sri S.R. Sanku, the learned counsel for the first respondent, submitted that the allegations made in the complaint satisfy the basic ingredients of Section 499 IPC.

3. A perusal of the record reveals that the first respondent filed a complaint under Section 200 Cr.P.C. against the petitioner for the offence punishable under Sections 500 and 501 IPC on the file of Additional Judicial Magistrate of I Class, Narsapur of West Godavari District. The learned Magistrate, after following the

due procedure contemplated under Cr.P.C., has taken cognizance of the offence against the petitioner under Sections 500 and 501 IPC and issued process.

4. A perusal of the record reveals that on 21.06.2007 a news item was got published in "UNDEEL" daily newspaper by one T.V. Govinda Rao, Advocate. Thereupon, the first respondent issued a legal notice to said Govinda Rao, Advocate to disclose at whose instance he got the news item published. Ultimately, the said advocate Govinda Rao issued a reply stating that he got issued the above said paper notification at the instance of the petitioner herein. It is an admitted fact that the petitioner is the brother-in-law of the first respondent.

5. The first and foremost question that falls for consideration is whether the complaint is time barred or not.

6. The news item was published on 21.06.2007. The complaint was filed on 10.05.2010. The trial Court has taken cognizance of the offence on 16.08.2010. The period of limitation to file the complaint is three years only.

7. The learned counsel for the first respondent submitted that for reckoning the period of limitation, filing of the complaint is the criteria but not taking of cognizance of the offence by the Court. To substantiate the argument, he has drawn my attention to the ratio laid down in Mrs. Sarah Mathew Vs. The Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and Others, , wherein the Hon"ble apex Court held as under:

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C.

8. In view of the principle enunciated in the case cited supra, I have no hesitation to hold that the complaint is filed within the period of limitation.

9. The crucial question that falls for consideration is whether the imputation made against the first respondent will fall within the ambit of Section 499 IPC or not. For better appreciation, it is not out of place to extract hereunder the contents of the paper publication.

10. From a perusal of the contents of the paper publication, it is manifestly clear that the petitioner made imputation or allegations against the first respondent. By giving such a paper publication, the petitioner exposed the family affairs of the first respondent to the public. Some of the allegations made in the paper publication undoubtedly reflect the character of the first respondent. Such an act is not permissible or appreciable. One should not expose the family affairs of the

other to public in the interest of family reputation.

11. The next question that falls for consideration is whether the imputation made against the first respondent in the news item would fall within the scope of Exception 9 of Section 499 IPC or not.

12. Establishment of the following two conditions is sine quo non to press into service exception 9 of Section 499 IPC viz., making of such imputation is 1) in good faith, or 2) for the public good.

13. Whether or not the petitioner made the imputation against the first respondent in good faith or for the public good is purely a question of fact, which has to be considered at the time of full fledged trial only. This Court, while exercising inherent power under Section 482 Cr.P.C., cannot go into the disputed questions of fact. The Hon'ble apex Court in *Sewakram Sobhani Vs. R.K. Karanjia* Chief Editor, Weekly Blitz and Others, held as under:

"The prayer in the application before the High Court was merely to quash the order dated November 30, 1977 of the learned Chief Judicial Magistrate, Bhopal and not to quash the complaint itself as the High Court has done. But, that was only a technical defect and we do not take serious notice of it in an appeal under Article 136 of the Constitution where we are very naturally concerned with substantial justice and not with shadow puppetry. The position now is this: The news item in the Blitz under the caption "MISA Rape in Bhopal Jail" undoubtedly contained serious imputations against the character and conduct of the complainant. In order to attract the Ninth Exception to Section 499 of the Indian Penal Code, the imputations must be shown to have been made (1) in good faith, and (2) for the protection of the interest of the person making it or of any other person or for the public good. "Good faith" is defined, in a negative fashion, by Section 52 of the Indian Penal Code as follows: "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention". The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore, is a matter for evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too the question whether an imputation was made for the public good. In fact the First Exception of Section 499 of the Indian Penal Code expressly states "Whether or not it is for the public good is a question of fact". "Public good" like "good faith" is a matter for evidence and not conjecture."

14. The facts of the case on hand are almost identical to the facts of the case cited supra. Whether the imputation made against the first respondent will fall within the ambit of exception 9 of Section 499 IPC would require a full fledged

trial.

15. It is a settled principle of law that the Court has to take into consideration the allegations made in the complaint only while deciding the petition under Section 482 Cr.P.C. The Court is not justified in embarking upon an enquiry to ascertain the truthfulness or otherwise of the allegations made in the complaint at the pre-trial stage. The allegations made in the complaint are, prima facie, sufficient to proceed further against the petitioner for the offences punishable under Sections 500 and 501 IPC.

16. A perusal of the record reveals that the learned Magistrate, after satisfying himself with the material available on record, has taken cognizance of the offence against the petitioner under Sections 500 and 501 IPC. Viewed from either legal or factual aspects, I am of the considered view that the trial Court has not committed any irregularity or illegality while taking cognizance of the offence against the petitioner.

17. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to quash the proceedings in C.C. No. 646 of 2011 on the file of Additional Judicial Magistrate of I Class, Narsapur of West Godavari District. The Criminal petition is accordingly dismissed. As a sequel, miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.