
(2003) 03 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 218 of 1997

G.B. Nayyar

APPELLANT

Vs

Ashok Satyadev Mishra and State of Maharashtra

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : (2004) 1 MhLj 832

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Anil Singh, for the Appellant; K.V. Saste, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—Shri Anil Singh submitted that the petitioner company filed a complaint in D.N. Nagar Police Station against Respondent No. 1 alleging that he committed the theft of articles belonging to and in possession of the said company after investigation, the Investigating officer formed the opinion that it was a mischievous, vexatious and a false complaint and, therefore, he prayed for issuing "B Summary" against the present petitioner. The said prayer and the report was challenged by the petitioner by filing a writ petition in the High Court. It was heard and finally decided. The High Court held that the said complaint was not false, mischievous and vexatious and, therefore, "B Summary" report prepared by the Investigating Officer was not proper. The stamp of false, mischievous and vexatious complaint was expunged. It was directed that it be not treated as "B Summary".

2. After this, the present respondent filed complaint in the concerned Court alleging that by such publication in Trade Diary, the petitioner committed the offence of defamation which happens to be punishable in view of provisions of Section 500 of IPC. The Trial Court issued the process against the petitioner in view of provisions of Section 500 of IPC and the challenge is being put to that order by the petitioner by way of this writ petition.

3. Shri Anil Singh submitted that the judgment and order passed by the High Court in Writ Petition No. 639 of 1997 by itself proves that the complaint filed by respondent No. 1 was not entertainable. He submitted that the said publication was in larger interest of the public and was the truthful account of the activities of respondent No. 1. He submitted that the said publication was published by the present petitioner in good faith and for protecting his and others interest and, therefore, keeping in view this aspect of the matter, the trial Court should not have taken the cognizance of the complaint filed by respondent No. 1 and should not have issued the process against the petitioner. He submitted that such order of issuing of the process be quashed.

4. Shri Saste, Additional Public Prosecutor, submitted that the impugned order is correct, proper and legal and the writ petition deserves to be dismissed.

5. Section 499 of IPC defines the offence of defamation. It provides four explanations, ten exceptions and some illustrations. Shri Singh attempted to bring his case within first, ninth and 10th exceptions. First exception provides that 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. It has been provided that whether or not it is for the public good is a question of fact. Ninth exception provides that 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. The tenth exception provides that 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.

6. The judgment and order passed by the High Court in the writ petition quoted supra was revolving around the grant of "B Summary" which would result in a prosecution. There is a difference between issuance of process and the adjudication that filing of a complaint is necessitating the issuance of "B Summary" by the Court. But that does not by itself stamp or vouchsafe its correctness, genuineness or falseness, mischievousness. It by itself would not vouchsafe it to have been made in good faith, made for protecting the interest of oneself or others or published for a cause intended for public good. When a person makes an imputation by words spoken or intended to be read, or by making signs or by visible representation, 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 to defame that person subject to explanations, provided by the section, exceptions and the illustrations given. If the accused in such case wants to raise a plea as indicated by the exceptions he has to make out a case for bringing himself within four corners indicated by those exceptions. He may do it by relying on the averments made in the complaint by which he has been brought in the Court as an accused or by producing material for perusal or the consideration of the Court by himself.

He has to raise a plea for bringing his case within four corners of the exceptions. He has to bring it to the notice of the Court that the complainant has not made out the case as indicated by Section 499 or its explanations. Unless he does it, the Court would not be considering his defence suo motu. A plea has to be raised before the trial Court or may be in higher court. But there has to be a case already made out or in existence for allowing such person to agitate such points before higher Courts. In the absence of that, the higher Courts would not be able to consider his plea as he wishes to be considered.

7. In the present matter, there is no case made out by the petitioner which would allow him to take the advantage of the limits provided in the exceptions embodied in Section 499. There is no case for permitting him to sort out the averments in complaint by taking the advantage of the explanations provided and the illustrations given. Hence, the petition stands dismissed. Rule stands discharged. No order as to costs. The Petitioner should appear before the trial Court on 22.4.2003 during working hours. The trial Court to proceed with the case in accordance with the provisions of law. The petitioner is entitled to move an application or raising the plea permitted by the provisions of Section 499 of IPC. If such application is preferred, the trial Court should adjudicate on it as early as possible.