

(1994) 09 GAU CK 0024

In the Gauhati High Court

Case No : Criminal Revision No. 359 of 1994

Homen Borgohain and Others

APPELLANT

Vs

The Brahmaputra Valley Regional Handloom Weavers' Co-Operative Society Ltd.

RESPONDENT

Date of Decision : 30-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 198, 199(1)
Penal Code, 1860 (IPC) — Section 34, 499, 500, 501, 502

Citation : (1995) CriLJ 2357

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : D.K. Bhattacharjee and B.M. Choudhury, for the Appellant; A.R. Barthakur, J.M. Choudhury, H. Deka, P.K. Barman and T.G. Barua, for the Respondent

Final Decision : Allowed

Judgement

M. Sharma, J.—This revision petition has been filed by the petitioners for quashing the complaint case No. 983/93 pending in the Court of Judicial Magistrate, Guwahati and the entire proceeding therein and also the order dated 1 -6-1994 passed by the said Magistrate explaining the offence u/s 500/ 501/502 read with Section 34, I.P.C.

2. Plea against the maintainability of the complaint in the above mentioned complaint case has been raised to the effect that the person aimed against in the impugned news item is not the Brahmaputra valley Regional Handloom Weavers' Co-operative Society Ltd., but the Managing Director Mr. Jagannath Sarma, and that as the Managing Director Mr. Sarma did not file the complaint as the person aggrieved, the defamation case file at the instance of the Co-operative Society is not maintainable.

3. The five petitioners, namely, petitioner No. 1 Homen Borgohain is the Editor of Asom Bani, and Assamese Weekly, petitioners Nos. 2, 3 and 4 P. G. Baruah, Binu

Baruah and Surajit govinda Baruah are the partners of M/s. Asom Bani and petitioner No. 5 Hari Chandra Bora is the Printer and Publisher of Asom Bani.

4. Complainant opposite party, namely. The Brahmaputra Valley Regional Handloom Weavers" Co-operative Society Ltd, represented by its PRO Shri Prabhat Chandra Sarma is a Co-operative Society under Assam Co-operative Societies Act, 1949 and engaged in manufacturing cloth under the scheme of Govt. of India, known as Janata Cloth Production Scheme under the State Level Implementation Committee (SLIC). the Managing Director of the complainant society is Shri Jagannath Sarma.

5. The opposite party as complainant filed complaint case as mentioned above u/s 500/501/502 read with Section 34, of the I.P.C. alleging defamation by virtue of a news item published in the said Assamese weekly Asom Bani dated 3-9-1993 in the column "Dispur Darshan" under the caption "Choror Murat Tel" (oil on the head of the thief). The complainant felt humiliated and aggrieved as the news item tarnished the reputation of the complainant in the public eyes. The news items was published in Assamese and the English translation has been reporduced as below :-

"An allegation of misappropriation of more than two hundred crores of rupees is raised against Shri Jagannath Sarma, the Managing Director of the Brahmaputra Valley Regional Weavers" Co-operative Society. As the amount is more than two hundred crores of rupees the Chief Minister was compelled to commit in the Assembly that the matter would be enquired into through the CBI, however, no enquiry is started till today. The opposition parties also stopped raising the issue of Jagannath Sarma's corruption on the floor of the Assembly. Their mysterious silence has created various confusions in the minds of many. The big thing is that the Directorate of Handloom & Weaving, in spite of having clear proof of misappropriation of several hundred crores of rupees, has even in this year instructed Brahmaputra Vally Co-operative Society to manufacture Janata Cloth so that several millions of rupees can be collected. It is worth saying by the elders that King's dear needs no Palanquin Carrier."

6. On the basis of the complaint, the trial Court took cognizance and issued process and on receipt of summons the petitioners appeared and on the date, i.e. on 1 -6-1994, fixed for explaining the offence to the accused persons, an application was filed praying for dropping the proceedings initiated on the complaint petition on the ground that offence of defamation u/s 500/501/502, I.P.C. has not been disclosed on the basis of the complaints and that a legal bar existed for taking cognizance thereof and continuing the proceedings u/s 199(1), Cr. P.C.

7. Mr. DK Bhattacharjee, learned counsel for the petitioners mainly advanced his arguments insisting that, in the news item no materials appear which can be considered to be an imputation of defamation against the complainant society, that the Managing Director Mr J. Sarma who is the actual aggrieved person has

not filed any complaint of defamation and therefore legal bar u/s 199(1), Cr. P.C. squarely applies to the instant case.

8. The stand of the opposite party is that the contents of the news item make out a case for defamation to the Society as a whole, that the second part of the news item implicates each and every member of the Society and thereby the Society is aggrieved and is competent to file complaint through the complainant opposite party.

9. Upon this backdrop the point stands before this Court for consideration is whether the news item contains any defamatory statement imputing the Society as a whole which caused harm and humiliation to the Society in the public eye and the statements made therein amounts to defamation, and whether the opposite party as complainant has locus standi to file the complaint for defamation.

10. Defamation u/s 499, I.P.C. is - any word/ words spoken or intended to be read, 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 or persons.

11. Mr. Bhattacharjee, learned counsel has-Submitted that the news item relating to Mr. Jagannath Sarma cannot be taken as defamatory as the news item was published in connection with an earlier news wherein much criticism was published against Mr. Jagannath Sarma, Managing Director of the Society and this news was published for the information of the public who have a right to be informed about the involvement of public money; that Mr. Sarma is the Managing Director of the Society and mismanagement of fund of the Society and activities of the concerned department (Textile and Handloom) also faced criticism and raised wide criticism in and outside the Assembly and that assurance was given to the representatives of the Legislative Assembly announcing C.B.I. enquiry regarding financial irregularities. But after the criticism and assurance in the floor of the Assembly, the assurance given in this Assembly was not followed up and people in general and the affected persons in particular have been waiting for the result for which assurance was given. Further stand of the petitioners was that, the plain or critical reading of the news item itself bears the meaning and give the identity of the person alleged to be defamed, and the entire words contained in the news item referred clearly Mr. Jagannath Sarma, Managing Director of the Society and that the words contained has reflection of a particular person who is Managing Director Mr. Sarma. The news item has established the identity of a person, i.e. Mr. Sarma and the imputation was directed none but to Mr. Sarma only. The alleged news items specifically named the person and that mention of the Society in the later part of the news item cannot be mingled with the financial mismanagement and both are independent as regards imputation of financial mismanagement of the fund of the Society and therefore there is no much difficulty to identify him from the Society; that the alleged defamation cannot cast any doubt in the involvement of the Society in the management of

the fund, simply saying that the imputation of embezzlement has been pointed to the Society. Reference was made to the probable benefit going to be obtained by Mr. Sarma, who is the Managing Director of the Society; that being this position the society is not the aggrieved party in the proceeding. Argument has been insistently advanced that the news item is, a whole one, in the same paragraph bearing the same news imputing only Mr. Sarma and the news item has to be taken as a whole, and the second party, alleged to be imputing the Society, cannot be served from the upper part of the news item and that it cannot be said that one part of the item is severable to the other and the contentions made therein did implicate each and every member of the Society including the Director; that the news item must be read as a whole with the eye of an ordinary reasonable man.

12. Mr. Choudhury, learned counsel for the opposite party objecting the prayer for quashing has submitted that as the complainant Society has been imputed directly by the words in second part of the news item, they are sufficient to react the mind of the general people against the Society including its Directors and shareholders. That the reasonable people will think and understand the words as referred to the Society and it is enough to impose liability and was of no consequence that the petitioner/accused had not intended to defame the Society as a whole. That the news item has conveyed a defamatory meaning imputing the entire Society and general people's reaction would be against the Society as a whole, and would arrive at the reasonable conclusion that it was the society which involved in huge financial mismanagement. That the headings in the news item, on the face of it, is defamatory imputing the Society, which was direct and that no separate meaning can be inferred from the wording of the news item.

13. To decide the maintainability of the complaint petition pending before the Court of Judicial Magistrate, Its Class, the locus standi of the Brahmaputra Valley Regional Handloom Weavers" Co-operative Society Ltd. as the complainant needs a though examination of the wordings along with the meaning which have emerged from the construction of the words used in the news.

14. Section 499, (Explanation 2) I.P.C. which is relevant for this case is quoted below :-

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

15. Apparently and collection of persons may be covered by this explanation. But that collection of persons must be identifiable so that it can be said that this group of particular people has been defamed, as distinguished from the rest of the community. There is no dispute that a Co-operative Society doing business in certain way may bring an action for defamation in respect of the publication of defamatory news item which effects its business reputation. But a Society/ Company cannot be said to be defamed, as to allegation which would be actionable at the suit, in case of an individual; but which would not be

defamatory of a Society/Company, would not be actionable, in a defamation case. If imputation is found direct, the procedure followed is that, the Board of Directors may pass resolution to that effect, and can entrust any person of its choice by resolution to cause the action in Court of law. In such a situation the point would arise,- whether the Society/Company is the actual aggrieved person in the case to establish that either it has suffered special damage or that the words are likely to cause not only humiliation but also pecuniary damage. Obviously to ascertain the maintainability of the complaint the locus standi of the complainant has to be decided in its initial stage. The question of maintainability on the ground of applicability of Section 199(1), Cr. P.C. may arise before the Court on an application to drop the proceeding. At that preliminary stage the trial Court has to decide whether the proceeding is liable to be dropped as the complainant is not the aggrieved person u/s 500, I.P.C. Admittedly an application was filed by the petitioners and the same was rejected.

16. As discussed above, the emerging position is that whether the impugned news item cast imputation to the Brahmaputra Valley Regional Handloom Weavers" Co-operative Society as a whole. The provisions of Section 199(1), Cr. P.C. reads as follows:-

"No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf."

17. Both the parties strenuously attempted to submit their respective points. A critical scrutiny of the news item has emphasised an query how the wording in the news item made imputation to the Society. For this purpose repetition of the news item is required to find out the link of the principal person Mr. Jagannath Sarma, the Managing Director and the Society. The stand of the petitioner is that no attempt was made by the petitioners to malign and impair the image of the Co-operative Society in its business and to ruin its reputation. Apparently, as it appears from the news item, it has made some imputation against the opposition parties of the State for not taking follow up action of their complaint raised in the State Assembly and then to the Weaving and Handloom Department of the State Government who in spite of such allegations, which had raised storm in the Assembly decided to give order to the Society for manufacture of Janath Cloth which involve millions of rupees. Society"s name has been indicated as it would manufacture the Janata Cloth and this would enable it to collect, as profit, millions of rupees. Mr. J.M. Choudhury, learned counsel for the opposite party complainant has submitted that the last portion of the impugned news item imputed the Society wherein clear imputation was made directly with the words

that, "Directorate of Handloom and Weaving has even in this year instructed the Brahmaputra Valley Regional Handloom Weavers" Co-operative Society to manufacture Janata cloth - So that several millions of rupees can be collected."

18. As it transpires the news item is compact in one paragraph wherein principal subject of imputation was embezzlement of fund amounting Rs. 200 crores (two hundred crores) and accusation was pointed to Mr. Jagannath Sarma, the Managing Director of the Society. Apparently, in last part of the news item, name of the Society was mentioned as the continuation of the first part of the news item and to substantiate the allegation of misappropriation of the principal in the name of the Society has been brought in of which he is the Managing Director. The whole of the impugned news item has to be taken to appreciate the meaning and the subject of imputation. Whatever be the imputation with the defamatory words, it has to be taken with the understanding of the general public. Whatever the intention of the news item to make imputation upon the principal's character or conduct it intended to communicate, the mention of the name of the Society in the conduct of the principal do not bear any defamatory meaning: Apparently target or imputation is Mr. Sarma and mention of the opposition parties of the State of Handloom & Textile department and the complainant Society, are used to substantiate the imputation against the principal person. Simple reading of the news item, in my view, would create some opinion not against the Society but against the principal, whose inaction or action would help the principal to indulge in the act of misappropriation. The critical reading of the news item shows that the natural and ordinary meaning of the words for the purpose of defamation has not been pointed to the Society, the intention communicated to the readers or the general public was to show the involvement and conduct of the person named categorically. Definitely, the impression of the people (readers) after reading the news would be on the conduct of Mr. Sarma, who has been shown, by implication, the beneficiary of the profit of the Society.

19. The caption of the news item is "Oil on the head of the thief" (Assamese wordings are "Choror Murat Tel") points out and indicates a person as a thief, i.e. somebody has been identified as a thief. By the headline a particular person was pointed out and identified as "Chor" (thief) and after that the news continued to point out M. Sarma and implicated him to the misappropriation as "thief." The other names, opposition political parties, Directorate of Handloom and Weaving and the Society have been mentioned through whom the person would be profited, i.e. oil would be poured on the head of the "thief."

20. From the discussion, I am of view that the word "thief is not ambiguous and the meaning and imputation carried in the news is not capable, on the face of it, bearing two meanings, the imputation is made against one person who has been identified as "thief," and definitely the word is not defamatory in itself to the Society. The news item may propose to impute Mr. Sarma, the person, as thief by reason of his alleged misappropriation but it is equally inconsistent to involve the Society and determining this aspect this Court holds that the words

complained of, are not capable of containing defamatory meaning ascribed to the Society. The far fetched suggestion of "collecting millions of rupees by manufacturing Janata Cloth" can have no imputation to the Society as a whole. Mere feeling of involvement cannot constitute a case of defamation u/s 500, I.P.C. and cannot therefore be an actionable wrong. The construction of the words in the latterpart of the news item, which has been taken by the complainant Society as the imputation to it, are not intended to impute the Society. Even, as the counsel for the petitioners has submitted, the news item was a simple one and meant for information to the reader and the public about the state of affairs to which the public has a right to be informed regarding the alleged misappropriation of a huge amount which was also raised in the floor of the state Assembly where assurance was given by the Chief Minister of the State for C.B.C. enquiry.

21. For the reasons discussed above, I hold that even a defamatory purpose will not render the accused petitioners liable, if the statement has defamatory significance for others.

22. Mr. Bhattacharjee, learned counsel for the petitioner referred in his support President and Directors of the Agricultural Produce Co-operative Marketing Society Ltd. Vs. M.K. Mohamed Ali and Others, In this case the complainant Society was defamed and therefore Magistrate was competent to entertain the complaint petition. The case of the petitioner was that the accused made some statements" defaming only the President and Directors of the Society and not of the Society itself. Since a complaint by an aggrieved person is a condition precedent to the jurisdiction of a Court to deal with the offences mentioned in Section 198, Cr. P.C. (Old) a complaint by the Society which was not the aggrieved person held to be a nullity. It was further held that the complaint was not maintainable since an offence u/s 500 of the I.P.C. could not be gone into in absence of the person aggrieved.

23. In view of my above discussion I hold that the complainant Society not being the person aggrieved has no locus standi to file the complaint for defamation and accordingly the proceeding in complaint case No. 983/93 pending in the Court of Judicial Magistrate, Guwahati is quashed.

24. In the result the petition is allowed.