

(1982) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 232 of 1982

Laxminarayan Singh and another

APPELLANT

Vs

Shriram Sharma

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Penal Code, 1860 (IPC) — Section 500, 505

Citation : (1985) JLJ 430 : (1985) MPLJ 187

Hon'ble Judges : C.P. Sen, J

Bench : Single Bench

Advocate : R.N. Rai, for the Appellant; R.P. Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

This is an application under sections 397/4, 401 read with section 482 of the Code of Criminal Procedure, 1973, for quashing the proceedings in Criminal Case No. 96/82 against the applicants for the offence u/s 500, Indian Penal Code pending in the Court of Judicial Magistrate, First Class, Jabalpur.

Applicant No. 2 is the Editor and Publisher for fortnightly Hindi magazine Sarita published from New Delhi, having wide circulation. In the two issues of September 1981 (Nos. 633 & 634) an article written by the applicant No. 1 was published under the caption "Tulsi Ke Ram" criticising Tulsidas for depicting Ram, the hero of the epic "Ramayana", in such a manner that though Ram was intended to be an incarnation of God, he was shown as an ordinary mortal with all the human weaknesses, with the result that it has not served the interests of the Hindu society. The non-applicant claims himself to be a traditionalist Hindu, a scholar, a teacher and a devotee of "Shri Ram", as depicted in by Tulsidas in "Ramcharit Manas" and he has profound regard for Sant Tulsidas. He filed the present complaint under sections 500 and 505 Indian Penal Code alleging that

the aforesaid article "Tulsi Ke Ram" published in the two issues of Sarita has abused Sant Tulsidas who is being honoured and respected for well over 400 years not only in India but all over the world for his literary work and he has been described as of uncivilised mind, of corrupting influence and of low thoughts. The applicants have falsely blamed and abused Lord Shri Ram and posed themselves as great scholars. They have set up one section of the Hindus against the other section. Since Sant Tulsidas died in 1680 and so he is not in a position to defend him, though after his death he has been a source of inspiration for the Hindus. So it is necessary to decide the charges levelled against Sant Tulsidas and to punish the applicants for defaming him, his work "Ramcharit Manas" and Lord Shri Ram.

The grievances of the complainant are especially about the following passages in the article:--

(a) In his emotion Tulsidas has created character of Ram, which is dirty and shameful. He tried to depict Ram as incarnation of God but actually Ram has not even been shown as a good man, he has imposed his uncivilised mind and narrow thoughts on Ram, no one has corrupted Ram as much as he has done.

(b) Ram has been depicted as liar, unjust, trickster, of no understanding, believer in casteism and slavery, giver of all protection to criminals, whimsical and of low taste, lover of flattery and Kshatriya chief whose own brother used to stand before him with folded hands as a slave, he had declared that any one who dared to walk before him insolently with raised head, he would cut his head but one who bowed down before him, he would give him all protection, this shows him not as a protector of poor but as a feudal lord.

(c) By praising all the vices of Ram as his good qualities, Tulsidas has tried to throw dust on the God-fearing Hindus, it is difficult to find another example of such a mean attempt to misguide others, and

(d) Instead of doing good to all in "Ramcharit Manas", majority of Hindus i. e. non-Brahmins have been made helpless and backward while Brahmins have been made proud, shirker and hypocrats. So much encouragement has been given to blind faith, hypocrisy, falsehood and corruption, as a result a majority of the people have started treating "Ramcharit Manas" as an unwanted and useless work.

After recording statement of the non-applicant, the complaint was registered under sections 500 and 505, Indian Penal Code and process issued to the applicants as the Magistrate found prima facie case against them. On 10-2-1982 the applicant No. 2 appeared through his counsel and applied for exemption from personal appearance on the ground that he is of advanced age and keeping indifferent health. Another application was filed under sections 196/199 of the Code of Criminal Procedure for quashing the proceedings as no sanction has been obtained from the Government for prosecution of the offence u/s 505, Indian Penal Code, no offence u/s 500 has been made out, the complainant is

not an aggrieved person and he does not belong to the family of Sunt Tulsidas and the complainant's own reputation or position has not been harmed. The non-applicant tiled an application for production of the manuscript of the article by the applicant No. 2 and for his furnishing full address of the applicant No. 1 as the summons to him has been returned unserved. The trial Magistrate asked the applicant No. 2 to produce a medical certificate and fixed the case for arguments on the applications on 12-3-1982. On that day, after hearing the arguments the trial Magistrate directed the applicant No. 2 u/s 91(1) of the Code to produce the written manuscript and supply full address of the applicant No. 1. Bailable warrant was ordered to be issued against the applicant No. 2 as he did not produce the medical certificate nor appeared. The full address of the applicant No. 1 was furnished on 13-3-1982 and on 16-3-1982 medical certificate of the applicant No. 2 was produced. Since the certificate advised rest up to 22-3-1982, the applicant No. 2 was asked to appear in the Court on the date already fixed i. e. 15-4-1982.

On 9-4-1982 the applicants filed this revision with the aid of section 482 contending that (i) the non-applicant has no locus standi to file the complaint as he is not a person aggrieved as required u/s 199 of the Code, (ii) the publication is covered by Article 19 of the Constitution which guarantees freedom of expression It is a fair comment and critical approach of the author with regard to the manner in which "Ramcharit Manas" was written and its characters depicted. So no case u/s 500 is made out. (iii) If the article has created ill-feelings and outraged the religious sentiments of the non-applicant and other members of the Hindu community, they should have approached the Government for prosecution of the applicants u/s 295A, Indian Penal Code and for forfeiture of the two issues of "Sarita" u/s 196 of the Code; and (iv) asking the applicant No. 2 to produce the manuscript amounts to compelling him to give evidence against himself and violates Article 20(2) of the Constitution. Therefore, the applicants prayed for quashing of the proceedings against them. The non-applicant submitted that no revision lies against an interlocutory order and the inherent powers cannot be invoked to override section 397(2) of the Code. The author has picked up passages from "Ramcharit Manas" without reference to context and the Sant has been criticised uncharitably. No case is made out for any of the exceptions to section 499 and the imputations against the Sant are uncalled for and highly defamatory.

Under section 499 Indian Penal Code whoever 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, subject to the exceptions, to defame that person. u/s 11 of Indian Penal Code, the word "person" includes any company or association or body of persons, whether incorporated or not. An idol may be a judicial person capable of owning property but it is doubtful if it can come within the meaning of the word "person" in sections 499 and 500 Indian Penal Code because in the explanations there is reference to defamation of a dead person and a corporate body only. Under

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 relatives. So imputation should not only be harmful to the deceased if living, it must also hurt the sentiments of his family members. According to the complainant, Sant Tulsidas died in 1680 i. e. 300 years back and he is not claiming himself to be a descendant of Sant Tulsidas nor any such descendant had come forward to make any such grievance. Therefore, it is clear that second limb of the Explanation (1) is not satisfied and as such no action lies for defamation of Sant Tulsidas at the instance of the complainant.

Even otherwise, section 199(1) of the Code of Criminal Procedure provides that no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code i. e. for defamation, except upon a complaint made by some person aggrieved by the offence, provided if such person is a minor or lunatic or infirm or a Parnadashin woman then by some other person with the leave of the Court. The Supreme Court while considering scope of section 198 of 1898 Code which is similar to section 199 of the present Code, in *G. Narasimhan, G. Kasturi and K. Gopalan Ors. Vs. T.V. Chokkappa*, held as under:--

Section 198 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 would be void and illegal.

it was also held that the Chairman of the Reception Committee of the conference could not be said to be an aggrieved person as the conference was not an identifiable or a definite body. The Calcutta High Court in *Dhirendra Nath Sen and Another Vs. Rajat Kanti Bhadra*, held that where the defamation was of a spiritual head of a certain community, an individual person of that community was not the person aggrieved and as such the cognizance of offence taken on a complaint by that individual person was illegal. The Delhi High Court in *Ganesh Anand Chela Vs. Swami Divyanand*, held--Criminal Procedure Code, Section 199--Penal Code, Section 499--Complaint u/s 500 by disciple of P for defamation of his guru-Disciple is not an aggrieved person. A Division Bench of the Rajasthan High Court in *Prempat Singh v. Phool Singh* 1980 Cri. L J 16 has held as follows:--

The grievance of the complainant, an ordinary member of the Mission, in his individual capacity cannot be more than a pain or hurting his sentiments, like any other ordinary member of the society and he cannot be considered as "an aggrieved person" u/s 199, Criminal Procedure Code. Such an ordinary member of the Mission cannot espouse the cause of a senior active member of the Mission especially when the civil suit filed by the latter against the accused for damages for defamation etc. has already come to an end by a compromise arrived at between the parties.

Therefore, it is clear that the complainant though he may be devotee of Lord Shri Ram and an admirer and follower of Sant Tulsidas, he is not an aggrieved person within the meaning of section 199(i) and, as such, no cognizance of the offence u/s 500 can be taken on his complaint and the trial is void and illegal.

Under Clause (a) of Article 19(1) of the Constitution all citizens have right to freedom of speech and expression. This freedom means the right to express one's convictions and opinions freely. Just as every person possesses the freedom of speech and expression, every person also possesses right to his reputation which is regarded as a property. Hence no body can so use his freedom of speech or expression to injure another's reputation. So defaming anyone has been made penal. However, Exception 6 to section 499, Indian Penal Code lays down that it is not defamation to express in good faith any opinion regarding the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance and no further. A Division Bench of the Bombay High Court while considering scope of Exception 6 to section 499 has held as under:--

A fair comment upon a literary work, or other such production, submitted to the judgment of the public, that is to say, a comment which is the expression of honest opinion and does not go beyond the limits of what may fairly be called "criticism" is no libel. A fair comment is a comment which is true, or which, if false, expresses the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds. The right of fair comment involves two essentials; first, that the imputation should be a comment on the work criticised, and second, that it should be fair, that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. It would be monstrous, for instance, for a critic to suggest as an inference from a mere grammatical inaccuracy in a work that its author was a swindler or a libertine. An imputation on an author made by a critic without reference to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce and not by what he says was his intention.

"Good faith" under this Exception requires not logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must in each case be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal untrained to habits of precise reasoning.

Good faith in the formation or expression of an opinion can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment.

The article "Tulsi Ke Ram" published in the two issues of "Sarita" written by the applicant No. 1 and published by the applicant No. 2 is a critical commentary on "Ramcharit Manas" written by Sant Tulsidas. It may be that many will not agree with writer's criticism and appraisal of the work of Sant Tulsidas. The language used in the article while criticising Tulsidas is not quite palatable and may have been couched in milder language. Nonetheless it cannot be said that there is want of good faith or that the writer has attacked the personal character of Tulsidas which has no reference to his work. The attack on Tulsidas is with reference to his work and the writer, therefore, holds the Sant to be uncivilised, of corrupting influence and of narrow thoughts because of his projection of Ram and getting such dirty works through him and not otherwise. It cannot be said that the opinion expressed could not be the honest opinion of the critic. The writer has given his own reasons for criticising Sant Tulsidas though at one place he has praised him for the excellence of literary work, which according to the writer is un-surpassed though it is not an original work but merely Hindi translation from Sanskrit. His annoyance is about the manner in which Ram has been painted by Sant Tulsidas in his work. According to the writer, Ram is regarded by the Hindus to be an ideal person, just, merciful, honest and good friend but Tulsidas in his emotion and enthusiasm has painted Ram as a dirty, uncouth and shameful character while attempting to make Ram as an incarnation of god. This, according to the author, shows his meanness, low taste and uncivilised mind. According to Tulsidas, one may commit thousands of crimes or commit thousands of sins but everything would be condoned if he touches the feet of Ram. According to the writer, this would give encouragement to criminals and sindoers. Even in the present immoral and corrupt world, no ruler can dare to give such protection. Ram had taken a vow to free the world of demons yet he allowed Vibhishan to rule over the remaining demons after the war with Ravan was over. To achieve his self interest, Ram encouraged traitor Vibhishan to disclose all the secrets of his friend Ravan, by tempting him with the throne of Ravan. Ram made friendship with Sugriv for his selfish ends. If there was such a magic in the feet of Ram to turn any thing into a beautiful woman then why Ram was roaming in the hillocks to search out Sita. These are some of the opinions expressed by the writer in his article "Tulsi Ke Ram". If the complainant feels that the applicants, with malicious and deliberate intention of outraging the religious feelings of Hindus, have published the article, proper course would have been to move the Government for their prosecution u/s 295A, Indian Penal Code and also for forfeiture of the two issues of "Sarita" u/s 195 of the Code of Criminal Procedure. Since the proceedings are being quashed, it is not necessary to consider as to whether by asking the applicant No. 2 to produce the written manuscript, there is violation of Article 20(2) of the Constitution.

Accordingly, the proceedings initiated on the complaint of the non-applicant for

prosecution of the applicants for the offence u/s 500 Indian Penal Code are quashed and the complaint is dismissed.