

(2015) 03 GUJ CK 0061
In the Gujarat High Court

Case No : Criminal Revision Application No. 570 of 2006

Melapchand Mohanlal Khatri

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : (2015) 03 GUJ CK 0061

Hon'ble Judges : S.G. Shah, J.

Bench : Single Bench

Advocate : P.P. Majmudar, for the Appellant; J.D. Jhaveri, APP, Advocates for the Respondent

Judgement

S.G. Shah, J.—Heard Mr. P.P. Majmudar, learned advocate for the petitioner, Mr. R.J. Goswami, learned advocate for respondent No. 2 as well as Ms. J.D. Jhaveri, learned APP for respondent No. 1 and perused the record.

2. Petitioner is original accused, whereas, respondent No. 1 is prosecuting agency, whereas, respondent No. 2 is original complainant.

3. Petitioner has challenged the judgment and order dated 20.11.2000 in Criminal Case No. 1776 of 1995 whereby the petitioner has been convicted under Section 500 of I.P.C. and directed to undergo simple imprisonment for one month and penalty of Rs. 1,000/- with further direction that in default of payment of penalty, he should undergo simple imprisonment for five days, which order was confirmed by the Additional Sessions Judge, 2nd Fast Track Courts, Deesa in Criminal Appeal No. 3 of 2000 by impugned judgment and order dated 26.7.2006.

4. Since the petitioner was on bail pending trial and during the appeal, pursuant to order dated 20.11.2000 while issuing the rule, the sentence was suspended and thereby petitioner remains on bail through out the period. The conviction as recorded hereinabove was awarded by the trial Court in a private complaint filed by the respondent No. 2 herein.

5. For the sake of convenience, petitioner is being referred as an accused and respondent No. 2 as complainant since they are referred as such in the impugned judgment.

6. The sum and substance of the complaint is that the complainant has filed a private complaint alleging that accused has committed an offence under Section 500 of the I.P.C. by publishing derogative and defamatory statement in his weekly Publication namely "Chalte Firtte" in its issue that teacher Agrawal serving in Sardar Patel High School, Deesa is not having any shame in molesting the girls and, therefore, parents have to follow the path of 'Lok Aandolan,' if the trustees of the School fails to take any steps.

7. Based upon such private complaint regarding defamation of the complainant, accused was tried by the trial Court and after trial he was convicted as aforesaid. When such conviction was upheld by the Sessions Court, practically, in this Revision Application, it is not permissible for this Court to re-appreciate the evidence which is already appreciated by two courts below and, therefore, practically, the jurisdiction of this Court is limited to the extent of scrutinizing illegality and irregularity, if any, in judicial process and in determination of matter by the lower Court. Thereby, in absence of any illegality or irregularity, it would not be possible even for the High Court to interfere with the findings on fact and to modify the impugned orders only because different views is possible or for any other reason that may be pleaded by the petitioner if there is no illegality or irregularity as aforesaid.

8. However, even to ascertain the irregularity or illegality, if we peruse the entire record, it becomes clear that the accused being owner, Editor and Publisher of the Weekly newspaper and when his name was disclosed in such Publication itself, he has no defence to plead and prove that he is not involved in the alleged activity, which is considered as punishable offence by both the lower Courts. Therefore, the only defence by the accused is to the effect that the statement in his Weekly publication, which is referred hereinabove, is not meant for the complainant. However, if we read the sentence which is printed and published by the Editor in his Weekly newspaper, it becomes clear that he is referring a teacher of a particular school namely; Sardar Patel High School and, thereby, if there is only one teacher having surname Agrawal in such School being complainant herein, then there is no question of mis-identity or the non-concerned of the complainant for such defamatory publication. So far as written words under consideration are concerned, there also, there cannot be any second opinion except that it certainly amounts to defamation of a person whose name is disclosed in such writing, when it is stated that such person does not have a shame in molesting girls. Thereby, what is stated is clear that the person under reference is molesting the girls. Thereby, it is clear that whoever reads such material in a local newspaper, he would immediately identify that complainant as a Agrawal teacher of Sardar Patel High School. Since Deesa is not Metro City but only District place and, therefore, there is no question of misreading the contents

so as to avoid to connect the complainant with such allegation. If it is so, the fact remains that the accused has committed an offence under Section 500 of I.P.C. since his disclosure in his writing in his Weekly newspaper is certainly derogative and defamatory. If we peruse the evidence on record and both the impugned judgment, it becomes clear that both the lower Courts have followed the standard practice of Criminal Jurisprudence during the trial and there is no grievance in the pleading also regarding any illegality or irregularity or perverseness in the proceeding before the lower Courts.

9. The scrutiny of record also confirms that there is ample evidence by the complainant to confirm that the defamatory statement is certainly referring him and he has to face the members of the family and members from the society after such publication as a person with loose character, though he has never molested the girl as alleged in such publication.

10. It has also come on record that after such publication on 3.7.2015, the complainant has met the accused and tried to get the picture clear that no such defamatory statement should be published but instead of publishing the regret, the accused has demanded Rs. 25,000/- for not publishing the similar news again. This is nothing but a misuse of a position by the accused as an owner and publisher of the Weekly newspaper and in absence of evidence in rebuttal, there is no reason or scope to modify findings of facts by trial Court which are confirmed by appellate Court.

11. As against that, it is submitted by the accused before this Court that the trial Court has not properly appreciated the evidence, inasmuch as, the witnesses examined by the complainant are his relatives and, therefore, they are to be treated as independent witnesses and that there is no reason to believe that published article is with regard to the complainant only.

12. As discussed hereinabove, there is no question of mis-identity since there was only one teacher with the surname Agrawal in Sardar Patel High School, Deesa. Thereby, when the complainant is the only Agrawal teacher in Sardar Patel High School, there is no scope of extending such benefit in favour of the accused. Whereas, so far as witnesses are concerned, it is clear and obvious that defamation is resulted amongst known person only and, therefore, witness must be relative and known person only. There cannot be any unknown person to realize that who is Agrawal but when published article is referring position also, it is obvious that because of such defamatory statement, the reputation of the complainant would certainly hamper and, therefore, there is no substance in such plea also.

13. It is also contended that prosecution has not examined any parents or trustees of the School or any colleague of the complainant. However, the quality of evidence is material for establishing certain facts and not the quantity of evidence. It is also to be realized that calling upon the parents or teacher of principal of the School would result into more defamation of the complainant

and, therefore, non-examination of any such person cannot confirm the acquittal in favour of the accused.

14. The jurisdiction of the Court in such revision petitions is limited by the statute itself, thereby prima-facie, the Court has to look into the issue regarding irregularity or illegality, if any, committed by the trial Court while passing the impugned judgment and whether the impugned judgment has ultimately resulted into miscarriage of justice or absolute injustice to either of the litigants. Therefore, this being the first revision against the order of acquittal, though this Court is empowered to re-appreciate the evidence, to examine that whether appreciation of evidence by the trial Judge has resulted into miscarriage of justice or not, it is settled legal position that such re-appreciation of evidence has to be done with limited jurisdiction and authority so as to verify the irregularity and illegality only and evidence cannot be reappreciated or dealt with, only because of different opinion of the Appellate Court.

15. If we peruse the entire evidence in its totality and if we consider the appreciation of such evidence, though there may be difference of opinion, if we re-appreciate the evidence, it is crystal clear that one cannot come to the conclusion that there is any irregularity or illegality and that the learned trial Judge has failed to consider such evidence as cogent and reliable evidence against the present respondents for confirming their guilt. To that extent, there is no reason to disapprove the appreciation of such evidence so as to interfere the decision.

16. It is further contended by the accused - appellant that he should be given benefit under the Probation of Offenders Act, whereas, trial Court has failed to extend even benefit of probation. For the purpose, accused - appellant is relying upon the decisions of Hon''ble Supreme Court reported in Jagdish Prasad Vs. State of Delhi and Another, and 1992 SC 988 in the case between N.M. Parthasarathy v. State.

17. However, considering the facts and circumstances emerging from record, when petitioner has failed to seek benefit of probation and when the matter has been pending for last one decade and when incident is of 1995, I do not see any reason to keep such Revision pending for the report of the Probation Officer. Therefore, when there is no substance in the Revision and when there is no irregularity or illegality in the impugned judgment, there is no reason to interfere in the order of conviction.

18. However, considering the age of the accused, period for which this matter has remained pending for adjudication, a nature of offence and nature of sentence awarded by the trial Court being simple imprisonment for one month only, it seems that irrespective of confirmation of conviction, the award of sentence can be modified suitably so as to meet the end of justice. It is clear and obvious that though Publication under consideration is minor commission of an offence under I.P.C. and though sometimes damage to reputation is more serious

than physical personal injury, when both the lower Courts have not awarded any compensation to the complainant though the act in question is also a tortuous act, it would be appropriate to modify the order of sentence by awarding compensation to the complainant from the accused by enhancing the amount of penalty. At the same time, for the same reason, it would be improper to ask the accused now to undergo the imprisonment at this age and that too only for 30 days, which would otherwise hamper his life at old age. It seems that there is sufficient material on record to appreciate and determine the amount of compensation that may be awarded to the complainant. Considering the over all facts and circumstances, it would be appropriate to quantify such amount as Rs. 50,000/- (Rupees fifty thousand only).

19. In view of above facts and circumstances and discussion, this Revision Application is partly allowed. Thereby, order of conviction of the petitioner by both the impugned judgment is confirmed and the order of sentence is modified to the effect that the order regarding simple imprisonment of one month is set aside, whereas, order of penalty is modified and, thereby, accused has to deposit an amount of Rs. 50,000/- (Rupees fifty thousand only) towards additional penalty in addition to Rs. 1,000/- within six weeks from the date of such judgment, before the trial Court. The trial Court shall disburse such amount in favour of the complainant against proper acknowledgment and in accordance with rule. If accused fails to deposit such amount of penalty within 45 days as aforesaid, the order of sentence by impugned judgment would stand revived. Thereby, trial Court shall issue warrant and shall execute the impugned judgment.

20. In view of above, this application is partly allowed and disposed of in aforesaid terms. Rule is made absolute accordingly.