

(2014) 08 KL CK 0165
In the High Court Of Kerala
Case No : Crl. M.C. No. 2369 of 2012

M.M. Chandrasekharan Namboodiri

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 499

Citation : (2014) 4 KLJ 268

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : Mahesh V. Ramakrishnan, Advocate for the Appellant; V.A. Satheesh, V.T. Madhavanunni, Advocates and Justin Jacob, Public Prosecutor, Advocate for the Respondent

Judgement

A. Hariprasad, J.—Petition filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.").

2. Accused in C.C. No. 27 of 2011 on the file of Judicial First Class Magistrate Court, Thaliparamba seeks quashment of Annexure-A1 complaint. Complainant is the 2nd respondent in this proceedings. Petitioner and the 2nd respondent are brothers. The averments in Annexure-A1 complaint would show that some observations in Annexure-A2 letter sent by the petitioner were highly objectionable to the complainant and he alleged that they are per se defamatory. The relevant portion is quoted hereunder:

"1965

BSc

Engg

Madras

Bsc-Bed

Rs.500/-"

3. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent/complainant.

4. Learned counsel for the petitioner submitted that a reading of Annexure-A2 in its entirety will show that the purport of the letter was to request the elder brother to settle family disputes. Per contra, learned counsel for the 2nd respondent submitted that indiscretion in choosing words and narrating past incidents in the letter in a false and figurative manner will make the letter defamatory. Section 499 IPC defines "defamation" in the following words:

"Defamation.-whoever, by words either spoken or intended to be read, or by signs or by visible representations, 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, except in the cases hereinafter expected, to defame that person.

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 near relatives.

Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

The Section is having four explanations and ten exceptions. The explanations amplify the scope of the Section whereas the exceptions take out certain things out of application of the Section. In order to constitute an offence of defamation, the essential ingredient is to make an imputation, concerning any person, with an intention to harm or with a knowledge or reason that such imputation will harm the reputation of such person. An imputation without an intention to harm or without knowing or having reason to believe that it will harm the reputation of such person will not constitute an offence of defamation. Learned Single Judge of this Court in *Mammen Mathew Vs. M.N. Radhakrishnan and Another*, has considered the essential ingredients required to constitute an offence of defamation.

The relevant portion reads as follows:

"The offence of defamation consists of three essential ingredients, namely,

- (1) making or publishing an imputation concerning a person,
- (2) such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations and
- (3) the said imputation must have been made with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned.

(Vide Sunilakhya Chowdhury Vs. H.M. Jadwet and Another, Thus, the mere publication of an imputation by itself may not constitute the offence of defamation unless such imputation has been made with the intention, knowledge or belief that such imputation will harm the reputation of the person concerned.

In this context, it is relevant to consider the scope of ninth exception to Section 499 IPC, which reads as follows:

"Imputation made in good faith by person for protection of his or other's interest. 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 circumstances under which the letter was issued is clear from the fact that the parties had locked horns in a civil suit as is evident from Annexure-A3. Learned counsel for the petitioner submitted that the complaint was filed as a counter blast to the civil suit. On a careful reading of Annexure-A2 letter, it is evident that there was dispute between the parties in relation to setting up boundary to the properties involved in the partition. Further, the petitioner wanted the property belonging to a temple to be protected. Therefore, according to the learned counsel for the petitioner, the imputation made was not with an intention to harm or diminish the reputation of the 2nd respondent, but only in good faith for the protection of the interest of the petitioner and other siblings.

5. Decision by a Single Bench of Karnataka High Court in S.P. Bobati and Others Vs. Mahadev Virupaxappa Latti, is pressed into service to contend a proposition that the word "imputation" implies allegation of fact and not merely term of abuse. The proposition of law in Jinabhai Chhibhabhai Patel and Others Vs. State of Gujarat and Another, pertains to a letter written by father-in-law in respect of a matrimonial dispute of his daughter and son-in-law, wherein the latter allegedly proclaimed to kill his wife. In that context, Gujarat High Court observed that the letter was intended to settle the family differences and a stray sentence cannot be culled out to find that it was intended to defame the recipient of the letter.

6. On going through the entire facts and circumstances, I am of the view that the insinuations in Annexure-A2 letter may be of bad taste, but are insufficient to fall within the definition of defamation under Section 499 IPC. There is no material available from Annexure-A1 complaint and Annexure-A2 letter to hold that the petitioner sent the letter containing certain imputations with an intention to harm

or with the knowledge that such imputation will harm the reputation of the 2nd respondent/complainant. Therefore, I am of the view that the prosecution is an abuse of the process of court.

In the result, the petition is allowed. Annexure-A1 complaint pending in C.C. No. 27 of 2011 on the file of Judicial First Class Magistrate Court, Thaliparamba is hereby quashed.

All pending interlocutory applications will stand dismissed.