

(1956) 12 MP CK 0051
In the Madhya Pradesh High Court
Case No : Criminal R. No. 66 of 1956

Parma Ghasiram Kachhi

APPELLANT

Vs

Khushilal Hemraj Kachhi

RESPONDENT

Date of Decision : 05-12-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1958) MPLJ 248

Hon'ble Judges : V.R. Nevaskar, J

Bench : Single Bench

Advocate : Homi Daji, for the Appellant; S.L. Garg, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Newaskar, J.

Accused Parma s/o Ghasiram Kachhi was prosecuted before the City Magistrate and the Additional District Magistrate Ujjain for an offence u/s 500, I.P.C. on the basis of a complaint lodged by one Khushilal Kachhi.

Complainant's case was that the accused had called a meeting of caste panchas and had therein expressed before them that the complainant had taken food with a Chamar. According to the complainant the imputation was bound to harm the complainant in the eyes of the members of the caste.

The defence taken by the accused at the trial was that he was not present before the Panchas at the material time and that he did not make any such imputation. This defence was found to be untrue.

The learned Magistrate who heard the case found that the accused had expressed before the members of the Panchas of Kachhi Community to which the parties belong that the complainant had taken food along with a Chamar. He further found that it had not been established that the imputation was made by the accused in good faith. According to the learned Magistrate the imputation

was per se defamatory. He therefore found the accused guilty and sentenced him to pay a fine of Rs. 25 and in default to undergo simple imprisonment for 25 days.

Against this decision a petition for revision was submitted in the Court of the Sessions and the learned Sessions Judge, Ujjain rejected the petition.

The present revision petition is filed on behalf of the accused against those decisions.

Mr. Homi Daji who appears for the Petitioner lays stress upon two points. Firstly he contended that accepting the prosecution version to be true all that the accused is said to have done is to prefer a complaint before the caste panchas regarding the objectionable conduct of the complainant. The caste Panchas heard the complaint and ultimately did not outcaste the complainant. On the other hand the evidence indicated that the Sar Panch had joined a complainant's marriage party. To a case such as this, according to the Learned Counsel, Exception Ninth to Section 499, I.P. C. applied.

It was secondly contended that the learned Magistrate while considering the guilt of the accused did not record a finding that the accused published an imputation concerning the complainant with the intention of causing harm to him or with the knowledge or belief that such harm would be caused. In the absence of such a finding the conviction would be illegal.

I do not think there is any force in either of these contentions.

Exception Eighth and Ninth to Section 499, I.P.C. are in the following terms:

Exception Eighth:

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Exception Ninth:

It is not defamation to make an imputation on the character of another provided that imputation be made in good faith for the protection of the interest of the person making it or of any other person, or for the public good.

Having regard to the words of these Exceptions and the circumstances of the present case as appearing on record I would be more inclined to hold that the accused can if at all take shelter under Exception Eighth rather than under Exception Ninth. But whether Exception Eighth or Exception Ninth applies the presence of good faith in making an accusation is a necessary pre-requisite for an effective defence in a charge of defamation. Nothing is said to have been done in good faith unless it is done with due care and caution. It was the accused who went voluntarily before the caste-panchas and made accusation regarding the conduct of the complainant. It was upto him to prove that what he did was

done in good faith. No evidence was adduced on behalf of the accused that he had acted as a reasonable and prudent man in making that accusation. He had not equipped himself with necessary information on proper grounds that the substance of the accusation was, to his belief, correct. On the other hand the evidence adduced on behalf of the prosecution indicates that there was absence of good faith. This appears from the evidence of Bajji who is the Sar Panch and the other witness Matadeen. Both these witnesses state that after the accused had expressed the accusation before the Panchas the Panchas had called upon him to give proof of the truth of the allegation that he left the Panchayat and did not return. In this state of evidence the finding recorded by the lower Court that it had not been established that the imputation had been made by the accused in good faith cannot be said to be erroneous. I am also inclined to agree with the learned Magistrate that the imputation was per se defamatory.

In view of this it is difficult to say that there is anything wrong in the decision of the lower Court.

In a case reported in 76 Indian Cases 393 (Baga Mahar v. Emperor), which is a case similar to the present case it is held that if a person at a meeting of a Panchayat of the caste makes a defamatory statement he will be entitled to be protected by Exception Seventh, Eighth and Ninth of Section 499, I.P.C. if the accused proves that the statement was made by him in good faith, that is to say, that the imputation was true or that he had reasonable cause to believe it to be true and that there can be no good faith when the accused can have no reasonable ground to believe the truth of that statement. This view is fully in line with the principle discussed above.

I am therefore of the opinion that there is no force in this revision petition. It is accordingly dismissed.