
(2013) 07 MP CK 0283
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 2645 of 2009

Purshotam Das Agrawal

APPELLANT

Vs

Ashutosh

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Penal Code, 1860 (IPC) — Section 500, 501

Citation : (2013) 07 MP CK 0283

Hon'ble Judges : D.K. Paliwal, J

Bench : Single Bench

Advocate : R.K. Soni, for the Appellant; H.K. Shukla, for the Respondent

Final Decision : Disposed Off

Judgement

D.K. Paliwal, J.—Heard. This petition has been filed u/s 482 of Cr.P.C. for quashing of the order dated 30.01.2009, passed by ACJM, Gwalior in Criminal Case No. 9551/2006 and order dated 22.12.2008, passed by Sessions, Judge, Gwalior in Criminal Revision No. 453/2008, whereby prayer of the petitioner for summoning the record in regard to public notice published in Danik Bhaskar newspaper has been rejected.

2. Brief facts giving rise to this petition are that the petitioner has filed the complaint u/s 501 of IPC against the respondent alleging that he is a reputed person and respondent has got published fake notice on 24.06.2002 in daily news paper Danik Bhaskar that the petitioner has taken loan of Rs. 4 Lacs from him and petitioner has filed a case so that amount of Rs. 4 Lacs could not be refunded. In fact petitioner has not taken any loan from the respondent. Thus, due to publication of fake public notice in the newspaper, the reputation of the petitioner has been tarnished.

3. Upon inquiry, the complaint was registered and evidence was led. After recording of the statement of the petitioner, the statement of respondent u/s 313

of Cr.P.C. has been recorded on 06.11.2008, in which respondent has stated that public notice has not been got published by him. On this, petitioner has sent a notice to Danik Bhaskar newspaper for supplying the information at whose instance public notice was published against the petitioner, but requisite information has not been supplied by the Office of Danik Bhaskar newspaper. Thereafter petitioner has filed an application before the learned trial Court praying that information concerning the public notice be summoned from the Office of Danik Bhaskar.

4. Learned trial Court has rejected this prayer holding that the case is pending since 2002 and burden to prove this fact is on the shoulder of the complainant and at this stage, this prayer cannot be allowed. Being aggrieved with the same, petitioner has preferred revision petition before the Sessions Judge, Gwalior, which has also been dismissed, thereafter, this petition has been filed.

5. It is submitted by the learned counsel for the petitioner that the respondent is being tried for the offence u/s 500 of IPC. During the evidence, respondent never stated that he has not got published any public notice in the daily newspaper. For the first time on 06.11.2008 this fact was brought before the Court. The petitioner immediately has filed an application, which has wrongly been rejected. Learned Sessions Judge has also committed illegality in dismissing the revision petition preferred by the petitioner solely on the ground that the petitioner has filed an application after an inordinate delay. The order passed by the learned trial Court without considering that required documents are essential for the just decision of the case, is illegal therefore, order passed by the Court below be set aside.

6. Learned counsel for the respondent supported the order.

7. I have considered the submission of the learned counsel for the parties.

8. Respondent is being tried for the offence u/s 500 of IPC upon the complaint filed by the petitioner alleging that fake public notice was got published in the daily newspaper by the respondent causing severe loss to the reputation of the petitioner. As per the petitioner, during statement of the accused, question put to him that he alongwith his father got published the public notice in the daily newspaper that Purshotam Das has taken a loan of Rs. 4 Lacs and he has not paid the same the respondent has denied this fact. It is pertinent to mention here that respondent, when particulars of the offence was read over to him that he has got published the public notice in the daily newspaper of Danik Bhaskar that petitioner has taken a loan of Rs. 4 Lacs with the intention to defame him, denied the allegation, thus the submission of the learned counsel for the petitioner that for the first time the respondent pleaded ignorance regarding the publication of public notice in the newspaper is devoid of merits.

9. Looking to the allegation made in the complaint by the petitioner, it was necessary for the complainant to summon documents on the basis of which public notice was published in the newspaper, but no such prayer has ever been

made till the case is fixed for final argument.

10. Learned counsel for the petitioner has referred the judgment reported in Mohanlal Shamji Soni Vs. Union of India and another, and submitted that the document is essential for the just decision of the case, hence permission has to be given. The fact of the present case are distinguishable with the afore-cited case because in the present case as noticed earlier petitioner has not made this prayer during the course of his evidence, moreover petitioner remain silent till the case is fixed for final argument. When the case was fixed for final argument the application was moved by the petitioner, which seems to be moved only to fill up the lacuna of the case, which cannot be permitted.

11. In view of the above discussion, this petition has no merits and deserves to be dismissed.

12. Consequently, petition is dismissed. Trial Court is directed to hear the final arguments and dispose of the case in accordance with law. With the aforesaid, petition is disposed of.