
(2012) 10 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 62 of 2010

Shri Narayan Ganesh Gadekar

APPELLANT

Vs

Smt. Parvati Sagun Gadekar

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2013) ALLMR(Cri) 1349 : (2013) BomCR(Cri) 162

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : Shivan Dessai, for the Appellant; J. Lobo, Advocate Under Legal Aid Scheme, for the Respondent

Judgement

A.P. Lavande, J.—Heard Mr. Shivan Dessai, learned Advocate for the appellant and Mr. J. Lobo, learned Advocate under Legal Aid Scheme for the respondent. By this appeal, the appellant challenges the judgment and order dated 5.2.2010 passed by the Judicial Magistrate, First Class, Pernem in Private Criminal Case No. 7/P/2007 acquitting the respondent of the offence punishable u/s 500 of I.P.C.

2. The appellant is the original complainant who filed the above Criminal case alleging the commission of the offence punishable u/s 500 of I.P.C., on the ground that on 9.3.2006 the respondent/accused had filed a false report at Pernem Police Station alleging attempt to rape by the complainant.

3. After verification, substance of accusation was explained to the accused and the accused claimed to be tried. The complainant examined himself as PW1 and examined Mr. Rajendra Kashalkar as PW2.

4. The statement of the accused u/s 313 of Cr.P.C. was recorded. The accused in answer to question nos. 2, 3 and 4 admitted that she had filed the false complaint alleging attempt to rape against the complainant and on account of

filing of the said complaint, the complainant was defamed and his reputation was harmed. The accused did not lead any evidence. Learned Magistrate recorded an order of acquittal, primarily on two grounds namely:-

(i) there was no publication of the complaint/report

(ii) there was no evidence led by the complainant that by filing the said report, the moral or intellectual character of the complainant was lowered in the estimation of others.

5. Mr. Dessai, learned counsel appearing for the complainant submitted that the findings recorded by the learned Magistrate are patently perverse and, as such, are liable to be interfered with. Learned Counsel further submitted that the complainant had clearly deposed that the accused had filed a false report at Pernem Police Station on 9.3.2006 alleging attempt to rape by the complainant and mere filing of the report at the police station is publication within the meaning of Section 499 of I.P.C. Learned Counsel further submitted that since the report was lodged at police station containing defamatory material, it was not even necessary for the appellant to prove that the same was brought to the notice of other people. Learned Counsel therefore, submitted that both the grounds on which learned Magistrate recorded an order of acquittal are unsustainable in law and findings being perverse, the impugned judgment and order of acquittal deserves to be quashed and set aside and the accused convicted u/s 500 of I.P.C. and appropriate sentence deserves to be imposed on her. In support of his submissions Mr. Dessai placed reliance upon following judgments:-

i. John Thomas Vs. Dr. K. Jagadeesan,

ii. S.K. Sundaram, (2000) supp 5 SCR 677

iii. Unreported Judgment passed by Single Judge of this Court in the case of Shri Sopullo Datta Naik Dessai Vs. Shri Yeshwant Govind Dessai and The State of Goa

6. Per contra, Mr. J. Lobo, learned Advocate appointed under Legal Aid Scheme on behalf of the respondent submitted that no fault can be found with the findings recorded by the learned Magistrate. Learned Counsel further submitted that according to the complainant himself the report was not written by the accused and it was written by her daughter. Learned Counsel further submitted that the accused is uneducated housewife who does not know English and therefore, this factor deserves to be taken into consideration while deciding the matter. Learned Counsel further submitted that it is evident from the proceedings before the learned Magistrate that the complainant had filed a complaint on 8.3.2006 against the husband of the accused with the Excise Department for running illegally liquor distillery in the property of which complainant claimed ownership. Learned Counsel therefore, submitted that no interference is warranted with the impugned judgment and order. He further submitted that in case this Court is inclined to set aside the order of acquittal and convict the

accused, a lenient view be taken against the accused considering the facts and circumstances in which the accused lodged the report which is defamatory.

7. I have carefully considered the rival submissions, perused the record and the judgments relied upon by Mr. Dessai.

8. As stated above, the learned Magistrate has recorded an order of acquittal primarily on the two grounds mentioned in paragraph five above.

9. In my view, both the grounds on which learned Magistrate has acquitted the accused are absolutely untenable in law, having regard to the legal position.

10. Section 499 of I.P.C. provides that 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 excepted, to defame that person.

Explanation 4. reads thus:

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.

11. In the case of John Thomas (supra), the Apex Court while dealing with Sections 499 and 500 of I.P.C. held that the only effect of an imputation being per se defamatory is that it would relieve the complainant of the burden to establish that the publication of such imputations has lowered him in the estimation of the right thinking members of the public.

12. In my view, the ratio of the said judgment is squarely applicable in the present case. Once the complainant was successful in establishing that the accused had lodged the report dated 9.3.2006 at Pernem Police Station alleging commission of the attempt to rape against the accused, it was not necessary for the complainant to prove that the publication had lowered him in the estimation of members of the public.

13. In so far as the findings of the learned Magistrate that there was no publication in terms of Section 499 of I.P.C. is concerned, the same is absolutely untenable in law, inasmuch as lodging of the report at Pernem police station making allegation of attempt to rape would amount to publication within the meaning of Section 499 of I.P.C.

14. In the case of S.K. Sundaram (supra), the Apex Court considered the issue as to whether sending of telegram by a contemnor would amount to publication. The Apex Court held that sending of telegraphic message can be transmitted only after the sender gives the contents of the message to the telegraph office which

would invariably be manned by the staff of that office. The message after transmission reaches the destination office which also is manned by the members of the staff and thereafter the message would be despatched to the sender. The Apex Court answered the same in the affirmative.

15. In the present case, it is the case of the complainant that after the accused lodged report both the complainant and the accused were called at police station. There is absolutely no reason to disbelieve the version of the complainant that he was called at the police station. The version of the complainant that the accused herein was also called at the police station is corroborated by an endorsement made in the report Exh. 4 lodged by the accused at Pernem police station, "Call applicant immediately".

16. Moreover, the accused in her statement u/s 313 of Cr.P.C. has admitted that she had filed the false report at Pernem Police Station against the complainant that he had attempted to rape her. It is not the defence of the accused that the statement made by her in the report was true. Since the report lodged by the accused is per se defamatory, the defence of truth was available to the accused during the trial which was not taken before the Magistrate. On the contrary, the accused admitted that she had filed the false report/complaint. Hence, the offence punishable u/s 500 of I.P.C. is proved beyond reasonable doubt against the accused.

17. In view of the above discussion, I am of the considered opinion that the judgment and order of acquittal passed by the learned Magistrate in Private Criminal Case No. 7/P/2007, acquitting the respondent/accused for the offence punishable u/s 500 of I.P.C., deserves to be quashed and set aside and is hereby quashed and set aside and the accused is convicted for the offence punishable u/s 500 of I.P.C.

18. Coming to the sentence, the record discloses that the complainant herein had filed a complaint on 8.3.2006 before Excise Department against the husband of the accused that he was running illegally liquor distillery in the property of which complainant claimed ownership. The report containing defamatory material was filed by the accused on 9.3.2006 and the same was typed in English. In cross examination of the complainant, he admitted that the daughter of the accused had written the report dated 9.3.2006 and handed over the same to the accused. Hence, it is clear that the accused was used by her husband to settle the score with the complainant since the complainant had filed a complaint against him with the Excise Department on the earlier day. The accused is illiterate, uneducated house wife. Therefore, in my considered opinion, the interest of justice would be served by sentencing the accused to undergo Simple Imprisonment of one day i.e. till rising of the Court and to pay compensation of Rs. 5,000/- (Rupees five thousand only) and in default to undergo Simple Imprisonment for three months. The accused is sentenced accordingly.

19. The compensation shall be deposited by the accused in the Court of Judicial

Magistrate, First Class, Pernem within a period of four weeks. Upon deposit, the amount shall be paid to the complainant. In case the amount is not deposited within a period of four weeks, learned Magistrate shall take appropriate steps to take the accused in custody to serve in default sentence imposed on her. Learned Magistrate shall file compliance report within a period of eight weeks. The bail bond executed by the accused shall stand discharged only after compensation awarded is deposited in the Court of Judicial Magistrate, First Class, Pernem. The appeal stands disposed of in aforesaid terms.