

(2009) 08 PAT CK 0045

In the Patna High Court

Case No : Criminal Miscellaneous No. 49987 of 2007

Sumit Sen

APPELLANT

Vs

The State of Bihar and Bihar Industrial Area Development
Authority

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 109, 120B, 34, 500, 501
Press and Registration of Books Act, 1867 — Section 14

Citation : (2009) 08 PAT CK 0045

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Chakradhari Sharan Singh, for the Appellant; Jharkhandi Upadhaya, Assistant Public Prosecutor and Sharad Kumar Sinha, for Opp. Party No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Both these applications have been taken up together as the complainant in both the cases happen to be the same Bihar Industrial Area Development Authority (hereinafter referred to as "the BIADA") and the petitioners are offices of News daily, "Times of India" and the issues involved relates to publication of certain news items in the said News Daily in respect of the inaction of the Authority and having been heard together are being disposed of by this common order.

2. The petitioners of Cr. Misc. No. 49987 of 2007 are Resident Editor, Assistant Resident Editor and Reporter of the news paper, Times of India, along with others have been impleaded as accused in Complaint Case No. 1968(M) of 2007 and have prayed for the quashing of the entire prosecution arising out of the same case including the order dated 26.6.2007 passed therein by the learned Chief Judicial Magistrate, Patna, whereby he has taken cognizance of offences under Sections 500, 501, 502, 109 and 120B I.P.C. as also Section 14 of the Press and

Registration of Books Act, 1867 (hereinafter referred to as "the Act").

3. In Cr. Misc. No. 50002 of 2007, the petitioner is the Correspondent of the News Daily, Times of India, who has been arrayed as the sole accused in Complaint Case No. 1854 (M) of 2007 and he has prayed for the quashing of the order dated 18.6.2007 passed therein by the learned Chief Judicial Magistrate, Patna, whereby he has taken cognizance of offences under Sections 499 and 500 I.P.C. and Section 14 of the Press and Registration of Books Act, 1867.

4. The complainant in both cases is BIADA through its Assistant Development Officer, impleaded in both cases as Opp. Party No. 2 and their grievance in Cr. Misc. No. 49987 of 2007 is against the publication of a news items in the second page of News daily, "Times of India" dated 24.6.2007 under the heading "BIADA ACCUSED OF IGNORING SSIs" PROBLEMS", which in their view was not only false, misleading, mischievous, scandalous but also published with a common intention to defame /damage the reputation of the complainant and its officers.

5. The name of the Assistant Development Officer in complaint petition No. 1854 (N) of 2007 giving rise to Cr. Misc. No. 50002 of 2007 has not been disclosed but the grievance of the complainant is against the publication of a news item in the third page of the News Paper dated 13.6.2007, which in the opinion of the complainant were defamatory, scandalous and mala fide statements made with regard to the complainant.

6. According to the complainant, the two news items referred to above were scandalous and defamatory statements designed in such a manner that the sole aim thereof was to defame the complainant authority and tarnish its image in the estimation of the public at large in order to cause wrongful loss to the complainant at social as well as at government level.

7. The alleged defamatory news items published in the News daily dated 24.6.2007 is as follows:

BIADA accused of ignoring SSIs" problems

(i) "Patna Industrial Area and Estate Association on Friday alleged that BIADA's Managing Director and Secretary never bothered to visit the Patliputra Industrial Area during the past 10 years to encourage the entrepreneurs for economic development of the State.

(ii) Association President Balraj Kappor, said the BIADA never listened to the problems faced by the SSIs despite regular communications of the association to it about the factors affection the industries.

(iii) BIADA had not provided roads in the Industrial area which were developed by the entrepreneurs themselves and the latter had ever to fill the low lying paddy crop land which was provided to them, Kapoor said. The SSIs had to pay to the then Patna Electric Supply Company (now called PESU) the cost of the electric poles and wires to supply power to the Industrial Area.

(iv) Despite several reports sent to the BIADA regarding incidents of loot, extortion, kidnapping and theft in the industrial area, the former did not take any action, Kapoor said.

(v) BIADA being the representative of the SSIs never took up their cases for preferential treatment in government purchase of products of the SSIs.

(vi) BIADA also never ensured adequate supply of power to these units in the Industrial area even as the erratic power supply was telling on their health, Kapoor added. Drainage problem in the industrial area remained acute with BIADA doing nothing to provide efficient and clean drains in the industrial area he added.

(vii) BIADA's recent move to convert into plots and its claim that this had generated to it Rs. 7 Crores indicated its negative approach towards the SSIs, Kapoor said.

(viii) Most of the SSIs had applied to the BIADA for change in the product, addition of new product and for sanction of change of shed and structure and capacity assessment, But BIADA did not reply to the letters of the association and the affected SSIs etc.

8. The alleged news items published in the Newspaper dated 13.6.2007 is as follows:

(i) BIADA issued a notification for auction of plots and sheds of 69 Small Scale Industrial (SSI) units in Pataliputra Industrial Area. This has resulted in most of the 69 affected entrepreneurs taking up the cudgels against the BIADA.

(ii) The BIADA had stated that entrepreneurs seeking allotment of plots and sheds could even set up schools, hospitals and recreation facilities. And, it is this particular clause that has made the affected entrepreneurs doubtful of the BIADA intentions.

(iii) The Bihar Industries Association (BIA) - While highlighting the loopholes in the notification-emphasized that most of the industries put on auction are sick and needed rehabilitation.

(iv) BIA President KPS Keshri told TOI that on the intervention of the industries development Commissioner the BIADA constituted a committee to assess which of the 69 SSI could be rehabilitated. Etc.

(v) It further published that the plots and sheds were handed over to the SSIs on a 99 years lease and the BIADA Act does not provide for their auction.

9. It has been submitted on behalf of the petitioners of Cr. Misc. No. 49987 of 2007 that there is no dispute about the publication of the news items on 24.6.2007 but what has been published in the said news items is grievance made by the representatives of entrepreneurs having their Small Scale Industries and the petitioners as Editor, Resident Editor as also the Reporter have not offered

any comment of their own on the grievances made by the representatives. It was further submitted that it would be clear from reading of the news items, which is Annexure-1 to the application that the said grievance was of none other than Sri Balraj Kapoor who has been impleaded as accused No. 1 in the complaint case, the President of Patna Industrial Area and Estate Association. It was further submitted that in the whole of the complaint petition, there is no assertion by the complainant that Sri Kapoor had not made any such statement or statements and the statements given by him have been twisted or tampered by the newspaper with an intention to defame the complainant. It was further submitted that what is worth noting is that the learned Chief Judicial Magistrate displayed unusual haste in taking cognizance of the offences exactly as alleged in the complaint petition on the very date that it was filed. It was further submitted that no case of defamation appears to have been made out so far as the petitioners are concerned and the publication was nothing but publication in good faith of statement of Balraj Kapoor issued through Press release. It was also submitted that the newspaper is given to publishing views expressed by all and it cannot be disputed that Press releases of BIADA are not being given proper coverage in the newspaper.

10. So far as Cr. Misc. No. 50002 of 2007 is concerned, a grievance has been raised against the haste with which the learned Chief Judicial Magistrate took cognizance in the case on the very date of its filing and that, too, without holding an enquiry and without even examining the complainant on S.A. with regard to the veracity of the allegations made in the complaint petition. It has also been submitted that the news items published in the Newspaper which appears to have offended the complainant was never sought to be contradicted by the complainant at any point of time nor any request was made for issuance of a corrigendum/contradiction or clarification from the complainant. It was also submitted that the complainant being a public body and its action are open to criticism. It was also submitted that the complainant has not revealed in the whole of the complaint petition as to what particular fact published in the news items was factually incorrect. Countering the allegations made in paragraph 15 of the complaint petition it was submitted that Mr. K.P.S. Keshri, the President of Bihar Industries Association, one of the members of the Board of Directors of BIADA has at no point of time denied of having talked to the Press and that, too, in the terms, as has been reported in the news items in question. It has also been submitted that from the allegations made in the complaint petition, no offence either u/s 499 or 500 I.P.C. is made out as the ingredients thereof are missing. Similarly, it was submitted that no offence u/s 14 of the Act can be said to have been made out against the petitioners since the Section does not deal with the publication of news items.

11. Learned Counsel for Opp. Party No. 2 has appeared and has sought to advance oral submissions to justify the action of the learned Magistrate taking cognizance in both cases. The submissions advanced by the learned Counsel for Opp. Party No. 2 are not supported by any pleadings since no counter affidavit or

show cause in pursuance of the notice issued to him appears to have been filed.

12. The liability of publication of an offence and defamatory news item can be fastened on the Board of Directors only if there is some evidence to show that they had such prior knowledge or that they somehow were concerned with the publication of the defamatory news items. There is no presumption that the Chairman or the Managing Director or even the Director of the Company that owns the Newspaper is responsible for the selection of the matter that is published.

13. So far as Cr. Misc. No. 50002 of 2007 is concerned, cognizance appears to have been taken under Sections 499 and 500 I.P.C. as also Section 14 of the Act. Unfortunately, Section 14 of the Act does not deal with the publication of news items and merely refers to declaration or other statements made under the authority of the Act.

14. Similarly, Section 499 I.P.C. relates to defamation. It does not define the word "defamation" but only provides what is and what is not defamation. Section 500 I.P.C. provides for the punishment thereof. It is not clear as to under what part of Section 499 I.P.C. the allegation against the petitioner would fall. It appears from perusal of the impugned order that the learned Chief Judicial Magistrate that on receipt of the complaint petition on 26.6.2007 he took cognizance immediately and transferred the case to the file of the Sub Divisional Judicial Magistrate for disposal. It would, thus, appear that no enquiry whatsoever, as contemplated under Chapter XV Cr.P.C. was resorted to by the learned Chief Judicial Magistrate before taking cognizance, more so when the case does not fall within the ambit of Clause (a) to the proviso of Section 200 Cr.P.C.

15. Similar would be the situation in respect of Cr. Misc. No. 49987 of 2007 so far as this aspect of the matter is concerned.

16. In Cr. Misc. No. 49987 of 2007, cognizance has also been taken under Sections 501, 502, 109, 120B/34 I.P.C. Apart from the submissions advanced by the learned Counsel for the petitioners, which have a great bearing on the matter in issue, for an offence u/s 501 I.P.C. and relates to the person who prints or engrave the defamatory matter. The complaint does not disclose that any of the petitioners herein were either the publisher or printer of the Newspaper which carried the allegedly defamatory matter. Petitioner Nos. 1 and 2, Resident Editor and Assistant Resident Editor, and petitioner No. 3, the Reporter, cannot be said to be printer or publisher of the newspaper. Similarly, Section 502 would also not apply to the petitioners since it was beyond their knowledge when the newspapers went out for sale that the printed matter was a defamatory.

17. Due regard being had to the facts and circumstances of the case, I am of the opinion that the prosecution of the petitioners of both cases are abuse of the process of the court and the complainant a Government Authority is wasting public money and time in indulging in frivolous litigation. Accordingly, the entire

criminal proceeding and the impugned order so far as petitioners of Cr. Misc. No. 49987 of 2007 is concerned is hereby quashed. Similarly, the impugned order in Cr. Misc. No. 50002 of 2007 is also quashed.

18. Both the applications are accordingly allowed.