
(2016) 10 BOM CK 0116

In the Bombay High Court

Case No : Criminal Application No. 6753 of 2015

Sushila Mahadeo Chaudhari

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-10-2016

Acts Referred:

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

Citation : (2017) 2 AIRBomRCri 10 : (2017) ALLMRCri 864

Hon'ble Judges : V.K. Jadhav, J.

Bench : Single Bench

Advocate : Mr. M.G. Kolse Patil, Advocate, for the Applicant; Mr. A.R. Kale, APP, for the Respondent No.1; Mr. B.T. Bodkhe and S.N. Gaikwad, Advocates, for the Respondent No.2

Final Decision : Allowed

Judgement

V.K. Jadhav, J.— Heard finally with the consent of the parties, at admission stage.

2. Being aggrieved by the order passed by the Judicial Magistrate First Class, Court No.5, Ahmednagar in STC No.1641/2012 dated 28.9.2012 whereby the learned Magistrate issued the process against the present applicant for having committed an offence punishable under section 500 of the Indian Penal Code and the judgment and order dated 30.6.2015 passed by the Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.187/2013 confirming the said order passed by the Magistrate, the petitioner-original accused preferred this criminal application.

3. Brief facts, giving rise to the present criminal application, are as follows :

The applicant had filed a private complaint before the Judicial Magistrate First Class, Ahmednagar bearing STCC No.34/2009 against respondent No.2 and two others for having committed an offence punishable under section 323, 504 read with section 34 of the Indian Penal Code. The learned Judicial Magistrate First

Class, Court No.5, Ahmednagar by the Judgment and order dated 21.12.2011 acquitted all the accused including present respondent no.2 for the offences punishable under sections 323, 504, 506 read with section 34 of the Indian Penal Code. Respondent No.2, has, therefore, filed private complaint before the Chief Judicial Magistrate, Ahmednagar against the present applicant for having committed an offence punishable under section 500 of the Indian Penal code. It has alleged in the complaint that the present petitioner has filed said case bearing STC No.34/2009 with false allegations and could not substantiate said allegations before the Court and thus thereby defamed the present respondent no.2. The learned Judicial Magistrate First class, Court No.5, Ahmednagar by order dated 28.9.2012 issued process against present petitioner for the offence punishable under section 500 of the Indian Penal Code. Being aggrieved by the same, the present applicant approached the Sessions Court, Ahmednagar, by filing criminal revision application No.187/2013. The learned Additional Sessions Judge, Ahmednagar, by its impugned judgment and order dated 30.06.2015 in Criminal Revision No.187/2013 dismissed the revision petition and thereby confirmed the order passed by the Magistrate. Hence, this Criminal application.

4. The learned counsel for the applicant submits that, the applicant is entitled to an absolute privilege in respect of the allegations made in the complaint before the Court as well as the statements made before the court during the course of the trial of the said case. The learned counsel for the petitioner, in the alternate, submits that, the allegations made in the said complaint filed by the petitioner were in good faith and for the protection of her interest and in view of Exception 9 to Section 499 of the Code of Criminal Procedure, no charge for defamation could lie against her. Learned counsel submits that, the present applicant lodged complaint in the police station in respect of the incident dated 14.11.2008 in Tofkhana Police Station, Ahmednagar on 15.11.2008. Since no cognizance was taken by the police, the petitioner had approached the Court and on 19.12.2008 filed private complaint before the Judicial magistrate First Class, Ahmednagar, bearing STC No.34 of 2009. Even though, both the dates are considered as the date of filing of the complaint as 19.12.2008 or the date of institution of the prosecution, the complaint filed by respondent No.2 against the applicant is barred by the provisions of section 468 of the Code of Criminal Procedure. Learned counsel submits that, complainant has not filed any application for condonation of delay. Learned Magistrate has committed grave mistake in taking cognizance of such time barred complaint and further issuing process against the accused for having committed an offence punishable under section 500 of the Indian Penal Code.

5. The learned counsel for the applicant in order to substantiate his contention on the point of limitation places his reliance on the following cases :

i. Surinder Mohan Vikal v. Ascharj Lal Chopra reported in AIR 1978 Supreme Court 986.

ii. Rajkumar Agrawal and another v. State of Maharashtra and another reported

in 2005 (4) Mh.L.J. 897.

iii. Mahendra S/o Shankarrao Godbole v. Prabhakar Hariram Gulhane and another reported in [2004 (4) Mh.L.J. 1068].

iv. Sarah Mathew and others v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others reported in 2014 (1) Bom C.R. (Cri) 451.

6. The learned counsel for the petitioner has fairly conceded that, the petitioner is not entitled to claim an absolute privilege in respect of the allegations made in the complaint filed before the Court and, if, such allegations made in the complaint amounts to a defamatory statement, or otherwise, falls within section 499 of Indian Penal Code and is not absolutely privileged.

7. Learned counsel for the applicant places before this Court following two cases decided by the Privy Council in case of

I. Isuri Prasad Singh v. Umrao Singh reported in ILR (ALL) 1900 (22) 234.

ii. Bai Shanta v. Umrao Amir Malek LAWS (PVC) 1925 (10) 18.

8. In Bai Shanta v. Umrao (supra), a case decided by the Full Bench of Calcutta High Court, is referred. It was held by the Full Bench of the Calcutta High Court "that a defamatory statement, on oath or otherwise, by a party to a judicial proceeding falls within Section 499 of the Indian Penal Code, and is not absolutely privileged.

9. The learned counsel for respondent no. 2 original complainant submits that, the present applicant has made baseless allegations in the complaint bearing STC No.34/2009. The petitioner has utterly failed to substantiate the allegations made in the complaint. Thus, the learned Magistrate has acquitted all accused including respondent No.2 for having committed an offence punishable under section 323, 504 of the Indian Penal Code. Thus, the allegations made in the said complaint amounts to defamation and learned Magistrate has, therefore, rightly issued the process against the applicant and the learned Additional Sessions Judge, Ahmednagar has also confirmed the said order in Criminal Revision Application. Learned counsel submits that, if the petitioner is not entitled to claim any absolute privilege in respect of the allegations made in the complaint filed by her, then, prima facie case is made out for issuance of the process against the petitioner for having committed an offence punishable under section 500 of the Indian Penal Code. Learned counsel submits that, the private complaint filed by the applicant which was registered as STC No.34/2009 before the Magistrate at Ahmednagar. Thus, present complaint filed by respondent no.2 on 5.6.2012 is well within the limitation. Learned Magistrate has therefore rightly taken the cognizance of the said complaint and accordingly issued process against the applicant-accused. No interference is required in the order passed by the Magistrate as well as the judgment and order passed by the learned Additional Sessions Judge thereby confirming the order passed by the Magistrate.

10. Learned counsel for respondent no.2, in order to substantiate his contentions places his reliance on following judgments :

I. Prafulla Hedge v. Mrs. Vineeta Vaze reported in 2014 ALL MR (Cri) 2886.

II. Narayan Ganesh Gadekar v. Smt. Parvati Sagun Gadekar reported in 2013 ALL MR (Cri) 1349.

11. In a case Satish Chandra Chakravarti v. Ram Doyal De reported in AIR 1921 Calcutta 1, it was held by the Full Bench of Calcutta High Court that, if a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of Section 499 of the Indian Penal Code. The question must be solved by the application of the provisions of the Indian Penal Code and not otherwise. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in Section 499 of the Indian Penal Code.

12. In a case of Bai Shanta v. Umrao Amir Malek (supra), by referring the Full Bench Judgment of Calcutta High Court in a case of Satish Chandra Chakravarti v. Ram Doyal De (supra) held that, relevant statements made by a witness on oath or solemn affirmation in judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by Section 499 of the Indian Penal Code. It is thus well settled that, a person giving evidence in a Court of law is not entitled to an absolute privilege in respect of statements which he makes and is consequently not immune from a complaint of defamation by reason of words uttered on oath in the witness box. It is also well settled that, if a statement is made by the accused in good faith for the protection of his own interest no charge for defamation could lie. Thus, considering the same, it is clear that the applicant is not entitled to claim immunity from prosecution for alleged defamatory statement contained in the complaint. Learned counsel for the applicant has also conceded the same.

13. On careful perusal of the Judgment and order passed by the Judicial Magistrate First Class, Court No.5, Ahmednagar on 21.12.2011 in STC No.34/2009, it appears that in paragraph No.8 of the Judgment, the learned Judge has observed that there is no corroborative evidence to support the testimony of complainant Sushila (present applicant). The learned Judge has further observed that, that in a criminal case prosecution has to prove the criminal case beyond reasonable doubt and in the present case corroborative evidence is lacking. The learned Judge has further observed that there is no medical evidence on record to prove the injuries of complainant. Considering the rivalry between the parties, the sole testimony of the complainant cannot be relied upon. The learned Judge considering all the aforesaid aspects thought it fit to extend benefit of doubt to the accused as complainant failed to establish the guilt of the accused beyond reasonable doubt. It is thus, clear that the learned Judge in the aforesaid Judgment has not observed anywhere that the allegations

made in the complaint are utterly false to the knowledge of the complainant therein. In view of this, Nineth Exception to section 499 of the Indian Penal Code stands attracted in this case. Nineth Exception reads as under :

"Nineth Exception :

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 interest of the person making it, or of any other person, or for the public good."

14. On the basis of the aforesaid observations made by the learned Judge in the STC No.34/2009 and since the applicant has made allegations in the said complaint in order to protect her own interest in good faith, I do not think that charge for defamation could lie against her.

15. In a case of Sarah Mathew and others v. Institute of Cardio Vascular Diseases by its Director Dr. K.M. Cherian and others (supra) Five Judge Bench of the Supreme Court has examined correctness of the view taken in Krishna Pillai's case and considered the following two questions :

a. Whether for the purposes of computing the period of limitation under section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence ? And

b. Which of the two cases i.e. Krishna Pillai or Bharat Kale (which is followed in Jani Sahoo) lays down the correct law ?

In paragraph No.11 of the Judgment, the Supreme Court has made following observations :

"11. In Bharat Kale, the offence under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was detected on 5/3/1999. The complaint was filed on 3/3/2000 which was within the period of limitation of one year. However, the Magistrate took cognizance on 25/3/2000 i.e. beyond the period of one year. It was argued that since cognizance was taken beyond the period of one year, the bar of limitation applies. After considering the provisions of Chapter XXXVI of the Cr.P.C. this Court observed that they indicate that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It, of course, prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This Court further observed that taking cognizance is an act of the court over which the prosecuting agency or the complainant has no control. A complaint filed within the period of limitation cannot be made infructuous by an act of the court which will cause prejudice to the complainant. Such a construction will be against the maxim "actus curiae neminem gravabit", which means the act of court shall prejudice no man. It was also observed relying on Rashmi Kumar (Smt.) that the legislature could not have intended to put a period of limitation on the act of the

court for taking cognizance of an offence so as to defeat the case of the complainant."

16. In the instant case, though the Magistrate has taken cognizance of the complaint filed by the present applicant in the year 2009 and accordingly STC No.34/2009 came to be registered before the Magistrate, said complaint was filed before the Magistrate on 19.12.2008. Even, prior to that, on 15.11.2008 the petitioner had filed a complaint in Tofkhana Police Station, Ahmednagar for the same incident alleged to have taken place on 14.11.2008.

17. In view of the authoritative pronouncement of the Supreme Court in the aforesaid case, the complaint filed by the respondent No.2 before the Magistrate dated 5.6.2012 is beyond the period of limitation of three years as prescribed under section 468 of the Code of Criminal Procedure. The learned Magistrate has therefore committed an error of law in taking cognizance of the said complaint and further issuing process against the applicant for having committed an offence punishable under section 500 of the Indian Penal Code. The learned Additional Sessions Judge has also not applied his mind and confirmed the said order passed by the Magistrate. Thus, both the impugned orders are liable to be quashed and set aside. Hence, order.

ORDER

I. Criminal Application is allowed in terms of prayer clause "B".

II. Criminal Application accordingly disposed of.