
(2015) 02 DEL CK 0327
In the Delhi High Court
Case No : Criminal Rev. P. 16/2008

Tata Motors Ltd.

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 203, 251, 482
Penal Code, 1860 (IPC) — Section 25, 34, 499, 500, 501

Citation : (2015) 02 DEL CK 0327

Hon'ble Judges : P.S. Teji, J.

Bench : Single Bench

Advocate : Sandeep Kapur and Apporva Pandey, for the Appellant; P.K. Mishra, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.S. Teji, J.—Aggrieved by the order dated 09.10.2007 passed by the learned Metropolitan Magistrate dismissing the Criminal Complaint No.911/1/07 under Section 499, 500, 501 and 502 read with Section 34 and 25 IPC filed by the complainant/petitioner, the present revision petition has been filed by the complainant/petitioner (hereinafter referred to as the petitioner).

2. Factual matrix, as emerges from the record, is that the petitioner was aggrieved by publication of an article titled: "People's Car or "Blood Car"? Is Ratan Tata bent on destroying the JRD legacy Shame in Singur, TSI Exposes and Documents the Disgrace published in the periodical "The Sunday Indian" Vol.I Issue 18, 5th to 11th February, 2007. The criminal complaint for offences under Section 499, 500, 501 and 502 read with Section 34 and 25 IPC was filed against Arindam Chaudhuri, Editor-in-Chief; Malay Chaudhuri, Chief Consulting Editor; A. Sandeep, Editor; Sutanu Guru, Managing Editor; Abhimanyu Ghosh, Chief Executive Officer and Ashok Bose, Publisher and Printer. It was alleged that the article was defamatory and lowered the esteem of the petitioner and its management. The petitioner set out various imputations in the said article which

according to them attract the aforementioned offences under the Indian Penal Code.

3. The petitioner produced four witnesses during pre-summoning evidence. The learned MM dismissed the complaint vide order dated 09.10.2007 while observing as under:

"The intention of the writer does not seem to defame the complainant and to harm the reputation of the complainant. No malice can be made out from the article. The words "Blood car" and "War Zone" only seems to be "exaggeration" in the circumstances which does not mean that the comment is unfair specifically when it seems to be made in good faith and for protection of public interest. In the circumstances no cognizance can be taken of the offences on the basis of the allegations, as no prima facie case is made out. The complaint accordingly stands dismissed."

4. Mr. Sidharth Luthra, learned Senior counsel for the petitioner has argued that the article published in the magazine of the respondent nos.2 to 7 was per se defamatory. Several imputations made in the magazine which were false and malicious just to incite the people to indulge in the activity portrayed in the picture. The imputations included the cover page of the magazine apart from "It (Singur) looks like a war zone. You get the feeling that blood has been spilled here. And that more will be. This is the making of the dream car. It's more like the making of the blood car." and "Bye bye Tata: protestors blacken the gates of a Tata Motors Plant". There was no material to portray the petitioner as such in the magazine. The defence of the proposed accused can only be seen during evidence led at the time of trial and not prior to notice under Section 251 Cr.P.C.

5. In support of this contention, learned Senior Counsel has relied upon judgment in case of Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others, in which it was observed as under :

"In order to attract the Ninth Exception to Section 499 of the Indian Penal Code, the imputations must be shown to have been made (1) in good faith, and (2) for the protection of the interest of the person making it or of any other person or for the public good. "Good faith" is defined, in a negative fashion, by Section 52, Indian Penal Code as follows: "Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention". The insistence is upon the exercise of due care and attention. Recklessness and negligence are ruled out by the very nature of the definition. The standard of care and attention must depend on the circumstances of the individual case, the nature of the imputation, the need and the opportunity for verification, the situation and context in which the imputation was made, the position of the person making the imputation, and a variety of other factors. Good faith, therefore is a matter of evidence. It is a question of fact to be decided on the particular facts and circumstances of each case. So too the question whether an imputation was made for the public good. In fact the First Exception of Section 499, Indian Penal

Code expressly states "Whether or not it is for the public good is a question of fact". "Public good" like "good faith" is a matter of evidence and not conjecture."

6. Learned Senior Counsel for the petitioner further argued that power under Section 482 Cr.P.C. (Old) corresponding section 203 Cr.P.C. cannot be exercised where the plea of good faith or public good is taken.

7. In support of the above contention, he has relied upon judgment in case of M.A. Rumugam Vs. Kittu @ Krishnamoorthy, . The facts of the said case were that the complaint petition filed by the respondent-therein contained a statement that he was implicated allegedly on the basis of an information received by the appellant from some persons that they had damaged nine coconut trees by pouring acid mixed kerosene on the respondent's advice. The said allegation against the respondent was published in various newspapers. The Hon'ble Apex Court held that the allegations made in the said complaint petition made out a case for proceeding against the appellant under Section 500 of IPC as thereby imputation concerning the respondent had been intending to harm or knowing or having reason to believe that such imputation would harm his reputation. He has also referred to judgments in case of Jeffrey J. Diermeier and Another Vs. State of West Bengal and Another, ; Harbhajan Singh Vs. State of Punjab, and Chaman Lal vs. The State of Punjab 1979 (1) SCC 590.

8. Further argument advanced by the learned Senior counsel for the petitioner that under Section 203 Cr.P.C., scope of enquiry is to find out sufficient ground for proceeding with the matter and not to find out the ground for conviction.

9. In support of this contention, judgment in case of Balraj Khanna and Others Vs. Moti Ram, has been referred. In this judgment, it was observed that the object of the provisions of Section 202 Cr.P.C. is to enable the Magistrate to form an opinion as to whether process should be issued or not. At that stage what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant a conviction. Where a prima facie case has been made out, the committing Magistrate is bound to commit the accused for trial and the accused does not come into the picture at all till the process is issued. On similar point, judgments in case of State (Delhi Admn.) Vs. I.K. Nangia and Another, and Shivjee Singh Vs. Nagendra Tiwary and Others, have been referred.

10. The learned Senior counsel for the petitioner referred to the second last paragraph of the order under challenge which reads as under :

"I have gone through the present article. The alleged defamatory words are to be read in the context in which they are used. It is well settled that where some passages in a petition are alleged to be defamatory, the documents should be read as a whole, with a view to find out the main purport. Considering that the article had been written in good faith with an attempt to bring forth the charged atmosphere at Singur in consequence to the project of the complainant it seems to be more of a public view than of defamation. The article seems to me to be a

critical analysis of the situation at Singur and at some other places during agitations led by the protestors. The article mentions that as happened in "Kalinga" where 12 protestors were killed in police firing there was every possibility that situation in Singur was also heading towards similar circumstances. As mentioned further it is not in dispute that the state govt. has mobilized a police force which at times have resorted to violence and torture on the farmers. It further states that there were everyday clashes between different groups. In the end of the article the writer says that the Tatas must pay the commercial value of the land and the farmers be allowed to buy the land where ever they want and otherwise the Singur plant must be relocated, the sooner the better. The alleged defamatory words have been used in this context." He has submitted that in the present case, the learned Magistrate dealt with the matter considering that the act done by the respondents is covered in good faith which is the subject matter of defence to be established by the accused. He vehemently argued that in the present case there is no material on the record which point out or referred to the defence of the respondents "the act of alleged defamation done in good faith".

11. On the other hand, learned counsel for the respondent nos.2 to 7 has argued that the order of the Ld. Magistrate does not warrant any interference. The same is based upon after considering the complaint, pre-summoning evidence and alleged article. It was observed by the Ld. Magistrate that the article seems to be a critical analysis of the situation at Singur and some places during agitation led by the protestors.

12. Ld. counsel for the respondents has referred to judgment in case of S. Khushboo Vs. Kanniammal and Another, in which it was observed that it is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainant produce material that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as "decency and morality" among others, stress was laid on the need to tolerate unpopular views in the socio-cultural space.

13. It was further submitted that the contention of the petitioner that exceptions cannot be looked into or applied by the Magistrate at the stage of issuing summons and is a matter of trial, is untenable and contrary to the judgment in case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, .

14. In Vadilal Panchal's case (supra) , the facts of the case were that the respondent filed a complaint before the Presidency Magistrate. The Magistrate referred the complaint to the police for inquiry and report. After the receipt of police report, the Magistrate dismissed the complaint under Section 203 of

Cr.P.C. while accepting the fact that the gun shot was fired by the accused in self-defence. The High Court set aside the order of dismissal of the complaint and directed the Magistrate to issue process against the appellant and deal with the case in accordance with law. The Hon''ble Apex Court upheld the order of the Magistrate dismissing the complaint and set aside the order of High Court directing the Magistrate to proceed with the matter passed on the basis that the right of the plea of self defence could not have been taken into consideration while dismissing the complaint. The Hon''ble Apex Court held that the plea of self defence could have been taken into consideration by the Magistrate while dismissing the complaint under Section 203 Cr.P.C.

15. Further argument advanced by the learned counsel for the respondents is that the Hon''ble Apex Court was of the view that the learned Magistrate was justified to consider the plea of defence while dismissing the complaint. He relied upon judgments in case of *Jawaharlal Darda and Others Vs. Manoharrao Ganpatrao Kapsikar and Another*, ; *Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another*, ; *Vineet Jain Vs. NCT of Delhi and Others*, .

16. On the contrary, learned Senior Counsel for the petitioner argued that the ratio in the case of *Vadilal Panchal (supra)* is not applicable to the facts and circumstances of the case as in the case of *Vadilal Panchal (supra)* there was sufficient material before the Court in the shape of inquiry and other documents in which the police had conducted the inquiry and does not render any assistance in the present case, whereas no material was available on the record with the learned Magistrate to arrive such conclusion to the effect that the act done by the respondents was in "good faith".

17. To examine the rival contentions, this Court has meticulously gone through the judgment referred in case of *Vadilal Panchal (supra)*. The discussion made by the Hon''ble Apex Court shows that ample material was available with the learned Magistrate to reach to the conclusion that the act done by the accused was in defence, whereas in the present case, except the statement of the witnesses of the complainant, no other material by way of inquiry or investigation was available with the learned Magistrate. So, the judgment in case of *Vadilal Panchal (supra)* does not render any help to the argument advanced by the learned counsel for the respondents.

18. The main contention of the parties is premised upon the scope of Section 203 Cr.P.C. which reads as under :

"203. Dismissal of complaint.--If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

19. From the totality of arguments and material referred by the parties, the present case shows that the act done in good faith was not part of the statement

of the witnesses of the complainant and no inquiry or investigation report was available before the learned MM to show that the act done by respondent nos.2 to 7 was in good faith. A bare reading of the para referred by the learned counsel for the petitioner shows that the conclusion drawn by the learned MM was premised upon "considering that the article had been written in good faith". The judgments referred by the learned counsel for the respondents in case of Vadilal Panchal (supra) , Jawaharlal Darda (supra) , Rajender Kumar Sitaram Pande (supra) and Vineet Jain (supra) do not render any help to the arguments advanced by the learned counsel for the respondents.

20. On the contrary, there is substance in the argument advanced by the learned Senior counsel for the petitioner that the defence of the accused cannot be considered as ground for dismissal of the complaint as held by Hon''ble Supreme Court in case of Sewakram Sobhani (supra).

21. The only conclusion which can be drawn from the arguments advanced by the parties, material available on the file of the trial court that the learned MM has exceeded his jurisdiction vested in him while treating the defence of the respondents as basis for dismissal of the complaint without referring to or having any material on the record in support of the same.

22. The settled position of the law is that :

The statement of the complainant and other witnesses, inquiry and investigation and the positive material could be relevant for dismissal of complaint under section 203 Cr.P.C.

Exception Ninth of Section 499 IPC (imputation made in good faith) is the defence of the accused persons which could have been relevant at the final stage after dealing with the evidence at the finality of trial.

The exception mentioned above cannot be made the basis for dismissing the complaint without having any material pointing out the act of accused falling in the exception.

23. Furthermore, the discussion made above shows that there is mistake of such reliance which is apparent on the face of order dated 09.10.2007 dismissing the complaint as the learned Magistrate proceeded on the basis "considering that the article had been written in good faith" and the dismissal of the complaint is in addition to exceeding of jurisdiction on the basis of inferred defence of accused.

24. This is a fit case where the revisional jurisdiction is required to be exercised to set aside the order dated 09.10.2007 passed by the learned Magistrate dismissing the complaint.

25. Consequently, the order dated 09.10.2007 is set aside. The case is remanded back to the CMM (New Delhi) to deal with the case or assign to the concerned MM to proceed in accordance with law to pass fresh order after hearing the counsel for the complainant. The complainant is directed to appear before the

learned CMM (New Delhi) on 13.04.2015.

26. It is made clear that the observations made above would not tantamount of expression of opinion to deal with the matter in accordance with law.

27. Accordingly, the present revision petition is allowed. Record of the trial court be sent back.