
(2015) 02 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 4459 of 2001

Tehmina Imam Punwani

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 499, 500

Citation : (2015) 02 JH CK 0052

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Aprajita Bhardwaj, for the Appellant

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.—Heard learned counsel for the parties.

2. In this application, the petitioner prays for quashing the entire criminal proceeding in connection with Complaint Case No. 48 of 2000 including the order dated 08.08.2000 passed by the learned Judicial Magistrate 1st class, Hazaribagh by which cognizance has been taken for the offences punishable under Sections 499/500 and 34 of the I.P.C.

3. It appears that a complaint case was instituted by the opposite party No. 2 herein in which it was stated that the complainant is the son of a famous Barrister and is author of several books and is a well-known personality of Hazaribagh. It has been stated that after the complainant returned from USA to New Delhi on 02.01.2000, he went to Apollo Hospital for his check-up and operation and finally came back to Hazaribagh on 15.01.2000. It was alleged that on 16.01.1999, the complainant was informed that a defamatory notice has been published in the daily newspaper "Hindustan" on 01.12.1999 and it was also alleged therein that the defamatory notice had lowered his prestige in the eyes of the general public; and that the notice was published with a view to malign him as the complainant has previous litigation with the property in

question and the said notice defamed him in public.

4. After the complaint case was instituted, inquiry was conducted and thereafter vide order dated 08.08.2000, the learned Judicial Magistrate, Hazaribagh was pleased to take cognizance for the offences punishable under Sections 499/500 and 34 of the Indian Penal Code.

5. The learned counsel for the petitioner has submitted that neither the complaint petition nor the publication which was made in the newspaper amounts to a defamation. He has further submitted that the legal notice which was published in the newspaper and which was issued by the petitioner in her capacity as an advocate for Mrs. Syeda Mehdi Imam wife of Late Mehdi Imam and therefore, since the notice was given by the petitioner in her professional capacity, the same could not be said to be defamatory in nature and she cannot be prosecuted for the offences under Section 499/500 of the IPC. The learned counsel for the petitioner has further submitted that the notice itself also does not reveal any defamatory language which has been used by the petitioner so as to lower the prestige of the complainant in the society. He has also referred to the judgments in the case of "Filomeno Pereira Vs. Joao Lourenco Fernandes and Ors." reported in 1981 Cr. Law Journal 117, M.K. Parameswara Kurup Vs. N. Krishna Pillai, , Harbhajan Singh Vs. State of Punjab, .

6. The learned counsel for the opposite party No. 2 submitted that the ingredients of defamation having been fulfilled in view of the apparent defamatory nature of notice issued by the petitioner and which has been published in the daily newspaper "Hindustan", the ingredients of Section 499 of IPC are clearly satisfied and therefore, a case having been made out against the petitioner, the same does not call for interference by this Court. He has further submitted that in fact the petitioner has not issued the notice in her professional capacity as a lawyer for her client, but in fact she had issued the notice in the capacity of being an interested party in the proceedings. He therefore, submits that the present case is liable to be dismissed.

7. After hearing the learned counsel for the petitioner and the learned counsel for the opposite party No. 2 and after going through the records, I find that a legal notice was published in the daily newspaper "Hindustan" on 01.12.1999 in which it was stated thus:

"It has been brought to the notice of my client Mrs. Syeda Mehdi Imam w/o Late Mr. Mehdi Imam, r/o of Bank Road, Patna (Bihar) that some person/persons are using documents purported to have been signed by her in respect of her various properties in Bihar and Uttar Pradesh.

It has also been brought to my clients notice that one Askari Hadi Ali Augustine alias Tutu Imam is also indulging in malpractices and is using a forged documents to prove his claims on my clients properties."

8. Based on the said legal notice, a complaint case was instituted by the

complainant - opposite party No. 2 stating therein that the publication of the said notice had lowered the prestige of the complainant in the eyes of the general public and had defamed him in public. In the application filed by the petitioner before this Court, it was stated in paragraph No. 8 and which is quoted hereinunder:

8. ".....It is relevant to mention here that the aforesaid publication on behalf of accused No. 1 of the complaint petition has been done in the capacity of a Lawyer although the petitioner is also related with the properties in question and also having dispute over title of property with the complainant.

9. That the petitioner further states and submit that she has also filed a civil suit being No. 155 of 1999 which is pending in the court of Senior Civil Judge, Delhi in which the complainant has been pleaded as Defendant No. 3. Hence with the aforesaid background it is obvious that notwithstanding the facts that well contested civil suit are going on between the parties, the instant complaint has been filed with an ulterior motive with a view to harassing and maligning the petitioner.

10. That the petitioner states and submit that in view of the nature of allegations made in the complaint petition it is necessary to briefly state about the Civil Suit No. 155/99 which has been filed before the Senior Civil Judge, Delhi by the Petitioner (as Plaintiff through her lawfully constituted Attorney Shri K.C.P. Singh alias A.K. Singh) pleading on amongst others, the complainant as one of the defendants. The suit was filed by the petitioner on 22.11.99 for grant of permanent and mandatory injunction in her favour and against the defendants (including complainant) restraining them, their agents, servants etc. from transferring, alienating or otherwise creating 3rd party interest and/or parting possession in any manner whatsoever in the 1/2 share of the properties belonging to the petitioner (plaintiff) in No. A/4, Chirag Enclave, New Delhi until final disposal of the suit."

9. Therefore it appears that on the own admission of the petitioner, it is not in dispute that the petitioner is a party to the proceedings between both the sides and issuance of notice by the petitioner, although has been done in her professional capacity as a lawyer, but her personal interests were also involved as is clear from her own admission that she was a party in the litigations. In the case of "Filomeno Pereira" (supra), while considering the duty of a lawyer, who had drafted the affidavit on instructions from his client, it was held as follows:

8. "The learned counsel for the petitioner (sic) has submitted before me that the petitioner has drafted the affidavits. Now, even assuming that it was the lawyer who has drafted the affidavits, there can be no offence against him. The lawyer owes a duty to his client and he must carry out faithfully his client's instructions. It is the lawyer's duty to plead allegations in the plaint or written statement or other pleadings, such as affidavits, on the instructions of the client. It is no doubt true that the counsel must perform his duties with discretion for example he

should not plead what are obviously irrelevant, wild or baseless allegations. It should also be remembered that the lawyer is not the Judge and it is not for him to decide whether the allegations made by his client against the opponent are true or false. Except in exceptional circumstances, he is bound to act on the client's instructions. If serious and baseless allegations are made against the opponent a lawyer may make himself liable for prosecution but in that case it has to be clearly established that he acted in bad faith or maliciously. The lawyer can certainly rely on Exception 9 to S. 499 I.P.C. A court may presume that a lawyer who has signed the leadings has acted bona fide and without malice. Unless such presumption is made no lawyer can possibly discharge his duties towards his clients. If a lawyer makes himself liable for prosecution every time he makes a serious allegation in a pleading under instructions of his clients, it would be impossible for him to carry on his duties. In this case there was nothing before the Magistrate except the two affidavits and some notices issued to the accused including the lawyer before the complaint was filed. There is absolutely no evidence of malice or mala fide on the part of the counsel. I, therefore, am of the opinion that no prima facie case of defamation has been made out. That being so, the Court should not have issued summons against the petitioner. Prosecution of the petitioner would clearly be abuse of the process of the Court and would not be in the interest of justice." 10. In the case of "M.K. Parameswara Kurup" (supra), in similar circumstances it was held as follows:

3. "Now even assuming that it was the lawyer who drafted the written statements there can be no offence against him. A counsel owes a duty to his client and he must carry out faithfully his client's instructions. If the client makes serious allegations against a party in a suit, it is the counsel's duty to plead those allegations in the plaint or written statement or other pleadings. No doubt the counsel must perform his duty with discretion, and clearly he should not plead what are obviously irrelevant, wanton, wild or reckless allegations. On the other hand, it must be remembered that a counsel is not a Judge in the case and it is not for him to decide whether the allegations made by his client are true or false. He is bound except in very exceptional circumstances to accept his client's words. If serious and untrue allegations are made he brings himself open to a prosecution for defamation, but he cannot be successfully prosecuted unless it is clearly shown that he had acted in bad faith or maliciously. The counsel can rely on exception 9 to S. 499, but he would lose that defence if he had abused his position and made allegations maliciously or for his own purposes.

A court may presume that counsel who has signed the pleading has acted bona fide and without malice and no counsel, in my view, should be called upon to answer a complaint for defamation merely because he has signed a pleading which contains defamatory matter. If this is not the position, then no counsel can possibly discharge his duties to his client. If a counsel renders himself liable to prosecution every time he makes a serious allegation in a pleading on instructions from his client, it would be impossible for him to carry on his duties. All that the learned Magistrate had before him in this case are the two counter

statements containing the offending passages in the written statements, not drafted or prepared by the lawyer, but only attested by him and a mere statement of the complainant that enmity existed between him and the petitioner. No doubt some evidence has been adduced about the existence of malice, but the evidence is vague, unbelievable and unworthy of credit. I am, therefore, of opinion that no prima facie case of defamation has been made out. No facts were placed before the Magistrate from which it could be inferred that the petitioner acted otherwise than in good faith. That being so, no charge could have been framed. Authority for this position could be had in the decision in Muhammad Taqi V. M.A. Ghani, AIR 1945 Lah. 97ENDLAWFINDER

In the case in *Tulsidas Amanmal Karani Vs. S.F. Billimoria*, , it was held that on grounds of public policy an advocate is entitled to special protection, and that if an advocate was called in question in respect of defamatory statements made by him in the course of his duties as an advocate, the court ought to presume that he acted in good faith and upon instructions.

A similar view was taken in *Mcdonnell V. Emperor*, AIR 1925 Rang. 345, where it was held by a Bench that it was the duty of a court when a complaint was made against an advocate for defamation to presume that the defamatory statement complained of was made on instructions and in good faith."

11. In the case of "*Harbhajan Singh Vs. State of Punjab*" (supra), it was held as follows:

41. "Even so, in view of our conclusion that the appellant has succeeded in showing that he is entitled to the protection of the Ninth Exception to S. 499, the appeal must be allowed and the order of conviction and sentence passed against the appellant set aside. If the fine imposed on the appellant has been paid by him, the same should be refunded to him." 12. In the case of *Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathi and Others*, , it was held as follows:

13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under

Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of "defamation" under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law." 13. In the case of Jeffrey J. Diermeier and Another Vs. State of West Bengal and Another, , it was held as follows:

37. "It is trite that where to the charge of defamation under Section 500 IPC the accused invokes the aid of Tenth Exception to Section 499 IPC, "good faith" and "public good" have both to be established by him. The mere plea that the accused believed that what he had stated was in "good faith" is not sufficient to accept his defence and he must justify the same by adducing evidence. However, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt.

38. It is well settled that the degree and the character of proof which an accused is expected to furnish in support of his plea cannot be equated with the degree of proof expected from the prosecution in a criminal trial. The moment the accused succeeds in proving a preponderance of probability, onus which lies on him in this behalf stands discharged. Therefore, it is neither feasible nor -possible to lay down a rigid test for deciding whether an accused person acted in "good faith" and for "public good" under the said Exception.

39. The question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made; the circumstances on which it came to be made and the status of the person who makes the imputation as also the status of the person against whom the imputation is allegedly made. These and a host of other considerations would be relevant and required to be considered for deciding the appellants' plea of "good faith" and "public interest". Unfortunately, all these are questions of fact and matters for evidence."

14. The judgments referred to above, thus have categorically stated that if the accused invoke the aid of 10th Exception of Section 499 of I.P.C., good faith and public good have both to be established by him. Moreover, at this stage when the notice as well as averments made in the petition disclose that the petitioner had issued the legal notice both in the professional capacity of a lawyer as also in the capacity of being an interested party to the proceedings in which certain alleged aspersions were cast upon the complainant and the same being a matter of trial cannot be looked into at this stage. It is for the petitioner to establish the fact that no offence has been made out against her only at the trial and not at this stage. Even otherwise, the Magistrate having been prima-facie satisfied of existence of sufficient ground for proceeding in the matter and since disputed questions of fact have arisen in the case, it would not be legally permissible for this Court to interfere in the criminal proceedings at this stage.

15. In view of what has been discussed above, this application is disposed of with a liberty to the petitioner to raise all the points before the learned court below at the appropriate stage and the learned court below shall pass necessary orders after taking into consideration both the legal as well as the factual aspects of the case.

16. This application is disposed of with the aforementioned directions and observations.