

(2016) 04 KL CK 0031
In the High Court Of Kerala
Case No : Crl. M.C. No. 2885 of 2013

The Mathrubhoomi Printing and Publisihing Company Ltd. and Others APPELLANT

Vs

Sudheesh K. and Others RESPONDENT

Date of Decision : 07-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 482, Section 499, Section 500

Citation : (2016) 04 KL CK 0031

Hon'ble Judges : Raja Vijayaraghavan V., J.

Bench : Single Bench

Advocate : C.P. Udayabhanu, Advocate, for the Appellant; K.K. Rajeev, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Raja Vijayaraghavan V., J.—1. The petitioners herein are the Managing Editor, Printer and Publisher and the Editor of a newspaper and they are arrayed as accused Nos. 1 to 3 in S.T. No. 1114 of 2012 on the file of the Chief Judicial Magistrate Court, Kalpetta. Allegation in the complaint is that they have committed offence punishable under Section 500 of the IPC.

2. The said proceeding was initiated on the basis of Annexure-I complaint filed by the 1st respondent herein.

3. In Annexure-I complaint, it is alleged that the de facto complainant along with 9 others are running a business in the name and style as "World Wide Corporation" at Kakkavayal, Kalpetta. They are engaged in direct marketing and their products include pillow covers, bed sheets, scissors meant for slicing fish and plastic vessels. The agents of the concern go directly to individual homes and sell these items and in course of time have garnered the respect of the customers in the District of Wayanad. While so, on 10.9.2012, a news item was seen published in the Mathrubhumi daily, in which, imputations in the form of an

alternative was expressed ironically which according to the complainant, was intended against the "World wide corporation". Though the name of the concern was not mentioned in the news item, it was clear on a plain reading of the news that it was directed against the concern of the complainant and none other. The news item was published under the heading (***). This item of news was circulated all over the District and any discerning person could have easily understood that it was directed against the concern of the de facto complainant. The defamatory news item lowered the stature of the complainant and his concern and tarnished their reputation. According to the complainant, the acts of the accused makes them penalty liable for the offence under Section 500 of the IPC.

4. I have heard the learned counsel appearing for the petitioners and the learned Public Prosecutor. Though notice was served on the 1st respondent, he has not chosen to enter appearance.

5. I have gone through Annexure - I complaint wherein the news item has been extracted in Para. 4. The same was published under the heading (***)

6. The news item refers to the unethical practices of certain direct marketing agencies operating in and around Kalpetta. It details the exploitation of unemployed youth by the direct marketing agencies in promising high wages and free accommodation to lure them to the business. Reference is made in the news item about the practice of these agencies in retaining the certificates of the agents so as to prevent them from giving up their employment. Specific reference is made to the case of a young girl whose relatives had to intervene in order to rescue the girl from the clutches of the agencies. It is also mentioned in the news item that the conditions of employment of the agents are very poor and they are made to work for long hours. Only a meagre commission is paid and the agents are persuaded to claim before the customers that they are pursuing MBA and BBM courses and have taken up direct marketing as part of their curriculum. It is further stated in the news item that situations are numerous where girls who work as agents face exploitation. It was on these allegations that the complaint was lodged, which the learned Magistrate had taken cognizance of after examining the complainant and his witnesses in terms of law. The aforesaid proceedings are sought to be quashed in this petition.

7. The learned counsel appearing for the petitioners would submit that the publication was made by the petitioners based on factual reports received from various sources. According to the learned counsel, averments in the publication will not prima facie make out a false imputation against any person and it cannot be said that the de facto complainant was targeted. Referring to the averments in the complaint, it was asserted by the learned counsel that there was no reference, either by name, description, or particulars about the complainant or the "World Wide Corporation" and the contention of the complainant that the news item specifically referred to the complainant cannot be countenanced. He also highlighted the rights, duties and obligations to the press and contended

that none of the offences were attracted.

8. The learned Public Prosecutor opposed the contentions of the learned counsel and contended that a person can be defamed by making an imputation in the form of an alternative or by expressing ironically. The learned Public Prosecutor, would further submit that the learned Magistrate have taken cognizance of the offence after examining the witnesses as well as the complainant and if the case of the petitioners is justified by good faith or if they are entitled to claim the benefit under the exceptions, it is for the petitioners to prove the same before the learned Magistrate. According to the learned Public Prosecutor, it was not for this Court to interfere at this stage and invocation of powers under Section 482 of the Code was not justified in the facts and circumstances.

9. I have carefully gone through the complaint. The petitioners does not dispute the fact that the news item was published. The contention of the learned counsel is that a dispassionate reading of the news item will only reveal that the intention was to bring to the notice of the general public, the modus operandi of direct marketing operations in general and no reference is made to the complainant or to the concern of the complainant. There are general allegations as regards the exploitation and unethical practices of direct marketing agencies at Kalpetta.

10. Section 499 of the Indian Penal Code gives the definition of defamation. Shorn of the Explanations and the Exceptions, the definition reads as under:--

"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."

11. The definition of defamation, given in Section 499 reproduced above, goes to show that if a person publishes any imputation concerning another person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of the other person he would, except in cases covered by the Exceptions, be guilty of defaming the other person.

12. Now coming back to the news item, it is clear from an impartial reading of the same that reference is made only to direct marketing agencies in general and not to any particular individual or concern. Of course, there is no need to refer to any person or concern specifically and it would be enough if the imputation is made in the form of an alternative or if the same is expressed ironically. The reference need not even be explicit and if the description and attendant circumstances suggest with a fair certainty, the identity of the person intended, the offence will be attracted. But at the same time, it is settled by now that the defamatory matter to be actionable, it must be such that it contains an imputation concerning some particular person or persons whose identity can be established.

13. The learned counsel referred to the judgment of this Court in *Raman Namboodiri v. Govindan* [, 1962 KLT 538] wherein it was observed as follows:

" If the words complained of contain no reflection on a particular individual or individuals, but may equally apply to others belonging to the same class an action for defamation will not lie. The defamatory matter to be actionable must be such that it contains an imputation concerning some particular person or persons whose identity can be established. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified. In this case the imputation complained of was directed against the Adhikari and it is impossible in my opinion, upon the facts disclosed to ascertain with any degree of certitude who that Adhikari is, whether it is the appellant or whether it is his son."

14. From the allegations in the complaint, I find it very difficult to comprehend that the 1st respondent or his concern was targeted and that the intention of the petitioners herein was to harm the reputation of the 1st respondent or his concern. Only general references to the unethical practices of direct marketing agencies are made in the complaint. These are all matters which are required to be brought to the notice of the general public. It is not possible to comprehend that the de facto complainant or his concern was defamed as a result of the said publication.

15. The newspapers do have a legal, moral and social duty and the alleged publication cannot be said to have constituted an infraction of the law relating to defamation. No prudent man can come into a different conclusion on a reading of the news item.

16. In *Sahib Singh v. State of U.P.* (, AIR 1965 SC 1451) the Supreme Court has observed as follows:--

"In a free society, the press enjoys an important position and plays a vital role. It may articulate the yearnings and aspirations of the inarticulate and give voice and visage to them. A muffled or muted media cannot discharge the trust that it holds. But, the liberty of press, by its history and connotation must be deemed to have certain limitations. It has to keep within these bounds, and not transgress frontiers of decency and propriety. Vituperative exercises, or yellow journalism, cannot pass muster under the guise of freedom of press, no more than shilling shockers, or salacious prose can masquerade, as literary works. The freedom of press is no mere important, than the good name of the press. It must set the right tune."

17. The news item cannot be said to be a vituperative exercise intended to target the complainant or his concern nor can it be said that they have exceeded the frontiers or decency or propriety. It does not appear to me that the news item was published with malevolent motive or with intent to cast aspersions on the complainant or his concern or with intent to tarnish his reputation in public.

18. In the light of the above materials and the facts which are beyond dispute and in view of the settled position of law, I am of the view that on a reading of Annexure - A complaint no offence under Section 499 is disclosed against the petitioners who are accused Nos. 1 to 3. Therefore, the court below ought not have taken cognizance against the petitioners/accused.

19. In above view of the matter, I am of the view that the petition is required to be allowed and the concerned criminal complaint filed by the second respondent deserve to be quashed.

20. The petition is therefore, allowed and all further proceedings in S.T. No. 1114 of 2012 on the file of the Chief Judicial Magistrate Court, Kalpetta, is quashed.