

(1990) 01 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 2752 of 1987

Trichinopoly Ramaswami Ardhanani and Others

APPELLANT

Vs

Kripa Shankar Bhargava

RESPONDENT

Date of Decision : 24-01-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 179, 200, 202, 204, 397
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (1992) ILR (MP) 762 : (1991) JLJ 365 : (1991) 36 MPLJ 597 : (1991) MPLJ 597

Hon'ble Judges : B.M. Lal, J

Bench : Single Bench

Advocate : S.C. Dutta, for the Appellant; A.G. Dhande, for the Respondent

Judgement

B.M. Lal, J.

This petition u/s 482 read with Sections 397/401, Criminal Procedure Code is directed against an order dated 11-4-1987 by which the Chief Judicial Magistrate, Chhindwara in Criminal Case No. 1034/87 while taking cognizance of an offence u/s 500, Indian Penal Code directed issuance of process against the petitioner in accordance with provisions of Section 204, Criminal Procedure Code.

Brief facts leading to this petition are as under :

Industrial Consultancy Bureau Pvt. Ltd., Kalyan, Bombay (in short ICB Pvt. Ltd.) is a Company registered under the Companies Act of which the petitioners Nos. 1 to 5 are directors, engineers and responsible officers.

The Company is engaged in the business of engineering constructions. It entered into a contract with the complainant/respondent Kripa Shankar Bhargava to execute certain work on behalf of the I.C.B. Pvt. Ltd. near Nandan Site at Damua in district Chhindwara.

It appears that some dispute of accounts between the Company and its officers

on one hand and the complainant Kripa Shankar Bhargava on the other hand, arose and the same led to filing civil suit by the respondent Kripa Shankar valued at Rs. 6,11,300/- in the Court of First Additional Judge to the Court of District Judge, Chhindwara, on 22-6-1986.

Similarly, the petitioner I.C.B. Pvt. Ltd. also filed a suit valued at Rs. 7,44,813.71 before the High Court of Judicature at Bombay in original jurisdiction on 29-7-1986 vide Suit No. 2065/86.

After receiving writ of summons of Suit No. 2065/86" and copy of the plaint, according to Kripa Shankar Bhargava, petitioner No. 1 vide para 16 of the plaint, used per se defamatory imputation i.e. "...wrongfully converted... misappropriated of some quantity of steel."

According to Kripa Shankar this defamatory version led him to file a complaint-case on 21-10-1986 against the petitioners, for taking suitable action and punishing them Under Sections 120B, 477A and 500, Indian Penal Code.

Respondent/Complainant in the complaint case submitted that he is a progressive businessman of Chhindwara Town and commends respectable position in his home town and outside as well. Therefore, the imputation so made in para 16 of the plaint referred to above has lowered down his prestige in the estimation of his well-wishers.

On 10-11-1986, respondent examined himself and one Om Prakash Shukla to establish prima facie case against the petitioners and the learned" Chief Judicial Magistrate, Chhindwara, by order dated 11-4-1987, having found prima facie case only punishable u/s 500, Indian Penal Code registered the case against the petitioners and directed issuance of process in accordance with the provisions of Section 204, Criminal Procedure Code.

Against this order the present petitioners have come up before this Court invoking inherent and revisional powers, seeking quashing of the impugned order dated 11-4-1987 as well as the entire proceedings pending before the Chief Judicial Magistrate, Chhindwara.

Learned Counsel Shri S. C. Dutta appearing for the petitioners made multifold submissions one after another as under :

(a) That, so called pe rse defamatory words used in para 16 of the plaint have been used in good faith and the petitioners are! entitled to take advantage of Exception 9 of Section 499, Indian Penal Code;

(b) That, the plaint was filed by I.C.B. Pvt. Ltd. Company and the same has been verified by petitioner No. 1, Trichinopoly Ramaswami Ardhanani, therefore, the other petitioners Nos. 2 to 5 having no nexus with the alleged use of per se defamatory words in para 16, Chief Judicial Magistrate, Chhindwara exceeded in its jurisdiction in issuing process to the petitioners Nos. 2 to 5 :

(c) That, the suit was filed at Bombay High Court, therefore, Bombay High Court

alone has territorial jurisdiction;

(d) That, the matter in issue (Civil Suit No. 2065/86) is sub judice in Bombay High Court and, therefore, Criminal Proceedings pending at Chhindwara be stayed till the decision of Civil Suit No. 2065/86;

(e) That, the so called per se defamatory words said to have been used in the plaint were not made public to be known to the persons in general, therefore no case u/s 500, Indian Penal Code is made.

On the other hand, Shri A. G. Dhande, learned counsel appearing for the respondent/complainant supported the order impugned.

Before discussing the points in issue, at this stage, where only direction of issuance of process u/s 204, Criminal Procedure Code is given, duty casts upon the Court to refrain from passing, any observation so that case of either side may not be prejudiced. Therefore, where the Magistrate acting u/s 200, Criminal Procedure Code is satisfied himself about the allegations made in the complaint and evidence adduced in that behalf, prima facie, for proceeding against the accused persons in such cases, at this stage, no interference ordinarily is called for either u/s 482, Criminal Procedure Code or Under Sections 397/401, Criminal Procedure Code until and unless glaring defect in the order impugned is demonstrated, i.e. -

(a) allegation and the evidence appearing on record if taken at their face value, no case is made out;

(b) where such discretion exercised by the Magistrate is capricious or arbitrary;

(c) basically the complaint suffers from some legal defect.

At this juncture, it will not be out of place to state that u/s 202, Criminal Procedure Code for issuance of process u/s 204, Criminal Procedure Code, detailed enquiry on merits and demerits of the case is not required, as ultimately after appearance of the accused persons, if the Magistrate comes to conclusion that no case is made out the accused either will be discharged or acquitted, as the case may be.

Facts of the instant case, therefore, are to be tested with the above touch-stone, while giving any finding.

Shri Dutta contended that the so called per se defamatory words used in para 16 of the plaint have been used in good faith and the petitioners are entitled to take advantage of Exception 9 of the Section 499, Indian Penal Code. In this regard Shri Dutta strenuously made reference to Bhagat Singh Sethi v. Jindalal AIR 1966 J. & K. 106, and contended that the petitioners' case is protected under Exception 9 of Section 499, Indian Penal Code.

Suffice to say that arguments advanced by Shri Dutta in this regard taking resort to Exception 9 of Section 499, Indian Penal Code, stating that so called

imputations have been made in good faith, has no relevancy at this stage. The question of applicability of Exception 9 of Section 499, Indian Penal Code as well as other defence available to the petitioners may be raised before the Trial Court during Trial of the Complaint. But at this stage the same cannot be gone into which may prejudice the case of either side. Besides this, there is no material to consider the said argument. See Balraj Khanna and Others Vs. Moti Ram, Therefore, submission so made by Shri Dutta in this behalf is of no avail.

Shri Dutta next contended that the plaint is filed before the Bombay High Court by I.C.B. Pvt. Ltd. and the same has been verified by petitioner No. 1 Trichinopoly Ramaswami Ardhanani, therefore, other petitioners Nos. 2 to 5 having no nexus with alleged use of per se defamatory words in para 16, Chief Judicial Magistrate, Chhindwara exceeded in its jurisdiction in issuing process to the petitioners Nos. 2 to 5. Submission so made by Shri Dutta appears to have some force. Bare perusal of the plaint annexed with the petition demonstrates that the averments of the plaint in Civil Suit No. 2065/86 have been verified by petitioner No. 1 Trichinopoly Ramaswami Ardhanani and, therefore, he alone is, prima facie, liable for the offence alleged and the submission so made by Shri A. G. Dhande that the offence committed by a company, every person who at the time of offence was in charge and was responsible to the company for conduct of business of the company, and the company shall be guilty of offence and, therefore, all its office bearers shall be liable to be proceeded against, has no force and it deserves to be rejected. Therefore, submission of Shri Dutta that no case against petitioners Nos. 2 to 5, prima facie is made out is sustained.

Shri Dutta also contended that the suit was filed before the Bombay High Court, and therefore, Bombay High Court alone has territorial jurisdiction. In this context Shri Dutta submitted that place of trial should be the territorial jurisdiction/limits of Bombay and not Chhindwara.

Law is well settled on this point. In such cases, the Court within whose jurisdiction the publication is made or the Court in whose territorial jurisdiction the defamatory matter is served, circulated or distributed, either Court will have jurisdiction. See Kazi Jalil Abbasi v. State of Uttar Pradesh 1978 Cri.L.J. 104 Allahabad. In the instant case writ of summons of Civil Suit No. 2065/86 was directed to be issued to the respondent/complainant at Chhindwara address along with copy of the plaint and, therefore, venue of trial at Chhindwara does not suffer from territorial limits of jurisdiction. Thus the submission so made by Shri Datta has no force and is hereby repelled.

Next submission of Shri Dutta is that the matter in issue (Civil Suit) is sub judice in Bombay High Court, therefore, Criminal Proceedings pending at Chhindwara be stayed till decision of the Civil Suit No. 2065/86. This submission is devoid of substance. Under the circumstances appearing in this case, proceedings in Civil Suit has nothing to do with the Criminal Proceedings pending at Chhindwara. According to Shri Dhande, learned counsel for respondent complainant, by using per se defamatory words in para 16 of the plaint the offence is complete and

even at this stage the petitioner No. 1 if withdraws those words from para 16 of the plaint by making an appropriate application Under Order 6, Rule 16, CPC for striking out the said words, it will be of no help to the petitioners as the offence is complete as soon as the so called per se defamatory words are used. Therefore, question of staying Criminal Proceedings at Chhindwara till decision of Civil Suit at Bombay does not arise.

The next point argued by Shri Dutta is that so called per se defamatory words said to have been used in the plaint were not made public to be known to persons in general and, therefore, no case u/s 500, Indian Penal Code is made out. This argument is only tenable where the letter enclosed in an envelope and is sent to the complainant and in that context it will not be deemed to be publication. But where the plaint is filed containing so called defamatory matter according to the respondent, the same amounts to publication within the meaning of Section 499, Indian Penal Code. In *Thangavelu Chettiar Vs. Ponnammal*, it has been ruled that filing a plaint or petition containing defamatory matter amounts to publication. Therefore, per se defamatory statement in pleadings, petitions, affidavits etc. of parties to judicial proceedings are offence punishable u/s 500, Indian Penal Code unless they fall within the exceptions enumerated in Section 499, Indian Penal Code and therefore, the petitioners are at liberty to take resort to exceptions of Section 499, India Penal Code at an appropriate stage.

Shri Dhande, however, giving reference to *Dhiro Koch and Anr. v. Govinda Dey Mishra Bura Satria*, Vol. LXV Indian Cases 204, contended that defamatory statements made by the parties to suit in pleadings are not absolute privilege. I have already expressed my view that at this stage in view of *Balraj Khanna's* case (*supra*), question of applicability of exceptions of Section 499 as well as other defence available to the petitioners may be raised before the Trial Court during Trial of the complaint. But at this stage, the same cannot be adjudicated upon. This question is left open for the parties to argue before the Trial Court.

During the course of argument, incidentally Shri Dutta also submitted that how the respondent was defamed by use of the words "...Wrongfully converted...misappropriated"... has not been prima facie established. I would again reiterate that at this stage it will not be proper to discuss the point so raised by Shri Dutta, in detail and give any finding which may tend to prejudice the case of either side. Since Shri Dutta made much emphasis on this point, it is necessary to say that defamation is injury to one's reputation and reputation is what other persons think of Kripa Shankar Bhargava, in the instant case, and not his own opinion about himself. Therefore, respondent/complainant while examining - himself has also examined one Om Prakash Shukla and has thus, prima facie established the necessary ingredients for taking cognizance within the meaning of Section 204, Criminal Procedure Code.

From the discussions aforesaid, this petition is partly allowed to the extent that proceedings initiated against petitioners Nos. 2 to 5 are hereby quashed.

However, the proceedings against petitioner No. 1 Trichinopoly Ramaswami Ardhanani alone shall continue before the Chief Judicial Magistrate, Chhindwara. It is, however, made clear that this is a case of 1987. Therefore, the petitioner No. 1 and the respondent/complainant are directed to appear before the Trial Court on 28-2-1990 and the Chief Judicial Magistrate, Chhindwara .shall proceed with the case expeditiously.