(2009) 04 DEL CK 0058

In the Delhi High Court

Case No : Criminal M.C. 1925 of 2008 and Crl M.A. No. 7013 of 2008

Ved Kumar Gupta and Others — APPELLANT

Vs

Ashok Kumar Aggarwal and Another — RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 34, 379, 406, 420, 499

Citation : (2009) 04 DEL CK 0058

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Deepak Dhingra, for the Appellant; Party-in-person, for the Respondent

Judgement

S. Muralidhar, J.—Both these petitions arise out of same set of facts and are therefore being disposed of by this common judgment.

2. The prayer in both petitions is that Criminal Complaint Case No. 1529/01/2007 titled Ashok Kumar Aggarwal v. Rajiv Kumar and Ors. pending in the court of the learned Metropolitan Magistrate ("MM"), New Delhi under Sections 500/34 IPC and all proceedings consequent thereto should be quashed.

3. The aforementioned complaint was filed by the Respondent Ashok Kumar Aggarwal alleging that the Petitioners accused have acted together with the common objective of damaging the reputation of the Respondent/complainant, injure his personal and business character thereby committing the offence of criminal defamation under Sections 500/34 IPC. While Crl M C 1925 of 2008 has been filed by the accused/respondents 8 to 15 in the complaint and Crl MC 1958 of 2008 has been filed by accused/respondents 1 to 7 in the complaint. The complainant alleged that the accused had caused the publication of an advertisement by way of public notice in the New Delhi Edition of Hindustan Times dated 6th January 2007 which attracted the offence under Sections 500/34 IPC. The said public notice reads as under:

PUBLIC NOTICE

Mr. Ashok Kumar Agarwal, son of Late Shri Padamchand presently in unauthorized occupation of the property of our clients, B-115, Sector-26, Noida (UP) was working as an Additional Director till 02.06.2006, when due to the acts committed by him inappropriate to his office, and due to breach of trust committed by him, he was removed from the Directorship by our clients when as if planned he immediately, on his dismissal joined another company also engaged in manufacturing of Chewing Tobacco. Consequently, our clients and other associates/sister concerns after giving appropriate opportunities initiated legal proceedings for recovery of loan, imprest, and advances and for repossession on company''s properties as also initiated criminal proceedings registered u/s 406, 420 and 379 of the Indian Penal Code against Mr. Aggarwal, as also his wife, Mrs. Shashi Aggarwal.

Instances have come to the notice of our clients that this Mr. Ashok Kumar Aggarwal is yet misrepresenting to be the President/Director/ Associate of our clients and their group companies and the said misstatements are being made by him knowing them to be false, misleading and incorrect, with purpose and motives.

Our clients put all to notice of the aforesaid facts since our clients shall not be held responsible for any loss/prejudice caused due to any such acts of Mr. Ashok Kumar Aggarwal.

Our clients totally disassociate themselves with all such activities in which Mr. Aggarwal may be involved claiming to be an associate or holding any position with our clients in any capacity, whatsoever.

Deepak Dhingra, Advocate Law Linker''s and company Advocates for Dharampal Satyapal Limited and Group Companies

4. It is stated by the complainant that he is presently working as a Partner and Managing Director of the Gopal Group having its corporate office at New Delhi. The Gopal Group is engaged in the manufacture and trading of reputed "Gopal" brand chewing tobacco, "Dil Khush" Pan Chutney etc. The said group has an annual turnover of about Rs. 300 crores. He is also the Director of Asda Foods Pvt. Limited, a family owned company. He is also a Director on the Board of the Bharat Heavy Electricals Limited (BHEL). Besides he is the Working Committee Member and Spokesperson of the "Zafrani Zarda and Pan Masala Association of India."

5. It is stated that the complainant associated himself with Dharampal Satyapal ("DS") group from about 1st December 1997. He rose to the position of Group President and later was appointed on the Board of the Directors of Dharampal Satyapal Limited ("DSL"). According to the complainant, the accused Nos. 1 to 7 are the main working Directors of DSL which is a family owned company. Accused 15 is the wife of Ravinder Kumar, accused No. 2. In para 8 of the

complaint it is stated inter alia as under:

8. ...the DS Group companies of family concerns of Dharampal Satyapal Limited, Dharmpal Farmchand Limited, Dharampal Satyapal Sons Pvt Limited, Surya Kiran Finance Corporation and several other partnerships and Pvt. Limited Companies. The Companies and Firms under the umbrella of the DS Group are owned by the sons and family members of the late Sh. Satyapal along with sons and family members of the late Sh. Surajmal, the former being the son- in-law of latter. All the accused Nos. 1 to 7 are actively involved in day to day working and they with a common intent and after taking the decision together have committed the acts of criminal defamation under Sections 499 and 500 of the Indian Penal Code in conspiracy, collusion and with a common intent as postulated by Section 34 of the said Code as enumerated hereinafter.

6. In para 9 of the complaint it is stated that the accused Nos. 1 to 3 and 7 to 15 are active partners of Surya Kiran Finance Corporation ("SKFC") and they had committed acts of criminal defamation under Sections 500/34 IPC. It is stated that false statements have been made in the public notice. Although the property alleged to have in the unauthorised occupation of the complainant bearing No. B-115, Sector 26, Noida (UP) was a subject matter of Civil Suit No. 533 of 2006 in which interim injunction had been granted directing the complainant"s possession not to be disturbed, false allegations in this regard have been published in the public notice. It is further alleged that the imputation in the public notice is that the complainant had committed acts inappropriate to his office and he was removed from the directorship on account of breach of trust. This was also false. The public notice had been published only with a view to lower the image and position of the complainant amongst his colleagues, business associates, friends and relatives.

7. By an order dated 11th January 2008 the learned MM while summoning the Petitioners for the offence u/s 500/34 IPC held that none of the exceptions set out in Section 499 IPC were prima facie applicable and that the complainant had made out a prima facie case that the accused 1 to 15 had "formed an association in order to tarnish the image of the complainant thereby sharing common intention towards that end". It may be pointed out that as part of the pre-summoning evidence the complainant examined three witnesses including himself. Although in the cause title of the complaint he described the accused 8 to 15 as partners of SKFC, in his pre-summoning evidence he stated that accused 14 Mrs. Sunita Gupta and accused 15 Mrs. Rita Gupta were also directors of Dharampal Satyapal Sons Private Limited which was a part of the DSL Group companies.

8. In the present petitions while directing notice to issue to Respondent on 30th May 2008 the proceedings before the learned trial court were stayed by this Court.

9. The submissions of Mr. Deepak Dhingra, learned Counsel for the Petitioners

and Mr. Ashok Kumar Aggarwal, the Respondent who appeared in person have been heard.

10. It is submitted on behalf of Petitioners that the public notice only set outs the facts which are true to the records and what has been stated therein is covered by the Ninth Exception u/s 499 IPC. In other words it is submitted that the imputations therein were in good faith and for the protection of the interests of the Petitioners and all other persons including the public. It is submitted that since the Respondent had, despite being removed as Director of the DSL by a Resolution dated 2nd June 2006, continued misrepresenting to the clients of DSL and the DS Group of companies that he was still associated with DSL, it was necessary to warn such clients and the public that they should not engage with him under such mistaken notion. It is further pointed out that the respondent himself wrote a letter on 28th February 2006 stating that he was parting ways with the DS group of companies. He later insisted that he had not formally resigned from DSL and continued to be its director. In the meanwhile on 1st April 2006 he joined the Gopal Group while still claiming to be a part of the DS Group. It is submitted that the public notice was published on 6th June 2007 nearly one year after a resolution was passed by the Board of DSL removing the Respondent as its Director. The details concerning the litigation instituted by DSL against the Respondent were true to the judicial records and therefore it could not be said that the public notice defamed the Respondent in any manner. It is submitted that among the witnesses examined by the complainant Respondent at the pre-summoning stage, one was the legal officer of the rival Gopal Group and other a former employee of the DSL was now acting at the behest of the Gopal Group. It was plain therefore that this was a proxy war between the Gopal Group and the DS Group and the Respondent was malafidely misusing the present proceedings towards that end.

11. As regards the accused Nos. 8 to 15 arrayed in the complaint as accused, it is pointed out by learned Counsel for Petitioners that they are all partners of SKFC which was not a part of the DS group of companies at all. According to petitioners, not even a minimum averment in this regard has been made in the entire complaint. It is pointed out that in any event the public notice was issued on behalf of DSL and the DS group of companies by its counsel and not by the SKFC which in any event was a firm and not a company. Accordingly it is submitted that not even a prima facie case is made out against the accused Nos. 8 to 15. Further it was submitted that as regards the accused Nos. 14 and 15, although they are partners of Dharampal Satyapal Sons Private Limited, they have been roped in the complaint only because they happened to be the wives of the directors of DSL and there is no specific averment concerning their role in getting the public notice published. Learned Counsel for the Petitioners has placed reliance upon the judgments of the Supreme Court in State of Haryana v. Bhajan Lal 1992 (Supp) 1 SCC 336 , Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , Dr. Anil K. Khandelwal and Others Vs. Shri Maksud Saiyed and Another, , P. Sharma Vs. P.S. Popli and Another, , Girisii Kakkar and Another

Vs. Dhakwanti and Others, , Smt. Dr. Nagarathinam Vs. M. Kalirajan, , Amrit Lal Batra Vs. Divakar Pandey and Another, and Sri Bhaskar Raj Sexena Vs. Sudershan Ausekhar and Another, .

12.The Respondent who appears in person on the other hand submitted that as held by the Supreme Court in Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others, the stage of examining whether any of the Exceptions u/s 499 IPC would apply, would be the trial. Reliance is also placed on the judgments of the Supreme Court in Balraj Khanna and Others Vs. Moti Ram, and Sukra Mahto Vs. Basdeo Kumar Mahto and Another, . It is submitted that even as regards accused Nos. 8 to 15, there are averments in the complaint that go to show that SKFC was in fact part of the DS Group and that such averment was sufficient to make its partners prima facie liable for the offence under Sections 500/34 IPC.

13. This Court is unable to accept the contention of learned Counsel for the Petitioners that when the complaint is read as a whole not even a prima facie case is made out for proceeding against Accused 1 to 7 (the Petitioners in Crl M C 1958 of 2008) for the offence under Sections 500/34 IPC. A perusal of the public notice shows that it does not merely inform the reader that that Respondent is no longer a Director of DSL. It details the reasons why he was removed. It mentions that he was removed from the directorship due to acts committed by him inappropriate to his office and due to breach of trust committed by him. While adverting to the litigation instituted by DSL Group of companies "other associates or sister concern" a reference is made in particular to the offence u/s 420 IPC. Further the public notice states that instances have come to the notice that the Respondent was yet misrepresenting to be the President/Director/ Associate of their clients and their group companies and the said misstatements are being made by him knowing them to be false, misleading and incorrect, with purpose and motives.

14. The above statements in the public notice cannot straightway be explained to be imputations made in good faith. That would obviously a matter of contestation for which evidence would have to be led at the trial. The very fact that the Petitioners invoke the Ninth Exceptions to Section 499 IPC indicates that but for such defence, the public notice would indeed attract the offence u/s 500 IPC.

15. In the judgment of this Court in Rakesh Sharma and Ors. v. Mahavir Singhvi 2008 (3) JCC 1656 it was held in paras 15 to 18 as under:

15. As evident from Sukra Mahto v. Basdeo Kumar Mahto, where a defence was raised with reference to the ninth exception to Section 499 IPC, the ingredients of that defence can at best be demonstrated during the course of trial. It must be recalled that the said judgment was given by the Supreme Court at the post conviction stage when the entire evidence was available to it. A contention similar to the one raised by the Petitioners here was rejected by the Supreme Court in Sewakram Sobhani v. R.K. Karanjia. The Supreme Court reversed the

judgment of the High Court which had, in exercise of its powers u/s 482 CrPC, quashed the criminal case on the ground that the publication of the news item in that case fell within the ambit of the ninth exception to Section 499 IPC. It was held that the High Court had prejudged the issue and the case ought to have been allowed to proceed to trial. Reference was made by the High Court to the first exception to Section 499 IPC and it was held that the publication of the defamatory news item was for public good. Repelling this contention, Sen, J, in the Supreme Court held (SCC, p 217):

The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith: per Vivian Bose, J. in Dr. N.B. Khare v. M.R. Masani.

16. In his concurring judgment Justice Chinappa Reddy observed as under (SCC, p 219):

Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the article published after exercising due care and attention" Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true'''' Did he act with reasonable care and a sense of responsibility and propriety'' Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author'' What steps did the author take to satisfy himself about the authenticity of the report and its contents'' Were the imputations made rashly without any attempt at verification'' Was the imputation the result of any personal ill will or malice which the author bore towards the complainant'' Was it the result which the complainant belonged'' Was the article merely intended to malign and scandalize the complainant or the party to which he belonged'' Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus'' Was the article intended to expose the despicable character of persons who were passing off as saintly leaders'' Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals'' There and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. "Good faith" and "public good" are, as we said, questions of fact and matters for evidence. So, the trial must go on.

17. In Balraj Khanna v. Moti Ram, an order discharging the accused u/s 202 CrPC for the offence involving Section 500 IPC was reversed by the High Court. It was observed (SCC, p 615):

10. ...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. It has been further pointed out that he function of the Magistrate holding the preliminary inquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out, even though much can be said on both sides, 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.

11. The question arises whether in an action for defamation u/s 500 IPC, it is necessary that the actual statements containing the words alleged to have been used by the accused must be before the Court or whether it is enough that the statements alleged to have been made are substantially reproduced in the complaint. The further question is whether the complaint in this case is defective in the sense that the actual statements alleged to have been made by the individual accused have not been stated in the complaint.

18. As far as the present case is concerned on an application of the above principles, this Court is of the considered view that a prima facie a case is indeed made out against the Petitioners for the offence u/s 500 IPC. As observed in Balraj Khanna (SCC, p 217):

the question of the application of the Exceptions to Section 499, I.P.C, does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C, as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint.

16. The aforementioned position has been reiterated recently by the Supreme Court in M.A. Rumugam v. Kittu @ Krishnamoorthy AIR 2009 SC 341.

17. It is clear therefore that the stage of considering the defence by the Petitioners with reference to the Ninth Exception to Section 499 IPC is not the present one and evidence would have to be led for the purpose at the stage of trial.

18. Accordingly, this Court finds no merit in the petition by accused Nos. 1 to 7 (petitioners in Crl M A No. 1958 of 2008).

19. However, as regards Crl MC No. 1925 of 2008, the complaint when perused as a whole does not even make out a prima facie case against accused 8 to 15. The complaint only states that they are partners of SKFC and together with the other accused responsible for the publication of the public notice. However, a perusal of the public notice indicates that it has been issued on behalf of DSL and the DS "group companies." Therefore, it cannot be said that public notice was issued on behalf of the firm SKFC, the partners of which may be related to the Directors of the DSL. The paragraphs of the complaint referred to by the complainant where allegations have been made generally against accused Nos. 8 to 15 are vague and do not specifically state that any of them was responsible for the publication of public notice.

20. As far as accused Nos. 14 and 15 are concerned, while there is no statement in the entire complaint (where they are only described as partners of SKFC) that they are individually or severally responsible for the publication of the notice. The mere fact that in the evidence at the pre- summoning stage the complainant has mentioned that they are directors of Dharampal Satyapal Sons Pvt. Limited, will not make any difference to the position. The fact remains that the averment as regards the accused Nos. 14 and 15 are insufficient to make them liable for the offence of criminal defamation under Sections 500/34 IPC.

21. Accordingly as far as accused Nos. 8 to 15 are concerned (Petitioners in Crl M C 1925 of 2008), this Court is of the view that not even a prima facie case is made out against them for the aforementioned offence under Sections 500/34 IPC. Accordingly, Crl M C No. 1925 of 2008 is allowed. The Petitioners in Crl M C 1925 of 2008 (who are arrayed as accused Nos. 8 to 15 in the complaint) will stand discharged in Complaint Case No. 1529/01/2007 under Sections 500/34 IPC titled Ashok Kumar Aggarwal v. Rajiv Kumar and Ors. pending in the court of the learned MM, New Delhi. It is made clear that the complaint will continue as far as the accused Nos. 1 to 7 are concerned.

22. Crl M C 1958 of 2008 is dismissed. However, it is made clear that the contentions raised by the Petitioners in the petition concerning the defence with reference to the Ninth Exception to Section 499 IPC is left open to be urged at the appropriate stage before the trial court. No observations made in this order as regards such defence will influence the opinion to be formed by the trial court upon an independent assessment of the evidence that emerges during the trial. As regards prayer of the petitioners in Crl M C 1958 of 2008 for exemption from personal appearance before the trial court, it is directed that as and when an application is moved by them for this purpose before the trial court, such application would be considered on their own merits by that Court.

23. Order be given dasti.

24. The trial court record along with a certified copy of this order be sent back within three days from today.

