

(2005) 10 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 51090 of 2001

Vir Sanghvi and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 499, 500

Citation : (2006) CriLJ 1079 : (2006) 1 RCR(Criminal) 115

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : R.S. Ghal and Sumeet Goel, for the Appellant; R.D. Sharma, D.A.G. and Shailender Singh, for the Respondent

Judgement

Surya Kant, J.—In this petition u/s 482, Cr.P.C. prayer for quashing of criminal complaint u/s 500, I.P.C. dated 30-3-2000 (Annexure P6) and the summoning order (Annexure P8) of the even date as well as subsequent proceedings arising therefrom, has been made.

2. The petitioners are Editor and Printer -- Publisher of the daily news paper The Hindustan Times respectively. The impugned complaint which has been filed by respondent No. 2 originated from a news item dated 23-12-1999 titled as "NCP leader accused of cheating," published in The Hindustan Times. It was founded upon some press conference held by one Balbir Singh Pal, who claimed himself to be the District President of Haryana Vikas Party and allegedly accused-respondent No. 2 the complainant of defrauding the aforementioned party of Rs. 10 crores. As per the contents of the news items, the said Balbir Singh Pal alleged that the complainant organised about 400 meetings in the State and at each meeting Rs. 50-60,000/- were collected by him but he did not deposit the amount in the party's account except an amount of Rs. 1.75 lacs. It was thus alleged that the complainant betrayed the party and its supremo Sh. Bansilal.

3. It appears that one K.B. Gupta, a correspondent to The Hindustan Times, also

attended the aforesaid press conference and upon his report, the news item in question was published.

4. In the impugned complaint (Annexure P6) respondent No. 2 the complainant after highlighting his social and political status, standing at the Bar as an Advocate and his participation in different walks of life, has alleged that the news item was published without verifying the true and correct facts and the same has tarnished his image amongst his family members, friends and society in general and immeasurable loss in terms of character assassination has been caused to him, apart from the fact that he has also been made an object of ridicule and disgrace in the society. Specific allegations have been made against the petitioners regarding their willful and calculated complicity with Balbir Singh Pal.

5. To substantiate the allegations, the complainant himself appeared as C.W. 1 and corroborated the allegations and also produced C.W. 2 and C.W. 3. Relying upon their statements and after going through the documents on record including the contents of the news item (Exhibit P1), and on prima facie satisfaction, the learned JMIC vide his order dated 30-3-2000 (Annexure P8) summoned the petitioners to face trial.

6. It may be mentioned here that when this petition came up for motion hearing on 18-12-2001, the petitioners' personal appearance before the trial Court was exempted on the condition that they shall appear through an authorised counsel. It is informed by the learned counsel for the parties that during the interregnum the proceedings have continued and the case is now fixed for 14-11-2005 for complainant's evidence.

7. In response to the notice of motion, respondent No. 2 the complainant has filed his reply, reiterating that the news item was published in haste; the facts were not got verified and immense loss has been caused to him in terms of his public image, social status and reputation, especially when the news item has branded him as a "corrupt person."

8. In support of the prayer made in this petition Sh. Ghai, learned senior counsel assisted by Sh, Sumeet Goel, learned counsel for the petitioners vehemently contended that there is no allegation levelled by The Hindustan Times against respondent No. 2 the complainant. The news items is based upon a "press conference" in which various correspondents/journalists were invited, therefore, it is a truthful and bona fide reporting of an event; that the same news has been published by five daily newspapers as can be seen from their news items (Annexure P2 Colly.); the petitioners in their capacity as Editor and Printer-Publisher of the news item have absolutely no role to play in relation to the episode in question and the action of the newspaper as such is duly protected under Exceptions Second and Third to Section 499, I.P.C. In order to show the bona fides of the petitioners, reliance has been placed upon a news item dated 25-12-1999 (Annexure P3) whereby the statement made by respondent No. 2 the complainant denying the allegations against him, was published.

9. On the other hand Sh. Shailender Singh, learned counsel for the complainant-respondent No. 2 contends that if one reads the news item dated 25-12-1999 (Annexure P3) it is writ large that it pertains to an altogether different event and in the last line "denial of allegations by the complainant" has been added. According to him the petitioners cannot take shelter behind Exceptions Second and Third to Section 499, I.P.C., as neither the contents of the impugned news item are an "expression of opinion" in "good faith" nor the same pertain to the "conduct" of a "public servant." According to him the news item was published with an oblique motive to tarnish the complainant's image and to harm his political and social career. It is also contended that the protection of Exceptions Second and Third to Section 499, I.P.C. can at the best be a defence available to the petitioners in the course of trial and can be appreciated only after evidence is led by both the parties. It is thus contended that this Court in exercise of its inherent jurisdiction u/s 482, Cr. P.C., may not stall the proceedings at this stage.

10. In order to appreciate the rival contentions, it will be profitable to reproduce the news item dated 23-12-1999, which led to the initiation of the impugned proceedings. The said news item read as follows:

NCP Leader accused of cheating"

HT Correspondent

Karnal, December 22,

The Karnal District President of the Haryana Vikas Party (HVP), Mr. Balbir Singh Pal, today accused former general secretary of the party Ved Pal of defrauding the HVP of Rs. 10 crore. Mr. Ved Pal who had joined the National Congress Party (NCP) of Mr. Sharad Pawar, was very close to the former Chief Minister Bansi Lal.

Addressing media persons here today, Mr Pal said that Ved Pal had organised about 400 meetings in the State during Mr. Bansi Lal's terms, and at each meeting Rs. 50,000/- to 60,000/- were collected. But except Rs. 1,75,000/-, no money was deposited in the party's account. Accusing Ved Pal of betraying Mr. Bansi Lal, Mr. Pal said that till the evening of August 17, Ved Pal assured the party of contesting the Parliamentary elections from Kurukshetra but eventually he failed to file his nominations. About the reported alliance between the HVP and the Congress for the coming elections, Mr. Balbir Singh said that the alliance could benefit both the parties but the district unit would abide by whatever decision the party supremo took.

He also averred that with the membership drive in the district, the formation of the District Executive Committee would be completed by December 31. Mr. Pal said that on January 10, a party workers' meeting would be held in Kurukshetra and on January 13, a HVP rally would be held in Jind.

11. On a plain reading of the news item reproduced before, there can be no exception and/or denial to the likelihood of causing some adverse impact on the complainant's reputation, political image and social status. However, the issue as

to whether contents of the news item are true and were correctly published and/or the same were based upon merely on the statement made by Balbir Singh Pal in a press conference and whether or not there was any complicity of the petitioners behind publication thereof, are disputed questions of fact which can be adjudicated on appreciation of evidence to be led by both the parties. Neither any final opinion in relation to these Issues can be formed on the basis of scant material on record nor its formation would be expedient and/or desirable at this stage. Regular that is, thus, inevitable.

12. The law in relation to quashing of criminal proceedings in exercise of inherent powers u/s 482, Cr. P.C., is well settled. In the case of R.P. Kapur Vs. The State of Punjab, , which has been recently reiterated by their Lordships of the Supreme Court in Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, , the following parameters for such interference have been laid down:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the First Information Report, or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

13. I am afraid, the case in hand does not fall within any of these exceptions.

14. Faced with this situation, learned counsel for the petitioners contended that the petitioners are holding highly responsible assignments in relation to the publication of a daily newspaper. Since there is no material to attribute any "motive" to them, it is a fit case to grant them exemption from personal appearance, subject to some reasonable conditions. To buttress this argument, reliance has been placed upon the judgments of the Apex Court in the case of State of Tamil Nadu v. J. Jayalalitha 2000 (3) RCR 407 : AIR 2000 SC 1589 and M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, . In both the cases their Lordships of the Supreme Court granted exemption to the accused from personal appearance subject to certain conditions like that they will not dispute the identity as particular accused; would be present in Court on any day when presence is required by the Court; will keep on appearing through counsel and will not stall the proceedings etc.

15. Learned counsel for the respondent No. 2 the complainant has taken a fair stand in this regard and states that he has no objection if conditional exemption from personal appearance is granted to the petitioners.

16. In view of the stand taken on behalf of respondent No. 2, it is directed that the interim order dated 18-12-2001 whereby the petitioners were exempted from their personal appearance before the trial Court, shall continue to operate till the proceedings in the main complaint are concluded, however, subject to the following conditions:

- (i) the petitioners will continue to represent themselves through counsel;
- (ii) they will not dispute their personal identity as accused;
- (iii) they will not delay/stall the trial proceedings;
- (iv) they will have no objection if complainant's evidence is recorded in their absence and in the presence of their counsel;
- (v) and/or any other condition which the learned Judicial Magistrate may deem appropriate.

17. In view of the above discussion, though no case for quashing of the impugned complaint and/or summoning order is made out, however, this petition is disposed of with the directions aforementioned.