

(1988) 11 AHC CK 0037

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 413 of 1988

W.N.Chaddha

APPELLANT

Vs

Osama Talha

RESPONDENT

Date of Decision : 04-11-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 203, 204
Evidence Act, 1872 — Section 78(2), 81

Citation : (1988) 11 AHC CK 0037

Hon'ble Judges : Rajeshwar Singh, J

Final Decision : Allowed

Judgement

Rajeshwar Singh, J.

The opposite party filed a complaint against the applicant in the court of the Magistrate under Section 500 of the Indian Penal Code, the Magistrate has summoned the applicant as an accused and the applicant has filed this application under Section 482 Cr.P.C. praying that proceedings of that complaint and prosecution of the petitioner pending in the Court of Magistrate and also the order dated 19.4.88 summoning the petitioner be quashed.

The complainant alleged in his complaint that some reports were published in newspapers which said that the applicant said something about the press in India and those utterances amounted to defamation within the meaning of Section 499 I.P.C. and so he should be proceeded against. The Magistrate examined the applicant and two other witnesses under Section 200, Cr.P.C. and then he passed order for issuing summonses.

The procedure for complaint cases is provided in Cr.P.C. from Section 200 onwards. Section 200, Cr.P.C. says that the Magistrate shall examine upon oath the complainant and the witnesses present and the substance of such examination shall be recorded. Then Section 203 says that if after considering these statements of the complainant and the witnesses the Magistrate is of opinion that there is no sufficient ground for proceeding he shall dismiss the

complaint. Thereafter comes Section 204. It provides that if Magistrate is of the opinion that there is sufficient ground for proceeding he shall issue process for appearance of the accused.

The object of examination of complainant and witnesses under Section 200, Cr.P.C. is to ascertain whether there is prima facie case and sufficient ground for proceedings. If there is no sufficient ground for proceeding, that is there is no prima facie case or there is no evidence that the accused committed an offence, Section 203, Cr.P.C. comes into play and Magistrate has to dismiss the complaint. This Section says that the Magistrate shall dismiss the complaint. Then Section 204 provides that if the Magistrate is of the opinion that there is sufficient ground for proceeding, that is, there is something to indicate that the accused committed the offence the Magistrate has to issue process.

First let us see whether there was any indication that the accused committed the offence. Section 499, I.P.C. lays down that if one makes or publishes certain types of imputation he is guilty of defamation. So it has to be seen whether anybody says that the accused made or published any imputation regarding press. There are statements of complainant and two witnesses. None of them says that the accused in their presence made or published a defamatory imputation. They merely says that in newspaper they read that the accused made some imputations. So the question arises whether this is sufficient to say that the accused made or published imputations.

For the aforesaid question we will have to consider Indian Evidence Act. Section 60 of the Evidence Act says that oral evidence must in all cases be directed that is to say that if it refers to a fact which could be heard, it must be the evidence of a witness which says that he heard it. Before us no witness says that he heard the accused making an imputation. The witnesses merely says that they saw something in the newspaper. This only proves that something was published in the newspaper and the publishers of the newspaper may be guilty of this defamation but this does not prove that the accused made that statement.

We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78 (2) of the Evidence Act 1972 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proof of the facts reported therein. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in absence of the maker of the statement appearing in court and deposing to have perceived the fact reported. [Laxmi Raj Shetty v. State of Tamil Nadu (1988) 3 SCC 319.]

A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand secondary evidence.

It is well known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news item cannot be said to prove themselves. [Samant N. Balkrishna and another v. George Fernandez and others ((1969) 3 SCC 238.)].

So the evidence of the witnesses and allegations in the plaint merely show that a certain report was published in a certain newspaper and it does not amount to *prima facie* proof of the fact that the accused uttered the words attributed to him. The result is that there is not an iota of evidence of the fact that the accused uttered the words imputed to him and in paragraph 8 of his affidavit the accused has said that he never uttered those words. Then there is no evidence it cannot be said even *prima facie* that accused uttered those words. So there was no sufficient ground for proceeding and the Magistrate was bound to dismiss the complaint under Section 203 Cr.P.C. He fell into error, when from the fact certain reports were published in the press, the learned Magistrate jumped to the conclusion that the accused made those statements.

Section 499, I.P.C. says that a certain type of imputation is defamation when it is made "concerning any person". Here the alleged statements are said to have been made regarding "the press in India". "The press in India" is not a person. So under the main section imputation will not amount to an offence. However, there is Explanation 2 to this section. It says that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. This brings us to the question whether "the press in India" is "a collection of persons" within the meaning of the aforesaid explanation.

A collection of persons must be identifiable body so that it is possible to say with definiteness that a group of persons, as distinguished from the rest of the community, was defamed. Therefore, in a case where Explanation 2 is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing inveighs against mankind in a general, or against a particular order of men, e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. (1699) 3 Balk 224, cited in Ratanlal and Dhirajlal, Law of Crimes (22nd Ed.) 1317. In England also, criminal proceedings, would lie in the case of libel against a class provided such a class is not indefinite, e.g., men of science, but a definite one, such as, the clergy of the diocese of Durham, the justices of the peace for the county of Middlesex. (See Kenny's Outlines of Criminal Law 19th Ed. 235). If a well defined class is defamed, every person of that class can file a complaint even if the defamatory imputation in question does not mention him by name. When, therefore, Explanation 2 to Sec. 499 talks of a collection of persons as capable of being defamed, such collection of persons must mean a definite and a determinate body. [G. Narasimhan v. T.V. Chokkappa (AIR 1972 SC 2609.)].

Here according to prosecution case, imputation has not been made regarding any

printing house, publishing house, any particular newspaper or a particular body of Journalists or a particular body of correspondents. The allegation is regarding "the press in India". That is a very wide term and it is not easily possible to locate it. One cannot even know whether it was against some correspondents, Editors or any newspaper or a News Agency or any Club relating to press or journalists. When it is so wide, it does not appear that the imputation has been made against a collection of persons which is identifiable or determinable.

In the case of *Ram Beyas v. State of Bihar* (1977 Cr.LJ. 21 at page 28 Patna High Court.) held that the Advocates as a class are incapable of being defamed as they are not regarded as determinate and identifiable body.

In view of what has been said above it does not appear that the act complained of can fall within the four corners of Section 499, I.P.C. and so there can be no prosecution under Section 500 I.P.C.

It may also require consideration whether the words attributed to the accused were merely abusive language uttered in a heat of the moment or even if they contained some imputation whether it was not an act causing such slight harm that its notice should not be taken in view of Section 95, I.P.C. which says there nothing is an offence by reason that it causes, or that it is intended to cause or that it is known to be likely to cause any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm. But these points have not been argued in detail and it is not necessary to go into them when in view of the above discussion it appears that this application has to be allowed.

The application is allowed. The proceedings and the prosecution of the applicant in Case No. 60/68 pending in the Court of Magistrate at Lucknow and the order dated 19.4.88 summoning the accused passed by the III Addl. Munsif Magistrate, Lucknow are quashed.