

S. Nagaraj Vs. K. Nanda Kumar

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Court : Karnataka

Decided On : Oct-14-2014

Judge : Anand Byrareddy

Appeal No. : Criminal Appeal No.79 of 2009

Appellant : S. Nagaraj

Respondent : K. Nanda Kumar

Judgement :

(Prayer: This Criminal Appeal filed of the code of Criminal Procedure, 1973, by the advocate for the appellant praying to set aside the order dated 18.11.2008 passed by the IX Additional Chief Metropolitan Magistrate, Bangalore City, in C.C.No.20237/2000 - acquitting the respondent/accused for the offence punishable under Section 500 of IPC.)

1. The appellant herein was the complainant before the court below. It was the case of the appellant that he had borrowed a sum of Rs.50,000/- from the accused, in order to secure the due repayment of the same, he is said to have executed a document dated 7.12.1997, styled as a Memorandum of Undertaking, agreeing to pay Rs.5,000/- every month to discharge the debt. It was claimed that the appellant repaid the entire amount and on payment of the last instalment, had demanded that the document executed by him be returned, as per the notice marked as Exhibit P-2. The accused is said to have replied as per Exhibit P-3. In

response to which, the appellant had issued yet another notice, Exhibit P-4, to which a reply was said to have been issued by the accused at Exhibit P-5.

2. It was the case of the appellant that the statements made by the accused in the two replies issued, at Exhibit P-3 and P-5, are per se defamatory, as they were statements making imputations as to the character and conduct of the appellant.

The appellant had tendered evidence in support of the complaint and examined one other as the person, to whom the offending statements contained in Exhibits P-3 and P-5, had been shown by the accused.

The trial court having held that the complaint does not refer to the said witness and in any event, that the said witness had admitted in cross examination, that he had not read the contents of Exhibit P-5, nor was it read over to him by the accused and therefore, the trial court has concluded that the alleged defamatory statements could not be said to have been "published", nor were the same brought to the attention of any third party. The trial court has even expressed that the statements complained of may even fall within the Ninth and Tenth Exceptions contained under Section 499 of the Indian Penal Code, 1860. The trial court has accordingly acquitted the accused. It is that which is under challenge.

3. After having heard the appellant, who had appeared in person and on a perusal of the record, it is seen that the offending statement, according to the appellant, as contained in Exhibit P-3, is an accusation that a cheque issued in favour of the accused could not be encashed because, the account on which it was drawn, was said to have been closed at the instance of the appellant, according to the accused. Hence, he had alleged as follows : "You will be abettor for the above act."

Further, in a further reply, Exhibit P-5, to a notice issued by the appellant, he was taunted as follows :

' Please let me know the name and address of your Senior Advocate under whom you are undergoing training so as to appraise him of your criminal attitude, who may be able to change your negative attitude for your own good and the good of

your family."

Even if the above statements could be said to be defamatory, it would require the appellant to establish that the defamatory matter was published or that it was communicated to some person other than the person about whom, it is addressed. The mere communication of the defamatory matter to the person defamed is not "publication". Publication should be made to others with intention to defame the concerned person - publication to person defamed may amount to an insult and not defamation.

In so far as the contention that there was such publication to a third person, namely, PW-2, is concerned as found by the trial court - the evidence of the said witness is vague and it is admitted that the contents of Exhibit - P.5 were not read by him nor was it read over to him by the accused.

In the light of the above, there is indeed no case made out by the appellant and the appeal is accordingly dismissed on the above primary ground.

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