

Ejaz Ali @ Dr. Ejaz Ali Vs. State of Bihar and ors.

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Court : Patna

Decided On : Sep-27-2006

Judge : Chandramauli Kr. Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 500; Code of Criminal Procedure (CrPC) - Sections 199, 199(1) and 202

Appeal No. : Criminal Misc. No. 25282 of 2005

Appellant : Ejaz Ali @ Dr. Ejaz Ali

Respondent : State of Bihar and ors.

Advocate for Def. : Ashraf Ansari, Adv.

Advocate for Pet/Ap. : Md. Wasi Akhtar, Sr. Adv., Md. Rashid Alam and Md. Anis Akhtar, Adv.

Disposition : Application allowed

Prior history : Chandramauli Kr. Prasad, J. 1. This application has been filed for quashing the entire prosecution including the order dated 29.4.2004 passed by the Judicial Magistrate. Bhabhua in Complaint Case No. 334 (C) i of 2004, whereby it had taken cognizance of the offence under Section 500 of the Indian Penal Code and directed for issuance of process. 2. Short facts giving rise to the present application, are that Opposite party No. 2 Nausher Ali Ansari filed complaint claiming himself to be a follow

Judgement :

Chandramauli Kr. Prasad, J.

1. This application has been filed for quashing the entire prosecution including the order dated 29.4.2004 passed by the Judicial Magistrate. Bhabhua in Complaint Case No. 334 (C) i of 2004, whereby it had taken cognizance of the offence under Section 500 of the Indian Penal Code and directed for issuance of process.

2. Short facts giving rise to the present application, are that Opposite party No. 2 Nausher Ali Ansari filed complaint claiming himself to be a follower and close to Mr. Sakil Ahmad Khan and alleging that the news item 'Shakeel Khan has been pushed backward and Raghuvansh Singh forward' in the daily Newspaper 'Sansam' in its issue dated 2nd of April, 2004 had shocked him and the muslim community at large and was intended to defame Mr. Khan, a Minister in the State Cabinet. After the complainant was examined on solemn affirmation the learned Magistrate directed for holding inquiry under Section 202 of the Code of Criminal Procedure. During the inquiry witnesses were examined and the learned Magistrate taking into account the allegation made in the petition of complaint, statement of the complainant on the solemn affirmation and the witnesses examined during the course of inquiry, prima facie, came to the conclusion that offence has been committed and accordingly, took cognizance of the offence under Section 500 of the Indian Penal Code and directed for issuance of process.

3. Mr. Wasi Akhtar. Senior Advocate appearing on behalf of the petitioner, submits that the complaint has been filed without the leave of the Court. He points out that in view of Section 199 of the Code of Criminal Procedure no Court can take, cognizance of the offence punishable under Chapter XXI of the Indian Penal Code, which includes Section 500 of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. He points out that the complainant claimed to be the follower and close to the person defamed even if accepted in its entirety shall not make him a person aggrieved within the meaning of Section 199(1) of the Code of Criminal Procedure. In support of his submission he has placed reliance on a judgment of this Court in the case of Dr.

Subramaniam Swamy v. State of Bihar 1996 M East Crc 457 and my attention has been drawn to paragraph 5 of the judgment which reads as follows:

5. I find sufficient merit in this contention. It is well settled that Section 199 of the Code of Criminal Procedure lays down an exception to the general rule that a complaint can be filed by any one whether he is an aggrieved person or not. It modifies that rule by allowing only an aggrieved person to move to the Court in cases relating to the defamation. The provisions of the section are mandatory and as such if a Magistrate takes cognizance of the offence of defamation on a complaint by one who is not an aggrieved person, the trial and conviction of the accused in such a case would be void and illegal.

4. Mr. Ashraf Ansari however appearing on behalf of complainant-Opposite party No. 2 submits that; the complainant being the follower and close to the person defamed comes within the expression 'person aggrieved' and as such competent to file the complaint. Rival submission necessitates examination of Section 199 of the Code of Criminal Procedure.

5. Section 199(1) of the Code of Criminal Procedure which is 'relevant for the purpose reads as follows:-

199. Prosecution for defamation.-(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic or is from sickness of infirmity unable to make a complaint, or is a woman who according to the local customs and manners, ought not be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

5. Section 199 of the Code of Criminal Procedure it is plain, clearly bars taking cognizance of an offence punishable under Chapter XXI of the Indian Penal Code, except upon a complaint made by some person aggrieved by the offence. Section 500 of the Indian Penal Code comes within the Chapter XXI of the Indian Penal

Code. Proviso to the aforesaid Section however, authorises other person to file complaint in the contingencies narrated therein with the leave of the Court.

It is common ground that the complaint has not been filed with the leave of the Court and hence the only question falling for determination is as to whether the complainant who claims to be the follower and close to the person defamed comes within the expression 'person aggrieved' by the offence. Section 199 of the Code of Criminal Procedure is an exception to the general rule that any body, aggrieved or not, can set the criminal law in motion. In my opinion, the mere fact that the feelings of the complainant have been injured in consequence of defamatory statement made against his leader is no ground under the law to prosecute the petitioner for defamation. I am of the opinion that the expression 'person aggrieved' shall necessarily mean the person directly defamed and it may sometimes refer to other depending upon the nature of offence and circumstances of the case but the grievance should not be the one shared by the follower of a leader. To bring a follower within the meaning of the 'person aggrieved' some personal element should be there and the defamatory statement should have a tendency to injure the reputation of complainant himself and should tend to lower him in the estimation of the people. When a person complains that he has been defamed as a follower of a leader, he has to satisfy that the imputation against him is personal and he is the person aimed at, before he can maintain prosecution for defamation. In other words to bring the complainant within the purview of person aggrieved his grievance should not merely be the one shared by every member of the society. The 'person aggrieved' must have a legal grievance and there cannot be any grievance merely on account of fanciful and sentimental attitude of being a follower and close to a leader.

6. In view of what has been said above, it is evident that in the present case the cognizance of the offence has been taken on a complaint of a person, who is not an aggrieved person within the meaning of Section 199(1) of the Code of Criminal Procedure, hence the order taking cognizance and issuance of process is illegal being against the mandatory provision of law.

7. In the result, the application is allowed the entire proceeding, including the order dated 29.4.2004 passed by the Judicial Magistrate. Bhabhua in Complaint Case No. 334 (c) of 2004, is quashed.

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