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„xyz? vs.state & Ors.

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Court : Delhi

Decided On : Dec-19-2018

Appellant : „xyz?

Respondent : State & Ors.

Advocate for Def. : Mr. K.S. Ahuja, Mr. Kartik, Ms. Neha Sarna, Ms. Jhanvi Dubey, Mr. Kirat Nagra

Advocate for Pet/Ap. : Mr. R.K. Handoo, Mr. Mansih Shukla, Mr. Aditya Choudhary, Mr. Yoginder Handoo

Judgement :

$~ + XYZ IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

13. h November, 2018 Pronounced on:

19. h December, 2018 CRL. M.C. 2602/2013 .....

... Petitioner
Through: Mr. R.K. Handoo, Advocate with Mr. Mansih Shukla, Mr. Aditya Choudhary, & Mr. Yoginder Handoo, Advocates versus STATE & ORS. .....

... RESPONDENTS
Through: Mr. K.S. Ahuja, APP for the State with SI Ranjeet Singh, PS Tughlaq Road. Siddharth Aggarwal, Mr. with Mr. Kartik Advocate Yadav, Ms. Neha Sarna,

Ms. Jhanvi Dubey, & Mr. Kirat Nagra, Advs. for R-2. CORAM: HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

1 The petitioner and the second respondent have been in public life for quite long, engaged in active politics, they being associated with political parties that generally have been seen to be opposed to each other. In their interest, their names are being withheld from mention, including in the cause-title. In the wake of results of the Crl. M.C. No.2602/2013 Page 1 of 11 elections to legislative assembly of a State being announced, both had participated in a debate on a private television network channel on 20.12.2012, there also being other participants to the debate, the discussion and exchange of views being moderated by an anchor representing the news channel, the programme being telecast live, the parties herein being virtually present from their respective residence in New Delhi. Both the petitioner, and the second respondent, came to be involved in a verbal exchange in the course of the said TV debate, such exchange having been carried live over the network, the same being referred by each of them to institute criminal complaint cases against the other alleging defamation, an offence punishable under Section 500 of Indian Penal Code, 1860 (IPC), having been committed.

2. On the basis of separate preliminary inquiries into the said criminal complaints, the courts of Metropolitan Magistrate have summoned the opposite party to appear as accused, each side having approached this Court invoking the inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) praying for quashing of the said criminal process on the plea that it is an abuse of the process of law.

3. Both the above-said petitions came up before the Court simultaneously for final hearing. Since they arise out of different criminal cases and against separate summoning orders, they are being decided by separate judgments, albeit simultaneously. Since the background facts are almost common, for the sake of convenience, the parties shall be referred to by their status in the proceedings. Crl. M.C. No.2602/2013 Page 2 of 11 4. The criminal complaint case (CC

No.01/01/2013) was instituted by the second respondent (complainant), against the petitioner, on 01.01.2013 in the wake of a legal notice sent on her behalf on 21.12.2012 to which the latter (accused-petitioner) had responded by a reply through counsel on 22.12.2012, this being followed by a letter dated 24.12.2012 sent by counsel of former it, in turn, being responded by a letter dated 31.12.2012 of the counsel for the petitioner.

5. In the course of pre-summoning inquiry in above said case, the complainant examined herself (as CW-1) besides examining an acquaintance (CW-2), and senior executive editor (CW-3) of the news channel. Through CW-3, a compact disk (CD) containing the recording of the TV debate (Ex.CW-3/A) with certificates (Ex.CW- 3/B and C) was brought on record. The Metropolitan Magistrate, by his order dated 11.03.2013, found grounds to proceed against the petitioner for offences punishable under Sections 499 and 509 of IPC. The said order is subject matter of challenge in the petition at hand.

6. Against the same very backdrop, in the wake of exchange of legal notice, reply and letters of the two counsel on both sides as referred to above, the petitioner herein presented his own criminal complaint (CC No.29/1A/2014), on 11.10.2013, alleging offence under Section 499 IPC having been committed by the second respondent. For preliminary inquiry, he examined himself (as CW-1), besides examining an acquaintance (CW-2), also relying on the evidence of senior legal executive (court witness) of the news channel through whom, inter alia, record of the TV debate in the form of CD Crl. M.C. No.2602/2013 Page 3 of 11 (Ex.CWA/2) along with certificate (Ex.CWA/3) were brought on record. Upon consideration of the said material, the Metropolitan Magistrate, by his order dated 06.06.2014 found grounds to proceed against the second respondent for the offence under Section 500 IPC and, thus, summoning her to appear as accused. The said order is under challenge by Crl.M.C. 2997/2015, it also invoking Article 227 of the Constitution of India on the plea that criminal action is abuse of process of the court.

7. The transcripts of the relevant portions of the TV debate were presented before the court of cognizance in the pre-summoning inquiry, some part also incorporated

in averments in the complaints. The said transcript has been perused and it is seen that the drift of the discussion, prior to the heated exchange between the two parties, hovered around the respective views of the participants, the petitioner insisting on bringing up certain issues concerning the plight of farmers on account of limited availability of electric supply or water and conditions of homeless poor in the State. In response, the second respondent questioned his credentials by raising issue of his past association with a different political outfit, the petitioner taking affront by terming the intervention as false accusation. This verbal duel continued for quite some time, the anchor though trying to intervene but finding it difficult to make either side budge. It is in that context that the petitioner uttered words to the effect that the second respondent was trying to show herself as an analyst (vishleshak) even though she had spent insignificant period (chaar din) in politics. He followed this by using words loosely translated to the Crl. M.C. No.2602/2013 Page 4 of 11 effect that the second respondent had been dancing around on television till recent times and was projecting herself as a political leader (Arrey, Kal tak television par thumke laga rahi thee, aaj neta ban gayee), repeating it several times, the anchor trying to stop this diatribe. The petitioner then raised the issue of the values followed by the second respondent (aapke sanskar bahut achche hain, aapke sanskar kya hain). The second respondent, seemingly hurt, responded by telling the petitioner that he was indulging in frivolous conduct (chhichhora harqat) similar to the one reflected by gunda elements who indulge in eve-teasing or molestation on the streets of Delhi, one which eventually turn them into rapists. The petitioner then retorted by asking the second respondent to shut up, questioning her character and thereafter bringing up the issue of her personal life, referring in this context to her marriage to the former husband of her close friend, she being behind their divorce. During this exchange, the other participants, and the anchor, tried to pacify but to no avail, the anchor opting to bring an end to the discussion by going into a commercial break.

8. On the complaint of the second respondent, the Metropolitan Magistrate has observed, by the impugned summoning order, that the aforementioned utterances of the petitioner were prima facie defamatory insinuations intended to lower her reputation in the eye or estimation of others, the same also amounting to insulting her modesty as a woman, referring in this context to the evidence of CW-2. Crl.

M.C. No.2602/2013 Page 5 of 11 9. The offence of defamation is defined by section 499 IPC. It is well settled that the following ingredients constitute the offence of defamation :-

"(a) making or publishing an imputation concerning a person; (b) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations; and (c) The said imputation must have been made with the intention of harming or with the knowledge or having reason to believe that it will harm the reputation of the person concerned, the intention to cause harm being the most essential sine qua non of the offence. [Shobhana Bhartia & Ors. vs. NCT of Delhi & Anr., 2007 SCCOnline Del 1301; Sanjay Mishra vs. Govt. of NCT of Delhi, 2012 (189) DLT196 Mammen Mathew vs. M.N. Radhakrishnan, 2007 SCCOnline Ker 131; and Sunilakhya Chowdhary vs. H.M. Jadwet, AIR1968 Cal 266].

10. There is no need for the present scrutiny of the material on record at this stage of the process, to refer to the exceptions appended to Section 499 IPC inasmuch as each of the said clauses are generally a matter of defence to be taken by the person accused at the trial, the onus invariably being on him to prove good faith. It is trite that, at the threshold, in absence of material to this effect being presented or Crl. M.C. No.2602/2013 Page 6 of 11 available, the Court cannot proceed on the presumption of good faith.

11. It has been argued on behalf of the petitioner that the assertions attributed to him are being read out of context, it being ignored unfairly that all that he was attempting to do, in the course of the TV debate, was to give vent to his anguish. It is his submission that the transcript of the entire conversation was suppressed and the material presented was by picking and choosing, none of the witnesses in the pre-summoning inquiry examined referring to the debate in entirety. It is his argument that whatever responses he gave were in answer to provocation, there being no intent on his part to defame or lower the image of the complainant in the estimation of others. He also argued that, in the legal notice sent on 21.12.2012 demanding his apology, the impugned statements in the debate were described as despicable and obnoxious which cannot be equated with defamatory insinuation.

In this context, he referred to the decisions of learned single judges of Lahore High Court, Orissa High court and Kerala High Court, reported as Girdhari Lal vs. Panjabi Singh, AIR1933 Lahore 727; Sarat Chandra Das & Anr. vs. The State, Criminal Revision No.262/1951, decided on 21.03.1952 (Orissa High Court); and Jacob Mathew vs. Manikantan, 2012 (3) KLT824 The sum and substance of his argument is that the expressions used by him might be construed as demeaning but the same would not fall foul of the inhibition of the penal clause of Section 500 IPC.

12. Relying upon the ruling of the Supreme Court in Manmohan Kalia vs. Yash & Ors., (1984) 3 SCC499 he argued that the doctrine Crl. M.C. No.2602/2013 Page 7 of 11 of innuendo cannot be applied on the basis of inferential evidence that is capable of two possibilities. Referring to the decision in M.J.

Zakharia Sait vs. T.M. Mohammed & Ors., (1990) 3 SCC396 his further submission was that the impugned words cannot be described as defamatory if they are not construed to be defamatory per se in their natural or ordinary meaning, without the aid of certain special or extrinsic facts which are in the knowledge of the particular persons to whom they are addressed, unless specifically pleaded and proved by giving particulars of such extrinsic facts.

13. The petitioner also argued that since the live telecast of TV debate was being controlled from their studio by the news channel, the onus was on their anchor to block the verbal exchange between him and the complainant from being telecast, he having no control over such process. It is his argument that in absence of the news channel from the array of accused, his prosecution is unfair.

14. It is also his grievance that the complainant had not brought action for offence under Section 509 IPC and, therefore, the inclusion of the said offence in the summoning order by the Magistrate on his own is bad in law.

15. Per contra, it is the submission of respondent that this court when called upon to sit in judgment over the prayer for quashing in exercise of its inherent power, it must accept the complaint and the material submitted therewith on their face value, it being impermissible to embark upon an inquiry as to the probability,

reliability, or genuineness of the defence of the person summoned as accused. In support, reliance is placed on State of M.P. vs. Awadh Crl. M.C. No.2602/2013 Page 8 of 11 Kishore Gupta & Ors., (2004) 1 SCC691 G.P. Sinha vs. State of Gujarat, 2003 Crl.L.J.

4538; Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, (1995) 6 SCC194 R.P. Kapur vs. State of Punjab, AIR 1960 SC866 and J.P. Sharma vs. Vinod Kumar Jain & Ors., (1986) 3 SCC67 16. Having accorded anxious consideration to the contentions that have been urged, this court is of the view that no case is made out for intervention in exercise of the special jurisdiction of Section 482 Cr. PC at this stage of the process in the complaint of the second respondent. The pleadings and arguments of the petitioner, at their best, give rise to questions of fact, some including such as cannot be addressed without the aid and assistance of formal evidence. [Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC330 17. The criticism that the entire TV debate was not available to the court of cognizance is not correct. The CD containing the recording of the said debate was adduced in evidence through CW-3, its transcript being also presented. It may be that in the complaint or in the notices, or letters, that were exchanged preceding the filing of the complaint or, for that matter, in the testimony of the three witnesses examined in the pre-summoning inquiry, the debate in question has not been copiously extracted. But, this was really not required. The material was available, it showing the context and the drift of the discussion from which conclusions could prima facie be drawn.

18. Mere use of the expression despicable or obnoxious in the legal notice does not mean that this is only how the impugned utterances are to be construed. Lest it prejudices either side at the trial, it may not be correct at this stage for this court to refer at length Crl. M.C. No.2602/2013 Page 9 of 11 to the contents of the legal notice or the correspondence that was exchanged or the hurt feelings set out by the complainant through her own deposition, or the view taken by CW-2 in this regard, Suffice it to note and observe that the utterances include those seemingly going beyond verbal abuses, particularly the assertions vis--vis the personal life of the complainant touching upon the circumstances in which she had entered matrimony. The innuendo of such expressions does not prima facie (generally)

require, particularly in the case of persons in public life, extrinsic facts to be pleaded or proved.

19. Given the fact that both parties were participating in the TV debate from their respective homes, it being presently a matter of assumption that they were aware that the programme was going live to the people at large, the need for restraint in choice of words or expressions was expected to be borne in mind. There is nothing shown at this stage to indicate that the anchor could have anticipated what was about to fall from the mouth of the petitioner so that he could block it from going viral through the live telecast.

20. As regards the inclusion of the offence under Section 509 IPC in the summoning order, it only need to be observed that the Metropolitan Magistrate was not bound by the prayer clause of the complaint. He had the power and jurisdiction to take cognizance of all such offences as are shown to have been committed by the evidence which was presented in the pre-summoning inquiry. In view of the nature of the material adduced, the summoning order additionally with reference to such offence cannot be questioned. Crl. M.C. No.2602/2013 Page 10 of 11 21. The petition is dismissed. The interim order earlier granted stands vacated. R.K.GAUBA, J.

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