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Pqr vs.state & Ors.

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Court : Delhi

Decided On : Dec-19-2018

Appellant : Pqr

Respondent : State & Ors.

Advocate for Def. : Mr. K.S. Ahuja, Mr. R.K. Handoo, Mr. Mansih Shukla, Mr. Aditya Choudhary, Mr. Yoginder Handoo

Advocate for Pet/Ap. : Mr. Petitioner Siddharth Aggarwal, Mr. Kartik Yadav, Ms. Neha Sarna, Ms. Jhanvi Dubey, Mr. Kirat Nagra

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

13. h November, 2018 Pronounced on:

19. h December, 2018 CRL. M.C. 2997/2015 & Crl.M.A. 10711/2015 $~ + PQR STATE & ORS. Through: Mr. .....

... Petitioner
Siddharth Aggarwal, Advocate with Mr. Kartik Yadav, Ms. Neha Sarna, Ms. Jhanvi Dubey, & Mr. Kirat Nagra, Advs. versus .....

... RESPONDENTS

Through: Mr. K.S. Ahuja, APP for the State with SI Ranjeet Singh, PS Tughlaq Road. Mr. R.K. Handoo, Advocate with Mr. Mansih Shukla, Mr. Aditya Choudhary, & Mr. Yoginder Handoo, Advs. for R

CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER1 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.2997/2015 Page 1 of 9 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.2997/2015 Page 2 of 9 4. The criminal complaint case (CC

No.01/01/2013) was instituted by the petitioner, against the second respondent, on 01.01.2013 in the wake of a legal notice sent on her behalf on 21.12.2012 to which the latter 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 latter.

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 second respondent for offences punishable under Sections 499 and 509 of IPC. The said order is subject matter of challenge in Crl.M.C. 2602/2013.

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 second respondent 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 petitioner. 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.2997/2015 Page 3 of 9 (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 petitioner for the offence under Section 500 IPC and, thus, summoning her to appear as accused. The said order is under challenge by the petition at hand, 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 second respondent 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 petitioner questioned his credentials by raising issue of his past association with a different political outfit, the second respondent 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 second respondent uttered words to the effect that the petitioner 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 effect that the Crl. M.C. No.2997/2015 Page 4 of 9 petitioner 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 second respondent then raised the issue of the values followed by the petitioner (aapke sanskar bahut achche hain, aapke sanskar kya hain). The petitioner, seemingly hurt, responded by telling the second respondent 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 second respondent then retorted by asking the petitioner 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, by the impugned summoning order, has observed that the material reflecting the above utterances by the petitioner constituted scurrilous and defamatory insinuations and constitute sufficient material accepting his case that the petitioner had abused him by referring him as a liar, an opportunist, a rapist, a molester, an eve teaser and gunda, basing his conclusions, inter alia, on the testimony Crl. M.C. No.2997/2015 Page 5 of 9 of CW-2, and thereby summoning her as accused for the offence of

defamation.

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 Crl. M.C. No.2997/2015 Page 6 of 9 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 available, the Court cannot proceed on the presumption of good faith.

11. It is the argument of the petitioner that the complaint instituted by the respondent is an afterthought and in the nature of counterblast to her complaint and from this perspective alone it is an abuse of the process of the court, this court being duty bound to put an end to the criminal action instituted against her, she placing reliance on D.P. Gulati, Manager Accounts, Jetking Infotrain Limited vs. State of Uttar Pradesh & Anr., (2015) 11 SCC730 M.N. Ojha & Ors. vs. Alok Kumar Srivastav & Anr., (2009) 9 SCC682 Eicher Tractor Limited & Ors. vs. Harihar Singh & Anr., (2008) 16 SCC763 and State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp (1) SCC335 It is also her argument that the transcript of the TV debate and the evidence produced in the pre-summoning inquiry by the respondent do not make out even a prima facie case of commission of an offence

of defamation by her, her reaction to the defamatory assertions of the respondent having stemmed from the mental agony and humiliation suffered on a public platform, it being couched in careful phraseology to caution the respondent against breaching the discipline of a civil debate by scurrilous remarks designed to tarnish her character and lowering it in the estimation of public at large.

12. Per contra, the respondent argued that the petitioner had indulged in using venomous words equating him with eve-teasers and rapists with intent to undermine and lowering his dignity. It is his Crl. M.C. No.2997/2015 Page 7 of 9 argument that he had patiently waited for apology to be tendered by her, also for the reason that on his petition (Crl.M.C.2602/2013), by order dated 22.08.2013, the parties had been referred to the process of mediation to explore the possibility of amicable resolution but since the said process did not bear fruit, he had filed his own complaint on 11.10.2013, within his own rights.

13. The manner in which the second respondent (complainant) has sought the utterances or the intervention of the petitioner to be construed, is not correct. The drift of the discussion which led to the verbal heated exchange does show that the petitioner was trying to block the criticism leveled by the complainant against the performance of the political party to which she belongs and in that process questioned his credentials by referring to the history of he having switched loyalties. The complainant took this as an affront and after mildly challenging her claim to be a political analyst shifted to comments which were designed to cause personal hurt bringing up her stint in the television programmes, challenging her values (sanskar) and eventually questioning her character with innuendoes concerning her matrimony. It is in that context that the petitioner retorted by stating that this was frivolous conduct similar to the one reflected by gunda elements. She at no stage called him a rapist or a molester or an eve teaser, neither directly nor indirectly. Her responses cannot be construed but as a caution to him to remain within the bounds of decency and civility.

14. Having regard to the chronology of events, it is clear that the criminal complaint leading to the summoning order against the Crl. M.C. No.2997/2015 Page 8 of 9 petitioner was instituted by the second respondent in the counter-blast

to the complaint of the former, there being no explanation offered for the delay. The continuance of such criminal prosecution on the basis of available material would be an abuse of the process of law.

15. Thus, the petition is allowed. The impugned order dated 06.06.2014 of the Metropolitan Magistrate summoning the petitioner as accused and the proceedings against her on the criminal complaint case (CC no.29/1A/2014) of the second respondent are hereby quashed.

16. The petition and the application filed therewith are disposed of in above terms.
R.K.GAUBA, J.

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