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**G. Narayan Reddy Vs. P. Sitapathi, Advocate and Special Prosecutor and anr.**

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**Court : Andhra Pradesh**

**Decided On : Jun-28-1991**

**Reported in : 1991(2)ALT683**

**Judge : D.J. Jagannadha Raju, J.**

**Acts : Indian Penal Code (IPC) - Sections 499 and 500; Code of Criminal Procedure (CrPC) - Sections 397, 401 and 482**

**Appeal No. : Criminal Revision Case No. 53/91**

**Appellant : G. Narayan Reddy**

**Respondent : P. Sitapathi, Advocate and Special Prosecutor and anr.**

**Advocate for Def. : C. Padmanabha Reddy, Adv. for Respondent No. 1 and ;Public Prosecutor for Respondent No. 2**

**Advocate for Pet/Ap. : Party in peson**

**Judgement :**

**ORDER**

**D.J. Jagaunadha Raju, J.**

1. This criminal revision is filed by the complainant against the rejection of complaint (S.R. N. 3735 of 1989) by order dated 29-12-1990 on the file of the VI Metropolitan Magistrate, Hyderabad. The complainant Sri G. Narayan Reddy who is advocate by profession, filed the complaint against an advocate Sri P. Sitapathi alleging that in the course of conducting C.C. No. II of 1988 which emanated on a complaint filed by the present complainant-petitioner and in the course of arguing Criminal Appeal No. 359 of 1989 on the file of the Additional Metropolitan Sessions Judge's court, the present accused Sri P. Sitapathi made various defamatory imputations and thus he is guilty of an offence Under Section 500 I.P.C. The main allegations are that in the course of cross-examination, the advocate suggested that the present complainant is in impecunious circumstances and he is cantankerous by nature and that the marriage proposals for his daughters failed because of his cantankerous attitude and it was beyond his capacity to think of having an alliance with an I.P.S. Officer because of his poor financial position. It is also alleged that during the course of the arguments in the criminal appeal, the advocate-accused went to the extent of suggesting that the complainant is an insolvent and that all these things were done with a view to forcing the complainant not to take interest in the prosecution of the case and the criminal appeal and they were done with a view to cow down the complainant and it is also alleged that the suggestion of insolvency was made more due to malice and ill will against the complainant.

2. The learned Magistrate, after recording the statement of the complainant, rejected the complaint relying upon exception (9) to Section 499 I.P.C. and he also rejected the complaint on that ground that it is filed belatedly, The relevant cross-examination of the complainant was done on 2-12-1988 and the imputations made at the time of the arguments in the criminal appeal took place on 9-12-1988 and then the complaint was filed after a long delay on 26-12-1990. The Magistrate came to the conclusion that there is no sufficient material to proceed further in the case and accordingly rejected the complaint. Aggrieved by this order, the present revision is filed.

3. In this revision petition Mr. Narayan Reddy, who argued the case as a party in person, contends that while he was forced to prosecute one S. Gopal Reddy I.P.S.

and his brother Panduranga Reddy in C.C. No. 11 of 1988, Sri. P. Sitapathi, appearing as the defence advocate, did not follow the rules of professional conduct and advocacy and he adopted a vilification and smear campaign and carried on cross-examination of the present complainant making defamatory statements. This is done with deliberate object of brow-beating the complainant and to humiliate him. As the case ended in conviction inspite of all those tactics, during the course of arguments in appeal, the advocate went on to make further imputations and made damaging statements and he represented to the court that the complainant is an insolvent and that he was not justified in hoping to have a marriage alliance for his daughter with a highly qualified I.P.S. Officer. Mr. Narayan Reddy submits that all these imputations were made out of private vengeance and malice and with a view to prevent the complainant from taking active interest in the prosecution of the criminal case and the criminal appeal. He relies upon Chandra Deo v. Prokash Chandra, : [1964]1SCR639 and contends that when the scope of enquiry Under Section 202 Cr. P.C. is very limited and it is confined to ascertaining the truth or falsehood of the complaint before issuing the process, the Magistrate has only to see whether any process is to be issued or not and he should only satisfy himself as to whether there is sufficient ground for proceeding further and not whether there is sufficient ground for conviction. Mr. Reddy contends that the Magistrate dismissing the complaint relying upon exception (9) to Section 499 I.P.C. is clearly an illegality. The defence of Section 499 exception (9) is a thing which the accused should plead and establish after process has been issued to him.. He also contends that the order does not give reasons as to how the complaint and the sworn statement and the copy of the written arguments tiled by the complainant in the course of the argument of the criminal appeal do not, prima facie, establish a case of defamation. He contends that the order dated 29-12-1990 should be set aside and the Magistrate should be directed to take the complaint on file and proceed with the case as per law.

4. On behalf of the accused-advocate Sri P. Sitapathi, the learned counsel Sri. C. Padmanabha Reddy contends that it is well-settled law that in a case of this nature for imputations made in the course of defending an accused, when the imputations are made for the purpose of protecting the case of the client and to advance his cause, no action can be taken to prosecute the advocate for an offence of

defamation even if the words are per se defamatory. In such cases, unless there is a positive allegation that out of private malice or private vindictiveness the imputations are made, not with the object of advancing the cause of the client, but purely to wreak vengeance or to settle old scores, then alone a complaint would be maintainable. He relies upon *Anwaruddin v. Fathim Bai*, ( A.I.R. 1927 Madras 378) in support of his arguments.

5. The point for consideration is whether the order dated 29-12-1990 rejecting the complaint is justified or whether it is liable to be modified.

6. The complainant-revision petitioner, who argued the case in person, took me through the entire cross-examination portion of his evidence in C.C. No. 11 of 1988. One of the questions put to the witness is, 'I suggest to, you that because of your cantankerousness several alliances were broken.' The petitioner-complainant has taken me through the written arguments which he filed in CrI. Appeal No. 359 of 1989 in his capacity as person who was permitted to assist the prosecution, in these written arguments, the main imputation complained against is that in the course of the arguments the advocate described the complainant as a man of impecunious circumstances and described him as an insolvent, in the present case on hand, there is absolutely no allegation in the complaint that Sri Sitapathi was acting beyond the instructions of his client and that he was acting out of private vengeance or private malice against the complainant.

7. Mr. Padmanabha Reddy rightly contended that exception (9) to Section 499 I.P.C. provides a complete privilege and protects the advocate who made imputations even if they are per se defamatory if they are meant to protect the interests of the client and to advance his cause. He placed strong reliance on *Anwaruddin v. Fathim Bai* (2 supra). In that decision which is binding on this court, the entire law on this branch has been settled. In that decision, the court upheld the dismissal of a complaint filed for defamation against a lawyer for matters uttered in court in the course of his professional duties. The court stated that such a complaint cannot be entertained and then traced the law on the subject. It referred to one of the earliest decisions *Sullivan v. Norton*,( (1887) 10 Mad. 28 (F.B.)) which laid down that such utterances by a lawyer in the course of his

professional duties and required by his duty to his client are absolutely privileged. Then referring to *Tirurangada Mudali v. Tripurasundari Ammal*, (A.I.R. 1926 Mad. 906) which doubted the correctness of the application of the English common law principles to the criminal law in India regarding doctrine of absolute privilege, the learned judge stated that the law has to be applied purely on the provisions of the Indian Penal Code. The court observed as follows:

'There is a course of such decisions which, interpreting the ninth exception to Section 499 Indian Penal Code, definitely lays down that, when a lawyer is acting in the course of his professional duties and is thus compelled, subject to the disciplinary action of the Court, to put forward everything which may assist his client, good faith is to be presumed, and bad faith is not to be assumed, merely because the statement is prima facie defamatory, and that there must be some independent allegation and proof of private malice from which in the circumstances of the case the Court considers itself justified inferring that the statement was not made because it was necessary in the interests of the client but that the occasion was wantonly seized as an opportunity to vent private malice. This is the general principle to be gathered from the decisions of the High Court of Bombay'

Then the judge cited various decisions in support of his view. The learned judge further observed :

'I take it that this principle implies and carries with it this other principle that even the presence of malice will not override the presumption of good faith where the statement made was obviously necessary in the interests of the client and where the lawyer could not omit to make it without gravely imperilling the interests of his client and would in fact not be discharging his duty to his client unless he made it; that is, that, even though some private malice is gratified by the publication of the statement, if such publication was imperatively called for in the interests of his duty to his client, the presence of such malice will not negative the presumption of good faith. That principle seems to me to apply directly to the present case.....if counter-petitioner's duty to his client imperatively demanded that the statement should be made, good faith is present, sufficient good faith to remove the offence

out of the category of defamation. That the counter-petitioner's duty to his client imperatively demanded that the statement should be made, seems to me unquestionable.'

8. This principle was followed by a later decision reported in *Bashyam Ayyangar v. Andal Ammal*.( (1934) M.W.N. 481) In this particular decision various questions were asked to the witness, a lady, as to whether she was living a married life or whether she was living in concubinage and as to whether she was kept by a washerman and a Mohammedan. When the lawyer was proceeded against for defamation, the court referred to the law laid down in *Sullivan v. Norton* (3 supra) *Tiruvangada Mudali v. Tripurasundari Ammal* (4 supra) and the judgment of Justice Wallace in *Anwaruddin v. Fathim Bai* (2 supra) and observed as follows:

'That learned judge however, has said in that decision that the effect of the interpretations of the Indian Law of defamation in the various High Courts with reference to exception 9 to Section 499 I.P.C. is that 'When a lawyer is acting in the course of his professional duties and is thus compelled subject to the disciplinary action of the court, to put forward everything which may assist his client, good faith is to be presumed and bad faith is not to be assumed merely because the statement is prima facie defamatory, but there must be some independent allegation and proof from which, in the circumstances of the case, the court considers itself justified inferring that the statement was not made because it was in the interest of the client, but that the occasion was wantonly seized as an opportunity to vent private malice.'

9. The above principle of law as laid down by *Anwaruddin v. Fathim Bai* (2 supra) was said to be attacked by Mr. *Bushyam Ayyangar* on the ground that Justice Wallace has put the case too high. Referring to that argument the learned judge observed that though it is claimed that the judge has put the case too high, no other authority is shown which has taken a different view and hence he would, with respect, agree with the view of Wallace. J. and decide the petition with reference to it. The judge went on to observe as follows:

'Here there is no allegation, and much less proof, that the petitioner in putting the questions to *Andalammal* as to her moral character was actuated by any motive of

private malice and was not acting in the interest of his client. It follows then that he was acting in good faith and this brings him within the ninth exception and so the charge, which imputes no illfaith but merely refers to the questions as having been put unnecessarily cannot stand. It is, therefore, quashed as are also the entire proceedings against the petitioner'.

10. The decisions reported in Anwaruddin v. Fathim Bai (2 supra) and Bashyam Ayyungar v. Andal Ammal (5 supra) are the decisions which are binding on this court. No authority expressing a contrary view is brought to my notice.

11. Sri Narayan Reddy relies upon two other decisions reported in Ayesha Bi v. Peerkhan Sahib (1954 Cri. L.J.1239) and H. Singh v. State of Punjab : 1966 CriLJ82 and contends that where there is no proof of instructions from the client and where the counsel keeps mute or mum about his putting the defamatory imputations on the basis of specific instructions of the client, the counsel could be liable to be proceeded against for defamation. Mr. Narayan Reddy contends that defence of Section 499 exception (9) is a thing which will come into consideration at the time of trial and not at the stage of deciding whether a complaint shall be entertained or not. Sri C. Padmanabha Reddy contends that the question of a defence Under Section 499 exception (9) can be considered even at the stage of entertaining a complaint. Mr. Padmanabha Reddy points out that the decisions relied upon by Mr. Narayan Reddy do not lay down any proposition which is in deviation of the decision rendered by Justice Wallace.

12. H. Singh v. State of Punjab (7) is a case dealing with exception (9) of Section 499 I.P.C. The Supreme Court held that the question whether or not good faith has been proved by an accused person who pleads in his defence the ninth exception Under Section 499 to a charge of defamation Under Section 500 I.P.C. is a question of fact and on such questions of fact or mixed questions of law and fact, when there are concurrent findings, the Supreme Court does not generally re-examine the matter. The Supreme Court also laid down that failure to prove good faith would exclude the applicability of ninth exception in favour of the accused. The principle of this decision does not in any way, Apply to the facts of our case. The Supreme Court decision does not lay down that good faith is not to be

presunied(sic) as laid down by Justice Wallace. *Ayesha Bi v. Peerkhan Sahib* (6 supra) actually reiterates the principle laid down in *Anwaruddin v. Fathim Bai* (2 supra). A reading of the body of the judgment, particularly, paragraph 17 clearly indicates that the judge is actually reproducing the paragraph in Justice Wallace's judgment. There is absolutely nothing to indicate in these two decisions that the defence of Section 499 exception (9) cannot be taken at the single of consideration of a complaint.

13. As to at what stage this defence can be raised has been considered by this Honourable Court in *T.R. Devarajan v. Del. Credere Bank of India* (1988 APLJ (Cri) 81). His Lordship Justice Jayachandra Reddy (as he then was) dealing with a petition Under Section 482 Cr.P.C. observed that the court can examine the question of the exception after examining the complaint and after recording the sworn statement of the complainant. The learned judge observed as follows:

'It cannot universally be said that even in case of the applicability of the 10th exception where the Court, after examining the complaint and its contents and the contents of the sworn statement and in the context in which the caution is made, is satisfied that it is prima facie made in good faith, it is still prevented from exercising its inherent jurisdiction. In examining the question of good faith, it is not in every case that a trial should go on and the same to a great extent depends upon the facts. In the instant case, viewed from any angle, it cannot be said that the caution given by the Reserve Bank is not made in good faith and no further enquiry is necessary on this aspect. Consequently, the 10th exception is squarely applicable to the facts of this case and therefore even if the allegations made in the complaint and the sworn statement are taken to be true no offence is made out and is laid down in *Kapur's case* (1) : 1960 CriLJ1239 supra the proceedings are liable to be quashed. Accordingly, the proceedings in C.C. 12 of 1987 on the file of the 11th Metropolitan Magistrate, Secunderabad are quashed and the petition is allowed.'

14. Apart from the decision in *T.R. Devarajan v. Del Credere Bank of India* (8 supra), even on a prior reasoning, it is common knowledge that an exception can be pleaded even at the stage of initiation of the criminal proceedings. For example,

if a chargesheet is filed accusing a child of three years of committing murder, can it be argued that the child should face the trial and only at the time of the trial, the defence of general exceptions can be pleaded? Common sense dictates that even at the stage of initiation of the proceedings, the general exception provided under Chapter IV of the Indian Penal Code can be raised and the accused is entitled to ask for quashing of the criminal proceedings. It is a well established principle that the exceptions which go to the root of the matter can always be pleaded even at the stage of mitigation(sic) of the criminal proceedings and parties are certainly entitled to seek relief on that basis in Section 482 Cr.P.C. petitions.

15. Judging the present case in the light of those decisions it is clearly a case where the action of the advocate is fully protected. There are absolutely no allegations of private malice or private vengeance and there is nothing to indicate that the advocate, who made the remarks and suggestions in the course of the cross-examination and in the course of the arguments, was making them for any ulterior purpose and not for the purpose of advancing the cause of his client. The learned Magistrate is perfectly justified in rejecting the complaint and not taking it on file.

16. In the result, the criminal revision is dismissed. The order of the Magistrate dated 29-12-1990 is confirmed.

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