

In Re: Hari Narain Buddharam

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Court : Madhya Pradesh

Decided On : Mar-30-1962

Reported in : AIR1963MP60; 1963CriLJ186

Judge : Shiv Dayal and ; P.R. Sharma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 499

Appeal No. : Criminal Appeal No. 150 of 1960

Appellant : In Re: Hari Narain Buddharam

Advocate for Def. : Nagarkar, Adv.

Advocate for Pet/Ap. : A.B. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Dayal, J.

1. This is an appeal by special leave under Section 417(3) of the Code of Criminal Procedure from an order of acquittal on private complaint by appellant Harnarain. His case was that Shyam Lal, Jagram and Deopal Das respondents got a hand bill printed by Laxman Rao respondent No. 4 and this handbill contained statements defamatory of the complainant. Shri Misra has not pressed this appeal as regards

Laxmanrao respondent No. 4. The impugned handbill is an appeal issued by the accused dissuading the public from giving any subscription to the complainant and one Manohar who is not a party to this case. It was said among other things that Harnarain and Manobar raised huge subscriptions which they invested in their own personal business; that formerly they used to repair shoes and were carrying on the business of a shoeblick, but extended the business and were running two boot houses. We would reproduce only the significant portion of the handbill on which Shri Misra laid stress. The caption of the handbill is 'Thagion Se Bacho.'

'Pichhale samaye ek parcha Shri Harnarayan Ken Wa Manohar ne chanda ughane ke liye nikalwaya hai. Lashkar Gwalior wa Murar ke Jatwon se anek bahance banakar in logon ne pichhle samaye kafi paisa ekaththa kar apni Bade Ki Jute bechne ki dukan wa Mochi Oli men jute banane ki dukan men lagakar khub paisa kama rahe hain. Jab Harnarain wa Chhunnilal Bade per baithkar Juton par palish kiya karte the.....'

The trial Magistrate has found that the accused were the authors of this handbill and they published it. He has also found that the first part of the extract quoted by us above is per se defamatory; as regards the second part he has found on the admission of the complainant himself that he did not consider it dishonourable to be a bootblack or cobbler. The accused have been acquitted because of exceptions 1 and 9 to Section 499, I. P. C.

2. Having heard both the sides we have reached the conclusion that there is no reason to interfere with the order of acquittal in this case. Without repeating the various grounds traversed by the trial Magistrate, we would content ourselves by referring to the statement of the complainant himself. He admits that he has been the Secretary of the Jatav Sabha and in that capacity subscriptions were raised from time to time and appeals were also issued from time to time to the Jatav community for giving subscriptions. For example in a handnote Ex. D-10 it was appealed that Re. 1/-should be contributed by every Jatav house. He admits that he used to sign the receipts acknowledging payments of subscriptions. But according to him it was the Treasurer who was responsible for the accounts, and he did not even supervise them. When he was asked about the subscriptions

made by Natla Ram and Sumer Singh, he could not give a satisfactory answer, but stated that he did not make any inquiry. When asked whether he could produce the accounts of the subscriptions raised under receipts signed by him he replied that that could be done by the Treasurer, who, however, was subordinate to him. He admitted that the subscription paid under Ex. D-1 was acknowledged by receipts signed by himself, but the accounts were maintained by Motilal Treasurer, who had died 'one month ago' (statement of the complainant dated 22-11-59). On the insistence by the accused to produce the record he stated that Ee would be able to inform the Court within four or six days whether the record existed or had been destroyed, and if it was available he would produce it.

'Main yeh to dekhkar bata sakta hun ki hisab ka record hai ya nasht kar diya gaya hai main chhar chhai roz men yeh malum kar sakta hun ki uska hisab ab moujud hai ya nahin. Agar mujhe mil jawega to la sakunga.'

It is obvious enough that this answer of the complainant was most unsatisfactory. However, the trial Magistrate postponed his statement and gave him six days time. When his cross-examination was resumed on the 28th November, 1959 he stated that he could not produce the record because sons of Motidas denied to be in possession of any record and when he enquired in his office he was told that the record was with Motidass Treasurer, who also held the cash balance; but in fact Motidass had none. On being further asked he stated that he could not say whether the receipts Exs. D2, D3, D4, D5, and D6 had been got printed by him or not.

'Ex. D2, Ex. D3, Ex. D4, Ex. D5, Ex. D6 kar rasiden maine chhapwai hain ya nahin main nahi kah sakta pura katta ho to main bata sakta. Inka asal katta mere yahan to nahin ho sakta baqi mulziman ke pas ho sakta hai.'

Such being the statement of the complainant, if the accused published the leaflet, they are entitled to the protection under exception 9 to Section 499, I. P. C. In order to justify the statement under this exception it is not necessary to prove that it is true; suffice that the accused only believed it to be true and it was published in the interest of the public The impugned handbill was aimed at protecting the Jatav community from giving subscriptions to a person, who holding a responsible office

in the organisation, neither maintained the accounts, no cared to supervise them, nor even knew whether they were maintained or were destroyed. Every communication is privileged if it is made for the public good and it is for the public good that the society should be safe from being deprived of their money if no accounts are maintained of the funds to which they contribute. In such a case the accused has only to show that there was reasonable ground for bringing the allegations he made. Even if the defamatory imputations made against the complainant were found to be baseless and incorrect still if they were made by the accused in good faith and for the public good, they are entitled to be protected by exception 9. Mere good faith could be negated on the ground of recklessness indicative of want of due care and attention, but in the present case there has been no endeavour to rebut the insinuation made against him. Good, faith is relative to a great extent, and must be determined by the circumstances under which the imputation was made, the social status and level of education of the person making the imputations.

3. In the circumstances stated above the order of acquittal passed by the trial Magistrate is well founded.
4. The appeal is dismissed.
5. SHARMA, J.: I agree.