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Court : Kerala

Decided On : Aug-18-1950

Reported in : 1951CriLJ623

Judge : Kunhi Raman, C.J. and; Sankaran, J.

Appellant : State

Respondent : D. Packiaraj and anr.

Judgement :

Kunhi Raman, C.J.

1. These two appeals are presented on behalf of the State from the order of acquittal made by the Sessions Court of Nagereoil in Cri. Appa. nos. 43 and 44 of 1122. The charge against the two accused who are the Editor, Printer and Publisher of a weekly newspaper called ' Nadar Narapan,' was that they had defamed the complainant by publishing a letter in the newspaper. The complainant was the Sty. Second Class Magistrate at Eraniel. The first accused who is an Advocate was the Editor of the newspaper and the second accused who is retired medical officer is the Printer and Publisher of the newspaper. The article published in the newspaper was translated as follows in the judgment of the lower appellate Court:

To the attention of the Gracious Government. Is this briber or a present?

We understand that Mr. Ramachandra Iyer, Second Class Magistrate of Eraniel, Kalkulam Taluk, on the morning of 2nd PurattasI received the following articles' from Arutmchalam Nadar Sri Krishna Nadar, the complainant in a criminal case in his Court; 50 coooanuts, 10 bundles of Ethamoli Betel leaves, 60 arecanuts, half a pound of Jaffna tobacco, one bunch of bananas, a few lime fruits and a little sugar. Is this a bribery or a present? It is said that a Vakil from Thalakulam is the cause for this and similar presents and that there Is money transactions between him and the Magistrate. What is the truth about this? If the Gracious Government ascertains the truth of this, it will do good to the poor subjects.

Lover of truth.

2. On behalf of the State, the learned Public Prosecutor argues that the order of acquittal is erroneous and that the provisions o Exception 9, will not apply to the present case. On the other hand, the learned Counsel for the Editor, Printer and Publisher of the newspaper supports the decision of the lower appellate Court and argues that the case is really covered by Exception 9 and that there is no ground for interference in this appeal.

3. Before dealing with the general questions raised on both sides, there is one point that was urged in the trial Court and which is also urged here on behalf of respondent 1. It is contended that at the time that the letter was published in the newspaper, accused 1, the Editor of the newspaper, was on leave and had nothing to do with the publication. This contention did not find favour with the trial Court which, as already stated, overruled this contention and held that both the accused were guilty. But it appears from the records that accused 2 accepted complete responsibility for the publication. The letter in question was addressed to him by a person who was personally known to him who was also examined as D. w. 2 at the trial. He had absolute confidence, in that person and it was he who during the temporary absence on leave of accused I, directed the publication of the letter in the newspaper. There is authority for the position that in such circumstances, where it is satisfactorily established that the Editor was on leave and had entrusted his duties to a responsible person, he cannot be held to be criminally liable. In the case reported in Ramaswami v. Lohanada, 9 Mad. 387, the

view taken was that it would be a sufficient answer to a charge of defamation against an Editor of a newspaper, if it is proved that the libel was published in his absence and without his authority, knowledge or consent and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. In the present case, both the Editor and Printer and Publisher are respectable persons belonging to the legal and medical profession respectively and although there was no evidence called to prove that accused I was on leave the second accused undertook responsibility and conceded chat it was daring the temporary absence of accused 1 that he directed the publication of this Letter. He was, according to his version, in charge of the newspaper during the absence of accused I. When the responsibility was accepted in that unqualified manner by accused 2, there was no necessity for accused I to adduce positive proof to show that be was on leave and the observation contained in the judgment of the trial Court that in the absence of such evidence, the plea of accused 1 could not be accepted, we are no!; prepared to endorse. On the other hand, she facts elicited at the trial show that accused 2 who is an equally responsible and respectable person, was in sole charge of the publication at the time that the letter was printed in the paper. In these circumstances, we are not satisfied that there is any ground for interference with the order of acquittal made by the lower appellate Court, so far as accused I is concerned.

4. Regarding the case against accused 3, the view taken by the learned Sessions Judge that the case is covered by Exception 9 to Section 502 cannot be accepted. One of the essential conditions mentioned in this Exception is that there should be good faith. The Exception expressly Jays down that it would apply only if the imputation be made in good faith for the protection of the interest of the person making it or of any other person or for public good. 'Good faith' has been defined in Section 46, Travancore Penal Code as follows:

Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention

and for the purpose of the Travancore Petal Code the expression 'good faith' must be understood in the sense in which it is defined. A person who has not

established that he did an act after the exercise of due care and attention, cannot be said to have acted in good faith. In the present cage, the evidence clearly shows that the articles that were alleged to have been given to the Magistrate were not so given. On the other hand, they were given to an employee in the office of the Magistrate. There is no evidence to indicate that before the letter was published accused 2 exercised due care and attention or even reasonable care and caution to ascertain whether the facts set forth to the letter are true or not. Therefore, good faith must be ruled out. It cannot be said that he published the article in good faith.

5. The method of publication is another aspect that has to be considered in deciding this case. If the publication was made for the protection of any person or for the public good, it was not necessary to resort to publication in a newspaper. The interest of the person concerned or of the public could have been safeguarded by making a representation to the Government of what accused 2 came to know is the course of the proceedings. The Government is the proper authority invested with the power of taking disciplinary action against the complainant, if he resorted to the illegal practice complained of in the letter. No useful purpose could be served by publishing it in a newspaper. On the other hand, it will amount to excessive publication if this method of publication is resorted to. This aspect of the case is considered in detail in the judgment of the Madras High Court in the case reported in Mammunhi v. Abdul Rahiman A.I.R. (36) 1949 Mad 524: (50 Cr. L.J. 710). Closely allied with this question is the question of good faith which has already been dealt with. In the case reported in Queen v. Vidya Sankara Narasimha, (6 Mad. 391), it was held that in considering whether the privilege contemplated by Excep. 9 to Section 499, Penal Code, was exercised with due care and attention, the Court is bound to look, among other things, at the mode of publication which is adopted and to see whether it was so far in excess of the privilege as to indicate a conscious disregard of the legal right of the party on whose character the imputation is made. In that cage, the libellous matter was published in a post card which could be read even by those to whom the communication was not addressed and the view taken was that it was a wanton excess of privilege which vitiated it altogether. In the case reported in Thiagaraya v, Krishnaswami, 15 Mad. 214: (2 M. L.J. 127), there was an

indiscriminate distribution of hand bills containing a defamatory statement which could thus be read by persons belonging to communities other than the one for whom it was intendes. This, it was held, destroyed the privilege. Similarly in Vinayak v. Shantaram A.I.R. (28) 1941 Bom. 410: (43 Cr. L.J. 174). there was publication in a newspaper of the resolutions passed at the meeting of a certain community condemning the action of one of its members. This was held to the excessive publication which would take the case out of the privilege conferred by Exceps. 9 and 10 to S 499, Indian Penal Code. Id the present case, as already indicated, the proper procedure for accused 2 to have followed, if he wanted to act in the interests of the public or in the interests of the particular individual concerned, was to have brought the fact to the notice of the Government or the appropriate authority which had jurisdiction to take disciplinary action against the complainant. The publication of the notice in a weakly newspaper was certainly not for the public good and it cannot be held that such a publication would protect the interests of the public or of the particular individual who brought the facts to the notice of accused 2. The case reported in Emperor v. Col. Bholanath, 51 ALL. 318: (A.I.R. (16) 1929 ALL. 1: 30 Or. L, J. 101), deals with the question of belief entertained in good faith, that is to Bay, after the exercise of due care and attention According to this decision, it will not do for the accussed to say that he made an imputation believing that ho was acting for the protection of the interests of any particular individual or for public good. It is really a question of law and not of fact for the decision of the Court, as to whether the person making the imputation was or was not acting in this manner. It is clear from the evidence in this case that accused 2 did not exercise due care and attention before he published the defamatory matter. He did not take steps to ascertain whether the Magistrate was given the articles mentioned in the letter. As a matter of fact, they were not given to the Magistrate. In these circumstances, the view taken by the lower appellate Court which has not considered the definition of 'good faith' contained in the Travancore Penal Code and which has consequently erred in law in arriving at the conclusion that the letter was published in good faith, cannot be supported. We set aside the order of acquittal.

6. The facts of this case are rather extraordinary. Usually, in a charge for defamation which can be taken cognisance of by a criminal Court only on the

complaint of the aggrieved party, the Government does not choose to interfere and present an appeal from an order of acquittal. But in the present case, the Government has chosen to do so, evidently because the reputation of an officer of Government was involved and also because for some unknown reason, the Government was impleaded as a party by the accused appellants when they filed their appeal in the lower appellate Court. The complainant also is a party here and in the circumstances, it is incumbent upon this Court to consider the question of punishment in view of the provisions of Section 350, Travancore Criminal P.C. The paper in which the publication was made is a weekly newspaper. It is represented that it has a poor circulation. The object of the Government and of the complainant is really attained by getting a decision from this Court that the publication of the letter is defamatory so fat as accused 2 is concerned. We have said so in unequivocal terms. There is no doubt that accused 2 was guilty of an error of judgment in permitting this letter to be published without consulting accused 1 who is the Editor of the paper. There is also this additional feature, that in respect of the offence, there is a civil remedy available to the aggrieved party which is perhaps more appropriate and satisfactory than the remedy by way of criminal prosecution. We consider that in these circumstances the ends of justice will be satisfied if accused 2 is convicted and a nominal fine is imposed on him. We accordingly convict him and direct that he shall pay a fine of Re. 1.

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