

Meera Vs. Mathew

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Court : Kerala

Decided On : May-28-2002

Reported in : 2002CriLJ3845

Judge : M.R. Hariharan Nair, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 499 and 500

Appeal No. : Crl. R.P. No. 52 of 1999

Appellant : Meera

Respondent : Mathew

Advocate for Def. : T.K. Latif, Public Prosecutor

Advocate for Pet/Ap. : K.P. Satheesan and; K.K. Gopinathan Nair, Advs.

Disposition : Revision allowed

Judgement :

ORDER

M.R. Hariharan Nair, J.

1. The revision petitioner is a retired Taluk Supply Officer hailing from Taliparamba. He is aggrieved that through the impugned order passed in C.M.P. No. 7688 of 1997 the complaint tiled by him against the first respondent in this

case alleging offence under Section 500 of the IPC was dismissed under Section 203 of the Cr.P.C, inspite of the fact that he had examined three witnesses to prima facie establish the correctness of his averments.

2. In the complaint the petitioner alleged that the accused, who is working as R.D.O., Thalassery, while participating in the meeting of the Food Advisory Committee held in the Collectorate Hall, Cannanore on 20.7.1996, made certain imputations aimed at the petitioner. The accused allegedly referred to certain irregularities in the performance of the Universal Gas Agency. The complainant alleged that after making a statement that a complaint directly filed against the irregularities in the Gas Agency did not yield any result and that the circumstances prevailing are such that the delinquent would escape and the complainant would suffer and that actually after getting huge amounts the gas cylinders were being illegally distributed, the accused made the following further statement:

'A retired Supply Officer of Taliparamba is the person behind this irregularity.'

3. According to the petitioner he is the only retired Taluk Supply Officer of Taliparamba and the reference was obviously against him and his reputation is thereby harmed.

4. In support of the complaint the petitioner examined his successor Taluk Supply Officer, an independent witness and also the reporter of Sudinam Daily, who had attended the press conference which followed the aforesaid meeting of the Food Advisory Committee, wherein also the accused allegedly repeated the very same statements.

5. The Court, after considering the said statements gave two reasons for dismissing the complaint. The first was that the words complained of did not refer to any particular individual; that it could equally apply to others belonging to the same class in so far as the accused did not mention the name of the present complainant at any point of time. Secondly, it was mentioned that the accused had filed a case of defamation against Sudinam Daily and as such it was unlikely that the accused would have divulged the defamatory statements alleged in the present case to CW3, the two being not on friendly terms in view of the pending

criminal case.

6. What is to be considered is the legality, regularity and correctness of the aforesaid order of the Judicial First Class Magistrate, Taliparamba.

7. This Court did not issue notice to the first respondent, who was the accused cited before the learned Magistrate, for the reason that he has no locus standi at this stage. The learned Public Prosecutor, who was heard, submitted that it is essential for maintaining a complaint under Section 500 of the IPC that there should be reference to the complainant by name or atleast the identity of the complainant should be clear from the imputations alleged in the complaint and also that the statements allegedly made in the present case in any case comes within the 9th Exception to Section 499 IPC, which reads as follows:

'Ninth Exception : Imputation made in good faith by person for protection of his or other's interests:- It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it or of any other person, or for the public good.'

He submits that the statement was made in public good and as such offence alleged could not be sustained against the present first respondent.

8. According to Mr. Satheesan, who represented the petitioner, all that is necessary is to prima facie establish that the alleged statements were aimed at the complainant though his name is not mentioned and that the applicability of the 9th Exception does not arise at this stage of taking cognizance. Section 499 of the IPC reads as follows:-

Section 499: Defamation: Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1: It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is

intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2: It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3: An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4: No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

It is clear from a reading of the definition that if the complainant can establish that the words spoken by the accused concerns the complainant and is intended to harm his reputation, the offence would be complete. The person aggrieved is the person against who imputation adversely affects the reputation. It is not necessary that his name should be uttered by the accused. If the words spoken to by the accused clearly convey to a third person or even to the complainant that the person intended by the accused is actually the complainant that will be sufficient to attract Sections 499 and 500 of the IPC. The attack may even be general; but if it conveys an innuendo as to the complainant, a prosecution can very well be maintained. If an authority is required on the point reference can be made to the decision in *Subair v. Sudhakaran* (1987 (1) KLT 291). That was a case where there was publication of a report in a news paper without specific name or explicit reference about the complainant. The contention that the identity of the complainant should be established, as raised now in the present case, had been raised in the said case also. It was held that it is not always necessary to name the person. If the description and attendant circumstances suggest, with fair certainty, the identity of the person intended, that is sufficient to attract the offence. Explanation 3 to Section 499 States that an imputation in the form of an alternative or expressed ironically, may also amount to defamation. Defamation by innuendo is also not unknown to law. It was therefore held that the reference need not be

explicit and if the description is such that a reasonable person, in the context in which it is made, would be able to understand it as a reference to a particular person, that would suffice.

9. A libellous statement may not always be made with clarity. A degree of indirectness or innuendo may be there and this can very well be expected since defamation is an offence. It is reasonable to think that he who defames is not anxious to invite legal consequences and would be looking for loop holes. That, however, does not protect him from prosecution. In view of this position of law, the complaint filed by the petitioner cannot be thrown overboard and in limine on the ground that his name was not mentioned by the accused while making the alleged defamatory statements. It may be mentioned here that in para 2 of the complaint the petitioner had asserted clearly that he is the only retired Taluk Supply Officer residing in Taliparamba and that hence there was no doubt that the accused was referring to him. In the circumstances the court below has committed an irregularity, if not illegality, in dismissing the complaint on the ground that the statements allegedly made by the accused did not contain the name of the petitioner.

10. I shall now come to the second reason given by the learned Magistrate for dismissing the petition, viz, the possible application for the 9th Exception to Section 499. The question whether the statement in question was made for public good is a matter to be considered based on the prospective evidence. The burden in that regard lies on the accused and it is for him to adduce sufficient evidence which would enable an inference that there was some public good involved in the matter of particular statement. It may be that there is some public good in bringing out irregularities in the distribution of gas cylinders. But it is another to make an imputation that a retired Taluk Supply Officer was behind it. Any way, that is not a matter to be considered at this stage because, as already mentioned, whether public good is involved is a matter to be decided after evidence is adduced in the course of trial. Suffice it to say that it is too premature now to throw out the complaint mentioning the possible application of 9th Exception that might be brought out during the trial of the case.

11. It is true that the accused has filed a complaint against the Sudinam Daily; but then the pleaded case is not that the accused mentioned the allegation in a private talk. The declaration was to press reporters generally and CW3 was only one of the press reporters present there. Hence the reason given by the trial court for coming to the conclusion that the disclosure to the Press alleged in the present complaint was not likely also has to fail.

12. In the circumstances I have absolutely no doubt in my mind that the learned Magistrate has erred in dismissing the complaint through the impugned order.

The revision is hence allowed. The impugned order is set aside and the learned Magistrate is directed to take cognizance of the offence and to proceed with the case to its logical end and in accordance with law.

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