

Kalyanam Vs. Ramesh

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Court : Chennai

Decided On : Jan-24-2003

Reported in : 2003CriLJ3390; 2003(1)CTC467

Judge : M. Karpagavinayagam, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482

Appeal No. : Criminal Original Petition No. 11401 of 2001 and Crl. M.P. Nos. 3710 and 3711 of 2001

Appellant : Kalyanam

Respondent : Ramesh

Advocate for Def. : C.L. Shaji, Adv.

Advocate for Pet/Ap. : K.P. Anantha Krishna, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. Kalyanam, who worked as Private Secretary to Mahatma Gandhi, the Father of our Nation, for about four years, having aggrieved over the issuance of process

against him in the private complaint filed by one Ramesh under Section 500 I.P.C., has approached this Court through this petition under Section 482 Cr.P.C. seeking for quashing of the above said proceedings.

2. The respondent filed a complaint against the petitioner and the Editor of The New Indian Express under Section 500 I.P.C. stating that The New Indian Express published an article carrying the title as 'Mahatma's Secretary seeks peace' at the instance of the first accused Kalyanam containing the imputation indicating that the Mahatma's Secretary is struggling for peace from the hands of the hands of the complainant and since the said article containing the imputation published in The New Indian Express dated 13.4.2000 would harm the reputation of the complainant, both the accused are liable to be punished for the offence of defamation under Section 500 I.P.C.

3. This private complaint was taken on file on 19.10.2000 after recording sworn statement from the complainant and the process was issued to both Kalyanam (A1), the petitioner, and the Editor of The New Indian Express (A2). In the sworn statement, the complainant stated that on 13.4.2000, The New Indian Express published an article captioned as 'Mahatma's Secretary seeks peace' containing imputation to harm the reputation of the complainant, who is the member of several Clubs, and his wife and the publication was made at the instigation of A1.

4. The main point which has been urged by the counsel for the petitioner before this Court is that there is no details of the averment either in the complaint or in the sworn statement with reference to the imputation which was said to be contained in the article published in The New Indian Express dated 13.4.2000 and as such, the complaint does not indicate any ingredient for the offence under Section 500 I.P.C. and hence, the proceedings arising out of the said private complaint are liable to be quashed.

5. I heard the counsel for the petitioner as well as the respondent.

6. I have gone through the complaint and the sworn statement.

7. Both in the complaint and in the sworn statement, it is merely mentioned that the article published in The New Indian Express dated 13.4.2000 at the instigation of A1 would harm the reputation of the complainant and hence, both the accused are liable to be punished. However, no particulars of imputation have been given both in complaint and in sworn statement indicating the imputation which would attract the ingredient of Section 500 I.P.C.

8. It is settled law that a person cannot be said to have committed an offence under Section 500 I.P.C. merely because some article or news item is published attributing certain utterances to that person. Unless it is shown that the imputation or objectionable words had been used by the accused and only at his instance, the said objectionable words were published, the accused cannot be prima facie said to have committed the offence punishable under Section 500 I.P.C.

9. In a trial for defamation, it is quite essential that the details of imputation containing the words alleged to be defamatory in character should be precisely set out in the complaint. It is the said imputation or the words so set out in the complaint that will constitute the foundation for defamation.

10. In a defamation case, the only document containing the accusation of offences supplied to the accused is the complaint. By issuance of process to the accused, he is called upon to answer the accusation relating to the imputation containing defamation mentioned in the complaint. In other words, cause of action is the accusation with reference to the imputation alone. What is required further is only adducing evidence by the complainant in support of those accusations. Therefore, the accused is entitled to know what are the accusations with regard to the imputation made against him. Then only he will be able to answer the accusations and shape his defence.

11. It cannot be said that the accused may be aware of the imputation because of the publication of the same through the newspaper. But, that is not the question here. It is required by law that from the complaint itself, the accused is entitled to know what are the accusations which formed the basis of the complaint.

12. When a similar question was raised before the Supreme Court in a defamation case, the Supreme Court would hold in *BALRAJ KHANNA v. MOTIRAM* 1971 S.C.C.(Cri.)647 in the following words:

'The purpose or object will be served if the complainant is able to reproduce in his complaint or evidence in a substantial measure the words of imputation alleged to have been uttered. If the statements or the words placed before the Court by the complainant are held to be not defamatory, it will mean that the complainant will have to lose. Therefore, it is to his interest to get a proper adjudication from the Court that as far as possible the words spoken or the statements actually made and which he alleges to be defamatory are before the Court. ... From the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be so stated as to enable the accused to know the nature of the allegations that they have to meet.'

13. Following the above judgment, the Kerala High Court also in *KONATH MADHAVI AMMA v. S.M. SHERIEF* has held that in the absence of the imputation constituting the offence of defamation in the complaint, the Court cannot entertain the complaint on defamation as the mere allegations contained in the complaint without imputation would not be sufficient for the accused as he is entitled to know about the imputation to face the charge.

14. The very same principles have been laid down in *LALOO PRASAD v. STATE OF BIHAR AND ANOTHER* 1997(2) Cri 498 Patna H.C.). Further, the Supreme Court in *SHATRUGHNA PRASAD SINHA v. RAJBHAU SURAJMAL RATHI* and this Court in *P. KARTHIKEYAN v. S. ANANTHANARAYANAN* 1998(1) Cri 44 would hold that in the absence of necessary averment containing the imputation constituting the ingredient of defamation, the complaint could not be said to be valid in law.

15. In the light of the above principles, if we look at the contents of the complaint, it is clear that the complainant merely mentioned that he is a tenant under the petitioner and has been regularly paying the rent and despite that, the publication was made by the New Indian Express, the second accused at the instance of the first accused, the landlord, containing defamatory and false particulars. Thus, it is

clear that there are no basic requirements in the complaint as the ingredient for defamation under Section 500 I.P.C. through the alleged imputation are clearly absent in the complaint.

16. The trial Court during enquiry under Section 200 Cr.P.C. examined the complainant only and recorded his sworn statement. Even in his sworn statement, he would simply refer to the article without giving any details of the imputation through the actual words or at least the contents of the same. Despite this, the trial Court has taken the case on file under Section 500 I.P.C. and issued process against both the petitioner and the Editor of the New Indian Express.

17. It is salutary to note that the judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the person, then only process would be issued. At that stage, the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process, otherwise it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it should not be allowed to use those means to wreak personal vengeance.

18. According to the complainant, the publication was made in the newspaper only at the instance of the first accused, the petitioner herein. The caption given in the article is 'Mahatma's Secretary seeks peace'. Due to filing of the private complaint in which process was issued to the accused, the petitioner is now constrained to continue to seek peace and for justice through this Court.

19. To put it differently, the facts set out in the complaint seeking for punishment under Section 500 I.P.C. without giving the particulars of imputation dragging the landlord and the Editor of the newspaper to the Court of Law would eloquently manifest on its face, a clear abuse of process of the Court to harass the petitioner and the Editor of the newspaper.

20. In view of what is stated above, the entire proceedings arising out of the private complaint filed by the respondent against both the accused, namely the petitioner and the Editor of the New Indian Express, are liable to be quashed. Even though A2, the Editor of the New Indian Express has not approached this Court seeking for quashing of the proceedings, I am of the view that the reasonings for quashing the proceedings against A1 would apply to A2 as well. Accordingly, the impugned proceedings initiated against both the accused are quashed and the petition is allowed. Consequently, CrI.M.P.Nos.3710 and 3711 of 2001 are closed.

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