

**Arjun Agarwal and Others Vs. Ramesh Agarwal**

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**Court :** Kolkata

**Decided On :** Apr-02-2012

**Judge :** Kanchan Chakraborty

**Appeal No. :** C.R.R No. 2109 of 2005, 1894 of 2006

**Appellant :** Arjun Agarwal and Others

**Respondent :** Ramesh Agarwal

**Judgement :**

**Kanchan Chakraborty, J.**

1) The C.R.R. 2109 of 2005 is pertaining to the C.R. Case No. 28 of 2004 under Section 500/34 of the Indian Penal Code wherein the petitioners Arjun Kumar Agarwal, Binod Agarwal and Kamal Kumar Agarwal are made accused. The petition of complaint against them was lodged by Ramesh Agarwal, the opposite party. The petitioners/accused prayed for quashing of the proceeding on manifold grounds.

2) The C.R.R. 1894 of 2006 is pertaining to the C.R. Case No. 15 of 2005 wherein the petitioner Ramesh Agarwal is made an accused by the complainant P.C. Agarwal under Section 500/34 of the IPC. The petitioner Ramesh Agarwal prayed for quashing of the proceeding on manifold grounds.

3) Since both the cases are closely related to each other and have arisen out of same factual background, both are disposed of by this common order.

4) The C.R. Case No. 28 of 2004 was initiated by Ramesh Agarwal against as many as 11 persons out of which three accused persons have taken out this application under Section 482 praying for quashing of the proceeding mainly on the ground that no case of defamation has been made out against them. Amongst the petitioners Binod Agarwal and Amal Agarwal expressed their intention not to proceed with the revision application through their learned Advocate Sandipan Ganguly. However, Arjun Agarwal wants to proceed with the revision application and, accordingly, the matter has been heard. The factual backdrop of the entire matter is stated below, in short, for proper appreciation of the matter. Ramesh Agarwal was a legal practitioner in the District of Darjeeling and other places and a man of repute in the area. He was also Secretary of Marwari Association during the period 1985 to 1986. He applied for membership in the new formed unregistered body of Marwaris at Kurseong known as Kurseong Marwari Sangathan. The petitioner and others were in control of that Sangathan who upon receipt of such an application from Ramesh Agarwal held a meeting and taken a decision to the effect that Ramesh Agarwal should be socially boycotted from the community. The said decision taken in the meeting was published in the daily newspaper "Janpath Samachar" dated 12.12.2004. The said written imputation were made by the petitioners and others in bad faith and out of personal enmity without due care and knowing fully well that the said statements were entirely false. Owing to such publication, the prestige, honour and reputation of Ramesh Agarwal was lowered in the eyes of the general public which also caused professional loss, mental pains and agonies to him. Therefore, the petitioner and others committed the offence of defamation within the meaning of Section 499 of IPC punishable under Section 500 of the IPC. The learned Court of Magistrate, upon receiving of the complaint, examined the complainant and one witness under Section 200 of the Code of Criminal Procedure and taken cognizance of the offence followed by issuance of process under Section 204 of the Code against the petitioners and others. The petitioners have come up with this application under Section 482 of the Code praying for quashing of the proceeding on the ground, mainly, that no case, whatsoever, of defamation within the meaning of

Section 499 of the IPC has been made out against them.

5) Mr. Sandipan Ganguly, learned Counsel on behalf of the petitioners contended that there was no resolution whatsoever taken in the meeting that what has been resolved by the committee of "Kurseong Marwari Sangathan" should be published in any newspaper. Nowhere within the four corners of the petition of complaint it has been mentioned that at whose instance the publication was made. There is no averment to the effect that Arjun Agarwal, the only contesting petitioner, either spoken to the press or intended to get that decision of the Sangathan published in the newspaper. Mr. Ganguly contended further that such a resolution might have taken by a committee but the committee did not publish it or intended to publish it. It was P.C. Agarwal who can be held liable personally for making such publication because no resolution was adopted in the meeting to make such press release. This apart, Mr. Ganguly contended that resolution was true and taken by a body in good faith and the same comes within the purview of ninth Exception of the Section 499 of the IPC. Mr. Ganguly submitted further that continuation of such proceeding against Arjun Kumar Agarwal will be amounting to abuse of the process of the Court and is liable to be quashed.

6) Mr. Biplab Mitra, learned Counsel appearing on behalf of the opposite party Ramesh Agarwal contended that a man is outcasted when he is not, is defamation. Person asserting ex-communication of complainant by an association knowing it was not true cannot be protected under exception 9th. Mr. Mitra continued by submitting that a man is outcasted when he is not is amounting to defamation since it is established law that the members of the cast cannot as individuals take the law into their own hands and declares a member to the outcasted and assert it to be so unless there has been a regular meeting of the caste Panchayat and a decision on the subject. In support of his contention Mr. Mitra referred to a decision in Babulal Vs. Tundilal reported in AIR 1932 Nagpur 1997.

7) Mr. Ganguly, on the other hand, contended that penal Code does not contain any provision for attaching vicarious liability on the part of any member when the accused in a society or a body of persons. In support of his contention he also

referred to decision in Maksud Saiyed Vs. State of Gujrat, reported in (2008) 2 SCC (Cri) 692; Sharon Michael and Ors. Vs. State of Tamil Nadu, reported in (2009) 2 SCC (Cri) 103 : S. K. Alagh Vs. State of Uttar Pradesh reported in (2008) 2 SCC (Cri) 686.

8) This Court is not oblivious of the fact that the petitioners have sought for quashing of the proceeding on the ground that no prima facie case is made out against them even if the allegations made in the complaint are taken at their face value and accepted uncontroverted.

9) It is trite law that High Court should exercise its jurisdiction under Section 482 of Code in the matter of quashing of a criminal proceeding in exceptional cases with utmost care and sparingly. It is to be used either to prevent abuse of the process of any Court or otherwise to secured the ends of justice. In view of the decision of the Hon'ble Apex Court in State of Hariyana Vs. Bjanlal reported in AIR 1992 Supreme Court 304, where the allegations made in the complaint, even if are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, High Court may quash the proceeding in order to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The principles laid down in Bajanlal's case (Supra) has been followed by all the High Court as well as the Apex Courts in all subsequent decisions. However, the settled legal position/proposition as it stands now is that while considering application for quashing of a criminal prosecution, truthfulness or otherwise of allegation is not fit to be gone into at that stage as it is always a matter of trial. High Court is not supposed to assume the role of the trial Court and embark upon an enquiry as to reliability of evidence and sustainability of accusation on a reasonable appreciation of such evidence. In this connection, the decision of Hon'ble Apex in Jandu Pharmaceutical works limited and Ors. Vs. Md. Sharaful Haque and Anr. Reported in (2005) SCC (Cri) 283 and K. Neelaveni Vs. State reported in (2011) 1 SCC (Cri) 219 can well be referred to.

10) The ultimate analysis of the situation is rested on the averments made in the petition of complaint. Therefore, it is necessary to look at the averments of the petition of complaint as well as the statements recorded under Section 200 Cr.P.C.

which prompted the learned Magistrate to take cognizance of the offence under Section 500 IPC and issue process under Section 204 of the Code of Criminal Procedure against the petitioners.

11) I have gone through the petition of complaint which is made annexure to the application taken out by the petitioners. A bare reading of the same makes it clear that the "Kurseong Marwari Sangathan" held in a meeting that the opposite party/complainant Ramesh Agarwal should be socially boycotted from the Marwari Committee. The paragraph 5 of the petition of complaint shows that no reason whatsoever has been assigned for taking such a decision by the Sangathan. It appears also from the petition of complaint that the petitioners herein did not convey or pass the decision to any third person far so, the press. The copy of publication which is also made annexure to the petition shows that one P.C. Agarwal, the accused no. 1 being the president of the Sangathan convened the meeting and the press release was made by Deoraj Agarwal, the Secretary of the Sangathan and that too without any resolution to do so taken in the meeting. Deoraj Agarwal has been made accused no. 2 in the petition of complaint. Therefore, it is clear that without being supported by any resolution for press release, Deoraj Agarwal, the Secretary of the Kurseong Marwari Sangathan" deliberately made that press release. It was an action on his part personally not even by the Sangathan or its members in their individual capacity or in the capacity of the Sangathan as a whole. Therefore, Deoraj Agarwal, at best, can be held liable for such a press release. Since the petitioners, were members of that Sangathan at the relevant period of time and attended the meeting conveyed by P.C. Agarwal cannot be held liable for making such press release by Deoraj Agarwal. Even, in my estimate, the Sangathan cannot also be held liable. Simply because the decision was taken by a Sangathan which is illegal and against the Constitution of India and the same has been published by one of the members of the Sangathan at his own risk, all the members of said Sangathan not possibly be held liable as penal Code does not contain any provision for attaching vicarious liability on the part of the members of a body of person unless any specific case is made out against him or them.

12) In Babulal (Supra) there was a meeting of caste Panchayat giving everyone full liberty to dine or not to dine with the complainant and the accused asserted, in spite of contradiction, that the complaint has been excommunicated by the Panchayat, which they knew was not correct, they cannot be said to have acting in good faith and cannot claim protection under exception 9th of Section 499 of the IPC.

13) The factual background of the case and that of this case in hands are completely de-similar. In that case the trial proceeded and evidence was recorded. In an appeal, it was held by the learned Single Judge the defense of good faith was discontinued by the repetition of the offence and the absence of any apology for indication that the applicants were merely acting according to their private opinion alone. In that case before the Hon'ble Single Bench, the action was taken by individual members who not only made defamatory statements but asserted facts which were untrue and which they must have known to be untrue.

14) In the instant case, the petition of complaint does not say anything that what the role of the petitioner Arjun Agarwal was in the said meeting and what he uttered against the complainant Ramesh Agarwal amounting to defamation and that he asserted that fact which was untrue and he knew that to be untrue.

15) In any way, the plea taken by Mr. Ganguly is not coming within the 9th exception of the Section 499 of the Indian Penal Code. Be that as it may, there is no direct or indirect averment against the petitioner Arjun Agarwal that he by words, either spoken or intended to be published, any imputation concerning the complainant intending to harm or knowing or having reason to believe that such imputation will harm, the reputation of the complainant. It was the accused no. 2 Deoraj Agarwal, who can possibly be held liable for making the publication in dispute in order to defame the complainant.

16) This Court reiterates that until and unless a specific case is made out against the accused from the averments in the petition of complaint or evidence recorded by Court, a proceeding can not be allowed to be continued against the accused. In the instant case, I am constrained to hold that although a news has been published in public concerning the reputation and respect of the complainant which

is amounting to defamation within the meaning of Section 499 of the IPC, the petitioner Arjun Agarwal can not be prosecuted for the same simply on the ground that there was no specific and direct allegation against him either in the petition of complaint or in the evidence recorded that he made any defamatory statement and published the same against the complainant.

17) In the premises above, this Court is of considered view that the prosecution against Arjun Kumar Agarwal should not be allowed to be continued. Accordingly the prosecution against him is quashed. Since other two petitioners have not pressed the revisional application, this Court passes no order in respect of them. The C.R.R. 2109 of 2005 stands disposed of. No order as to cost is passed.

18) The C.R.R. 1894 of 2006 has been taken out by Ramesh Agarwal praying for quashing of the proceeding initiated by P.C. Agarwal the accused no. 1 in the C.R. case no. 28 of 2004 which initiated by Ramesh Agarwal. P.C. Agarwal filed a complaint against Ramesh Agarwal in order to prosecute him under Section 500 of the IPC as Ramesh Agarwal filed a complaint against him and others which was false and frivolous. He also alleged in the complaint that Ramesh Agarwal had filed written complaint with Kurseong police station during pendency of the C.R. case no. 28 of 2004 making false allegation and aspersion against him. However, the complaint filed by P.C. Agarwal against the petitioner Ramesh Agarwal was entertained by the learned Magistrate who upon examination of P.C. Agarwal and other witness issued process against the present petitioner Ramesh Agarwal in order to proceed against him under Section 499 of IPC. That order was challenged by the present petitioner Ramesh Agarwal in the Criminal Revision No. 23 of 2005 and the Hon'ble Revisional Court was pleased to allow the revision application by setting aside the order of the learned Magistrate dated 18.7.2005 with a direction for writing the order afresh. Before a fresh order is passed by the learned Magistrate, Ramesh Agarwal has come up with this application challenging the legality of the proceeding and prayed for quashing of the proceeding on the ground that no case is made out against him even if the allegations made in the complaint are accepted in their entirety.

19) Since the learned Magistrate has not passed any fresh order according to the direction of the learned 1st revisional Court, this Court thinks that the learned Magistrate should get an opportunity to consider and appreciate the entire matter afresh and pass a reasoned order regarding proceeding further either under Section 203 or 204 of the Cr.P.C against the petitioner/accused Ramesh Agarwal. In doing so the learned Magistrate may make further enquiry under Section 202 of the Code of Criminal Procedure.

20) With direction above, the C.R.R. 1894 of 2006 stand disposed of.

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