

Charmesh Sharma Vs. State of Rajasthan and Another

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Court : Rajasthan

Decided On : Mar-19-2012

Reported in : 2012CrLJ2115

Judge : Mahesh Chandra Sharma

Appeal No. : S.B. CRIMINAL MISC. PETITION NO. 1674 OF 2011

Appellant : Charmesh Sharma

Respondent : State of Rajasthan and Another

Advocate for Pet/Ap. : Mr. Sudarshan Laddha

Judgement :

S.B. Criminal Misc. Petition No. 1674 of 2011 under section 482 Cr.P.c. against the order dated 17.3.2011 passed by Additional Sessions Judge No.1 Bundi in Criminal Revision No. 168 of 2010 against the order dated 7.8.2010 of the Chief Judicial Magistrate passed in Complaint No. 249 of 2010 was confirmed and the revision petition was rejected.

REPORTABLE BY THE COURT :

1. This criminal misc. Petition has been filed by the petitioner under section 482 Cr.P.c. against the order dated 17.3.2011 passed by Additional Sessions Judge No.1 Bundi in Criminal Revision No. 168 of 2010 against the order dated 7.8.2010

of the Chief Judicial Magistrate passed in Complaint No. 249 of 2010 was confirmed and the revision petition was rejected.

2. Brief facts of this criminal misc. petition are that a complaint was filed against the respondent No.2 before the Chief Judicial Magistrate Bundi for the offence under sections 500 and 504 IPC. It was stated in the complaint that the non-petitioner No.2 used to defame the great personalities of India. On 5.6.2010 non-petitioner No.2 publicly criticise the Ex- Prime Minister late Hon'ble Shri Jawahar Lal Nehru stating that "Shri Jawaharlal Nehru did nothing for children". The said News item was published in the News papers, telecast on TV Channels and also spread on Internet. It has further been stated in the complaint that the late Shri Jawahar Lal Nehru liked children very much and so on he worked for welfare of children. Children used to call him as "Chacha Nehru" and his birth day has been celebrated as Children day on November 14 each year. But due to the aforesaid critics by non-petitioner No.2 sentiments of Crores of Indians have been hurt. It was alleged in the complaint that critics caused by non-petitioner No.2 is an offence under sections 500 and 504 IPC. It was prayed in the complaint that cognizance be taken against the non-petitioner No.2. On filing the complaint, report of the office was called for. In the report it was stated that the complaint is beyond jurisdiction of the trial court. The complainant was heard on the complaint and the same was dismissed by the Chief Judicial Magistrate on 7.8.2010. The order dated 7.8.2010 passed by the Chief Judicial Magistrate Bundi was challenged by way of filing revision petition before the Sessions Judge, Bundi, and it was transferred to the Additional Sessions Judge No.1 Bundi. The Additional Sessions Judge No.1 Bundi after hearing the counsel for the petitioner and the Assistant Public Prosecutor appearing for the State of Rajasthan dismissed the revision petition vide order dated 17.3.2011.

3. Challenging the order of the Chief Judicial Magistrate Bundi dated 7.8.2010 and the order of the Additional Sessions Judge No.1 Bundi dated 17.3.2011, the petitioner now filed the present criminal misc. petition, before this court.

4. This court on 7.12.2011 issued notice of this petition to the non-petitioner No.2 and the notice on the non-petitioner No.2 was served on 29th Dec. 2011 and

power was filed on his behalf by Mr. O.S. Lakhawat on January 31, 2012. On 6.2.2011 the counsel for the petitioner requested for time but the counsel for the non-petitioner requested for giving fixed date for hearing the matter. On request of both the parties the matter was listed on 17.2.2012 but could not be heard. Thereafter the matter was notified to be listed for hearing today on 14.3.2012.

5. Today on 14.3.2012 the learned counsel for the petitioner filed a written submission in support of his case. It was stated that it is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence or not. Both the courts have not given their opinion regarding the allegations in the complaint under section 499 IPC and has not followed the proper course of law. The word "Pandit Jawahar Lal Nehru Ne Bachcho ke Liye Kuchh Nahin Kiya" clearly cause damage to the reputation of the great leader Shri Nehru. This statement lowers the moral/ intellectual character of late Shri Jawahar Lal Nehru in the eyes of children. This statement certainly comes under the definition of defamation under section 499 IPC. It was further stated that these words are not about any Prime Minister but it is about the First Prime Minister of India, who took the charge from the British and gave the leadership to the Nation. As India's First Prime Minister and External Affairs Minister, Jawahar Lal Nehru played a major role in shaping modern India's government and political culture along with sound foreign policy. The petitioner filed an extract from an Article written in the Magazine of Subodh Public School, Jaipur along with the written statement. A News item published in the Rajasthan Patrika dated November 15, 2008 relating to Jawahar Lal Nehru's Birthday was also enclosed with the written submission. The learned counsel also stated that according to section 199 Cr.P.C. read with Explanation I of section 499 IPC, complainant should be the "person aggrieved" and in case of deceased person the complainant could be the family or other near relative. Placing reliance on 2001 AIR SC 2651 it was stated that the collocation of words "by some persons aggrieved" in section 199 Cr.P.C. definitely indicates that the complainant need not necessarily be the defamed person himself, whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the court depending upon the facts of each case. It was further stated that in India, every child is taught that his teacher, his Guru is more important than any other persons

even if God is present before the Guru. Nehru is like a Guru to the petitioner and he has filed the complaint for his relation of Guru Sishaya with Nehruji as he is an active member of Congress since teen age and believe in Nehru and his principle as a followers. Placing reliance on section 179 Cr.P.C. it was stated that when an act is an offence by reason of anything which has been done and of a consequence which has caused the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. Relying on section 65 B of the Evidence Act information through computers have been termed as "Electronic Documents". It was stated that in the modern era where the electronic media and Internet occupies an important place in one's life, defamation via electronic document i.e. website or Internet news must occupy the same meaning as publication and the place where it is read or seen should be considered the place where it has aggrieved the person. Placing reliance on *Rajendra Singh vs. State of Bihar* 1989 Cr.L.J. 2277 where the court acquitted the accused on the ground that it had no jurisdiction to take cognizance of the complainant, the order of acquitting the accused would be illegal as the court ought to have returned the complaint for presentation to the proper court instead of acquitting the accused. Relying on sections 200, 201, 202 and 203 Cr.P.C. it was prayed that the orders passed by the CJM and the Addl. Sessions Judge should be quashed and set aside and subordinate courts may be directed to take cognizance against the accused person.

6. On behalf of the non-petitioner No.2 Narendra Modi, Chief Minister of Gujarat, written submissions have been filed by Mr. O.S. Lakhawat assisted by Mr. B.N. Sandu. Mr. Lakhawat has pointed out that the orders passed by the CJM Bundi and the Addl. Sessions Judge are not perverse and the same were rightly passed as the CJM has no jurisdiction to take cognizance against the non-petitioner No.2. Relying on *C.S. Satya vs. State* 1994 Cr.L.J. 1954 and *Kiran Singh vs. Chaman Paswan* AIR 1954 SC 340, it was argued that as per the provisions of section 179 Cr.P.C. "when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued." A defect of jurisdiction, where it is pecuniary or

territorial or where it is in respect of the subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. Relying on section 199 Cr.P.C. it was stated by the counsel for the respondent No.2 that the petitioner "Charmesh Sharma" cannot be said to be a "person aggrieved". It was specifically stated in section 199 Cr.P.C. that "no court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence". It was argued that First Prime Minister Shri Jawahar Lal Nehru died in 1964 and the person who has already died the kith and kin can only be said to be an aggrieved person. The petitioner cannot be said to be the kith and kin of First Prime Minister Shri Jawahar Lal Nehru, as he himself designed as "Congress Worker" holding some post in Congress party. In support of his contention the learned counsel for the respondent placed reliance on Bhagwan Shri Rajnish vs. State of Bihar 1987 BLJ 335, S. Khushboo vs. Kanniammal and another 2010 Cr.L.R. (SC) 381, Prabhu Chawla vs. Shivnath Soni RLW 1988 (2) 359, P.Karunakaran and others vs. Sri C. Jayasooryan and others (1992 Cr.L.J. 3540, Prempal Singh and others vs. Phool Singh and anr. 1980 WLN 483, M. Subroya Aiyar vs. Kadar Rowthan Abdudl Kadar Sahib Indian Cases Vo. XXIII page 725, Swamy Aroopanand vs. Bagmisri Nilamadhaoa Bramha and others 2000 Cr.L.J. 4296, Kartar Singh and others vs. State of Punjab (AIR 1956 SC 541, S. Rangarajan vs. P. Jagjivan Ram and others (1989) 2 SCC 574, Sri C.S.Sathya vs. State of Karnataka (1994 Cr.L.J. 1954) and Smt. Harsh Mendiratta vs. Dr. Maharaj Singh and others (2002 Cr.L.J. 1894). It was prayed that the criminal misc. petition filed by the petitioner may be dismissed as two courts have already rejected the complaint on account of jurisdiction.

7. I have heard Mr. Sudarshan Laddha, learned counsel for the petitioner, Mr. O.S. Lakhawat, assisted by Mr. B.N. Sandu, learned counsel appearing for the non-petitioner No.2 and Mr. Peeyush Kumar, Public Prosecutor appearing for the State of Rajasthan and have also gone through the judgments of the courts below and the case laws cited by both the parties.

8. Before proceeding further it would be necessary to have a look at sections 179 and 199, Cr.P.C., the same reads as under :

179. Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

199. Prosecution for defamation.- (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”

9. In my considered view there is no prima facie case of defamation in the present case. This will become self-evident if I draw attention to the key ingredients of the offence contemplated by Section 499 IPC, which reads as follows:

“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 expected, 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.”

(emphasis supplied)

The definition makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. Explanation 2 to Section 499 further states that “It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.”

10. With regard to the complaint in question, there is neither any intent on the part of the non-petitioner No.2 to cause harm to the First Prime Minister Shri Jawahar Lal Nehru or in any way to harm complainant as kith or kin of late Shri Jawahar Lal Nehru which discern any actual harm done to his reputation. In short, both the elements i.e. mens rea and actus reus are missing. The nonpetitioner No.2's statement published in Media or News Paper or over Television or through Internet is rather a general statement. It is difficult to fathom how the non-petitioner No.2's view can be construed as an attack on the reputation of anyone in particular. Even if I refer to the remarks published in the News Paper, there is no direct attack on the reputation of anyone in particular. Instead, the purported remarks are general in nature and not to harm any body concerning him.

11. This takes me to the question of whether the impugned complaint was made in a bona fide manner. The complainant belong to a political party, who is only active in the State of Rajasthan in Bundi District. This fact does add weight to the suggestion that the impugned complaint has been filed with the intention of gaining undue political mileage.

12. It may be reiterated here that in respect of the offence of defamation, Section 199 Cr PC mandates that the Magistrate can take cognizance of the offence only

upon receiving a complaint by a person who is aggrieved. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. There is of course some room for complaints to be brought by persons other than those who are aggrieved, for instance when the aggrieved person has passed away or is otherwise unable to initiate legal proceedings. However, in the given facts of the present case, I am unable to see how the complainant can be properly described as “persons aggrieved” within the meaning of Section 199(1) Cr PC.

In *M.S. Jayaraj v. Commr. of Excise* (2000) 7 SCC 552 the Apex Court observed as under:

“The ‘person aggrieved’ means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. ‘Person aggrieved’ means a person who is injured or one who is adversely affected in a legal sense.”

13. A complaint under Sections 500 and 504 IPC was filed by the complainant against the non-petitioner No.2. The Apex Court in *G. Narasimhan* case (1972) 2 SCC 680 had to consider whether the complainant had the proper legal standing to bring such a complaint. The Court did examine Section 198 of the Code of Criminal Procedure, 1898 (analogous to Section 199 Cr PC, 1973) and observed that the said provision laid down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is an “aggrieved person” or not. But there is a departure from this norm in so far as the provision permits only an “aggrieved person” to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “aggrieved person”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

14. In the complaint, the petitioner in paras 1 and 3 stated as under :

“Other Language”

3. Other Language”

15. I have also gone through the findings of the CJM, which are as under :

“Other Language”

I am in agreement with the findings arrived at by the CJM. The complainant has no jurisdiction to file the complaint at Bundi.

16. I have also gone through the findings given by the Addl. Sessions Judge in the order dated 17.3.2011, which reads as under :

“ Other Language ”

6. Other Language”

The findings arrived at by the learned Addl. Sessions Judge and the CJM on the question of jurisdiction cannot be said to be perverse. In my considered view there is no prima facie case of defamation in the present case. The definition of defamation makes it amply clear that the accused must either intend to harm the reputation of a particular person or reasonably know that his/her conduct could cause such harm. In the complaint, there is neither any intent on the part of the non-petitioner No.2 to cause harm to the First Prime Minister Shri Jawahar Lal Nehru in any way or the complainant is kith or kin of late Shri Jawahar Lal Nehru which discern any actual harm done to his reputation. It is difficult to fathom how the non-petitioner No.2's view can be construed as an attack on the reputation of anyone in particular. Even if I refer to the remarks published in the News Paper, there is no direct attack on the reputation of anyone in particular. As I have already noted, the complainant belong to a political party, who is only active in the State of Rajasthan in Bundi District. This fact does add weight to the suggestion that the impugned complaint has been filed with the intention of gaining undue political mileage. The complaint can only be filed by an aggrieved person. This limitation on the power to take cognizance of defamation serves the rational purpose of discouraging the filing of frivolous complaints which would otherwise clog the Magistrate's Courts. Section 199 Cr.P.C. lays down an exception to the general rule that a criminal complaint can be filed by anyone irrespective of whether he is

an “aggrieved person” or not. But there is a departure from this norm in so far as the provision permits only an “aggrieved person” to move the Court in case of defamation. This section is mandatory and it is a settled legal proposition that if a Magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an “aggrieved person”, the trial and conviction of an accused in such a case by the Magistrate would be void and illegal.

17. The case laws cited by the counsel for the petitioner are not applicable to the facts of the case. The Apex Court has categorically held in number of cases that the person filing complaint must be a person aggrieved. The complainant is not an aggrieved person, hence the complaint filed by him was rightly rejected for want of jurisdiction and the other factum of the case is that he is not an aggrieved person. In these circumstances the other rulings cited by the counsel for the non-petitioner No.2 are not necessary to be looked into in view of the clear position of the provisions of section 199 Cr.P.C. and section 499 IPC related to definition of defamation.

18. For the reasons mentioned above, the criminal misc. petition filed by the petitioner has no force and hence it is hereby dismissed.

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