

Court No. - 34

Case :- APPLICATION U/S 482 No. - 7940 of 2004

Applicant :- Rajeev Kumar Yadav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Nikhil Kumar

Counsel for Opposite Party :- Govt. Advocate, S.R. Verma

Hon'ble Sudhir Agarwal, J.

1. Heard Sri Nikhil Kumar, learned counsel for applicant and learned AGA for State of U.P.
2. Applicant has invoked jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) with a prayer to quash Complaint Case No. 5116 of 2003, under Section 500 IPC, pending in the Court of Ist Additional Chief Judicial Magistrate, Ghaziabad.
3. It is contended that complainant Umesh Chandra Vashisth was placed under suspension vide order dated 21.06.2002 which was required to be served upon him by applicant. Applicant made all his efforts to intimate about suspension of complainant and in this regard, he published this information in daily newspaper "Amar Ujala" on 10.07.2002 and also sent letter dated 08.07.2002 to complainant. In the meantime, order of suspension was revoked vide order dated 02.07.2002 and it was received by applicant on 17.07.2002. However, on the basis of information published in newspaper, a complaint under Section 500 IPC was filed by complainant Umesh Chandra Vashisth against applicant and allegations made therein are as under:-

"1. That the complainant was posted at Modinagar as Town Employment Officer in the year September, 2001.

2. That the complainant attended his office in Modinagar till 26.6.2002. The complainant fell ill and thus on Medical advice he proceeded on leave and came down to Hapur at the above said address. The complainant is still on leave.

3. That in December, 1999, the complainant received a letter from Shri Rajeev Kumar Yadav, Regional Employment Officer,

intimating therein he (R.E.C.) has been appointed an Enquiry Officer against the complainant.

4. That the complainant then immediately moved an application before the Director, Training and Employment (Head of the Department) U.P. Lucknow, requesting therein that Shri Rajeev Kumar Yadav be not designated as an Enquiry Officer, as he is a material witness in this Departmental Enquiry, and the complainant will be prejudiced.

5. That the complainant learnt through reliable sources in the month of June, 2002 that the complainant has been placed under suspension. The complainant therefore represented the matter before the Principal Secretary (Labour) U.P. Govt. Lucknow.

6. That the complainant learnt from the publication in Amar Ujala newspaper dated 10.7.2002 at page 12 which is as under:-

“श्री उमेश चन्द्र वशिष्ठ, नगर सेवायोजन अधिकारी, मोदीनगर (निलंबित) को सूचित कि जाता है कि आपको निर्गत प्रतिकूल प्रविष्टियां वर्ष 1999-2000 एवं 2000-2001 आपके निवास (ई-293, शास्त्रीनगर, मेरठ) पर चस्पा करा दी गयी हैं। यदि 15 दिन के अंदर आपका प्रत्यावेदन निदेशालय को प्राप्त नहीं होता है, तो गुणावगुण के आधार पर निर्णय ले लिया जायेगा।

दिनांक : 08.07.2002

आज्ञा से

कुमार अरविंद सिंह देव, आई.ए.एस. (निदेशक)

प्रशिक्षण एवं सेवायोजन, उ०प्र०, लखनऊ।”

7. That this publication lowered the estimate of the complainant in the eyes of respectable persons of the town as also of Meerut.

8. That the complainant received a letter from the Regional Employment Officer, Meerut, dated 29.8.2002 along with Annexure letter of the Director, Training and Employment, U.P. Lucknow, dated 2.7.2002. Photo copies of the letter along with Annexure is annexed as Annexure 1 & 2 to this complaint.

9. That the complainant learnt from this letter that the Director had revoked the suspension order on 02.07.2002 and this fact was conveyed to Shri Rajeev Kumar Yadav, Regional Employment Officer, Meerut.

10. That Shri Rajeev Kumar Yadav intentionally with a purpose to harm and humiliate the complainant gave a publication in the news paper Amar Ujala dated 10.7.2002, when he had the knowledge that he is getting the publication make in the newspaper, which is not true.

The Photostate copy of the letter sent to the Editor, Amar Ujala, Meerut dated 08.07.2002 is annexed as Annexure-3 to

this complaint.

11. That the act of the accused Shri Rajeev Kumar Yadav falls under the purview of Section 500 IPC.

It is, therefore, prayed that the accused be summoned and punished according to law.”

4. From the perusal of allegations contained in complaint as also the submission advanced by learned counsel for applicant, I find that Section 500 IPC is not at all attracted in the case in hand and, therefore, impugned proceedings are liable to be quashed.

5. Section 499 IPC provides as to what is “defamation” and reads as under:-

“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.” (Emphasis added)

6. There are four Explanations and ten Exceptions in Section 499 IPC which I have not quoted.

7. Explanations covers some shades of the words, spoken or intended to be read etc., which may amount to “defamation” while exceptions give the illustrations of what will not constitute “defamation”. To be more particular, Explanations-1, 2 and 3 provide certain aspects which would amount to defamation and Explanation-4 explains the words “will harm the reputation of such person” which is a necessary and integral part of Section 499 IPC so as to constitute defamation. Offence of defamation, therefore, consists of three essential ingredients. (i) making or publishing an imputation concerning a person; (ii) such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations; and, (iii) the said imputation must have been made with the intention of harming or with the knowledge or having reason

to believe that it will harm the reputation of the person concerned.

8. Thus, to bring an offence under Section 500 IPC, prosecution has to show, (a) that an imputation was made consisting of words spoken or written or intended to be read or made by signs or by visible representations; (b) that the imputation concerned the complainant i.e. the person defamed and the person who has come forward qua complainant alleging that defamation concerned him, are identical persons; (c) that the accused made or published the incriminating imputation; and, (d) that the intention behind making and publishing words causing harm to the reputation of such person.

9. Offence punishable under Section 500 IPC, therefore, is to protect a fundamental right of a person i.e. 'reputation' which is part of right to enjoyment of life and liberty and property having an ancient origin as explained by Supreme Court in **Smt. Kiran Bedi v. Committee of Inquiry and another 1989 (1) SCC 494** wherein Court reproduced the observations from **D.F. Marion v. Davis 10 55 ALR 171** as under:-

“The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.” (emphasis added)

10. In **Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni and Others (1983) 1 SCC 124**, Court said that “right to reputation” is a facet of right to life of a citizen under Article 21 of Constitution.

11. In **Vishwanath S/o Sitaram Agrawal v. Sau. Sarla Vishwanath Agrawal 2012 (6) SCALE 190**, Court dealt with the aspect of “reputation” though in a different context, and said:-

“.....reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of

the grave. It is a revenue generator for the present as well as for the posterity. ” (emphasis added)

12. In **Kishore Samrite Vs. State of U.P. and Others 2013** (2) SCC 398, Court said:-

“The term 'person' includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. 'Reputation' is an element of personal security and is protected by Constitution equally with the right to enjoyment of life, liberty and property. Although 'character' and 'reputation' are often used synonymously, but these terms are distinguishable. 'Character' is what a man is and 'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. ”

(emphasis added)

13. Offence under Section 500 IPC, therefore, covers a very important aspect involving a person's right to life and liberty, hence when a complaint is made that a person's reputation has been jeopardized, a Magistrate, if has taken cognizance in the matter by initiating proceedings, Court under Section 482 Cr.P.C. or in writ jurisdiction under Article 226 of Constitution should not interfere lightly unless a clear case of abuse of process of law is made out. I, therefore, would examine the matter in question, whether a case of abuse of process has been made out or not.

14. In the present case, it is evident from record that complainant was actually placed under suspension vide order dated 21.06.2002. Complainant himself admits that he attended office at Modinagar till 26.06.2002 and thereafter remained absent and according to him, he could not attend duty due to illness and even left his residence and went to Hapur. Director, therefore, sought to communicate the factum

of suspension to complainant by publishing order of suspension in a daily newspaper “Amar Ujala” on 10.07.2002. In the meantime, it appears that order of suspension was revoked on 02.07.2002 but information regarding revocation of order was received by Director before he sent the publication of suspension order in a daily newspaper for onward communication to complainant is not stated anywhere. Further, even otherwise, order of suspension is a fact and publication in daily newspaper thereof is not a wrong information or a false information but a truth based on order of suspension which actually had taken place at a relevant point of time. Moreover, there is no averment in the entire complaint that information of suspension of complainant was published by accused-applicant with an intention to harm the reputation of complainant for the reason that complainant was in a service wherein contemplation or pendency of departmental enquiry, he could have been placed under suspension and was actually placed under suspension, therefore, ingredients of defamation defined under Section 499 IPC prima facie are not satisfied. Without examining all these aspects, Magistrate has taken notice and initiated the proceedings ex-facie. Here is a case where criminal proceedings initiated against accused-applicant amounts to abuse of process and should not be allowed to continue.

15. In view thereof, application is allowed. Impugned proceedings initiated against application in Complaint Case No. 5116 of 2003, under Section 500 IPC, pending in the Court of Ist Additional Chief Judicial Magistrate, Ghaziabad, are hereby quashed.

Order Date :- 4.12.2019
Siddhant Sahu