



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY
CRIMINAL PETITION NO: 3260 OF 2015

Between:

1. C.SUNIL KUMAR REDDY & ANOTHER S/o. Ramachandra Reddy
Aged about 45 years, Occ: Advocate.
R/o. Door No.P54/24-11, Old Post Office Street, Rayachoty, Y.S.R.District
2. Rajanolla Jayachandra Reddy, S/o. Rami Reddy,
Aged about 75 yeais, Occ: Agriculture,
R/o. Rajanollapally, Obulareddy Pally,
H/o.Talupula Mandal, Ananthapur District.

...PETITIONER(S)

AND:

1. THE STATE OF A.P., & ANOTHER rep., by its Public Prosecutor,
High Court of Andhra Pradesh, Hyderabad.
3. K.Raghunatha Reddy, S/o. K.Sahadeva Reddy,
Aged about 70 years, Occ: Adovocate, R/o. Flat No.401, Vandana
Enclave, R.K.Nagar, Kadapa City, Y.S.R.District.

...RESPONDENTS

Counsel for the Petitioner(s): V R REDDY KOVVURI

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

**THE HONOURABLE SRI JUSTICE K. SREENIVASA REDDY****CRIMINAL PETITION NO.3260 OF 2015****ORDER:-**

This Criminal Petition is filed to quash the proceedings in C.C.No.496 of 2014 on the file of the Judicial Magistrate of First Class, Rayachoty, YSR District.

2. The facts averred in the present Criminal Petition are that 2nd respondent/complainant in C.C.No.496 of 2014 filed complaint seeking to punish the petitioners herein for the offence punishable under Section 500 of the Indian Penal Code, 1860 (IPC) i.e. for defamation, on the ground that they have made defamatory statement in the counter filed by 2nd petitioner herein, in I.A. No.413 of 2013 in O.S.No.45 of 2009, which is pending on the file of the Senior Civil Judge Court, Rayachoty, where suit is filed by 2nd respondent/complainant against 2nd petitioner herein, who is arrayed as 2nd defendant, and others seeking specific performance of agreement of sale. 1st petitioner herein is the counsel for 2nd petitioner herein before the court below.

It is stated that as 2nd respondent herein, who is plaintiff in the suit, could not file his affidavit in *lieu* of his examination-in-chief, the learned Senior Civil Judge closed the evidence on his behalf in O.S.No.45 of 2009 on 14.11.2013. Thereafter, 2nd respondent herein filed I.A.No.413 of 2013 along with affidavit in *lieu* of his examination-in-chief,



praying to reopen the evidence in the said suit on the ground that he was held up at Hyderabad during the relevant point of time in connection with W.P.No.30209 of 2010 pending before the High Court of Andhra Pradesh.

It is also stated that a counter was filed in I.A.No.413 of 2013 by the 2nd petitioner herein stating that the averments that the complainant is a practicing Advocate in Andhra Pradesh High Court at Hyderabad and he attended the High Court of Andhra Pradesh at Hyderabad in connection with W.P.No.30209 of 2010 on 14.11.2013 and hence, he was unable to attend the Court on 14.11.2013, are absolutely false; the complainant is a retired Lecturer and he is in the habit of filing false cases by creating forged documents and he is intentionally delaying the proceedings in the suit.

Aggrieved by the said statements, the 2nd respondent herein filed a private complaint before the learned Magistrate, and the learned Magistrate took cognizance of the same and registered it as C.C. No.496 of 2014 for the offence punishable under Section 499 I.P.C. and issued summons to the petitioners herein.

3. This Court, *vide* order, dated 24.4.2015, granted interim stay of all further proceedings including appearance of the petitioners/accused in C.C.No.496 of 2014 on the file of the Judicial Magistrate of First Class, Rayachoty, YSR District.



4. Notices in the Criminal Petition were served on the 2nd respondent/complainant on 28.08.2015, but there is no representation for the 2nd respondent.

5. Heard the learned counsel for the petitioners and learned Additional Public Prosecutor for the 1st respondent and perused the entire material available on record.

6. It is contended by the learned counsel for the petitioners that the averments made in the counter filed in I.A.No.413 of 2013 in O.S.No.45 of 2009 on the file of the Senior Civil Judge Court, Rayachoty, are only with a view to bring it to the notice of the Court that the 2nd respondent herein/complainant, who is plaintiff in the suit before the Court below, was taking time on one pretext or the other, and thus, by any stretch of imagination, the averment in the counter that the 2nd respondent herein/complainant was a practicing Advocate in Andhra Pradesh High Court at Hyderabad and he attended the High Court of Andhra Pradesh in connection with W.P.No.30209 of 2010 on 14.11.2013 and as such he could not attend the Court in the suit on 14.11.2013, is absolutely false, cannot be construed as a defamatory and the same would not come within the purview of Section 499 IPC. He contended that the statement made in the counter before the learned Senior Civil Judge Court in I.A.No.413 of 2013 that the



2nd respondent/complainant is taking time would not come within the meaning of publication or circulation much less in the public at large. It is also contended that counter is a document, which was submitted only before the Court and during the Court proceedings, and the averments are denials of the averments made in the affidavit filed in support of I.A.No.413 of 2013, as such, it cannot be regarded as defamation in view of Exception 4 to Section 499 IPC.

7. Section 499 IPC defines 'defamation', 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-----

Explanation 2-----

Explanation 3-----

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.”



8. Construing the above provision and taking note of the relevant case law on the subject, the Delhi High Court in ***S.T.P. Singh Vs. Tarsem Singh and others, dated 03.07.2018 in Crl.M.C. No.4514 of 2015 and Crl.M.A.No.16078 of 2015*** held as under :

“ 9. It is clear from a bare reading of the above extracted provision that it is not only essential that the impugned imputation harming the reputation of the person in question must be alleged to have been "made" or "published" but also that it must be shown, amongst others, to have directly or indirectly, inter alia, lowered the moral or intellectual character of the said person "in the estimation of others".

“12. The key words in the main clause wherein the offence of defamation is defined by [Section 499](#) IPC are "makes or publishes" the "imputation" encompassing insinuation with the propensity "to harm" the "reputation" of the person against whom the same is directed. For the present discussion, the said clause has to be read in light of the explanations appended thereto particularly the fourth explanation which excludes from the purview of the criminal offence the imputations with such insinuation as to the character of the affected person unless it is designed to adversely affect the reputation "in the estimation of others".

13. It is necessary to focus on the expression "publishes". The word "publish" is defined by Chambers, 20th Century Dictionary to connote :

"to make public; to divulge; to announce; to proclaim; to send forth to the public; to put forth and offer for sale orig. any article, new books, newspapers, etc. to put in circulation."

14. Halsbury Laws of England (Third Edition) explains that :

"publication consists in making known the defamatory statement after it has been reduced into some permanent form"



16. Pertinent to note in the context of use of words "in the estimation of others", the commentary on [Indian Penal Code](#) by Ratan Lal (2002) in relation to the offence of defamation begins with the general comment that:

"the essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed."

18. Following the view taken by the full bench decision of the Privy Council in Queen Empress Vs. Taki Husain, 7A 205 (FB) -

4A.W.N. (1884) 340, Allahabad High Court in a very early decision reported as [Khima Nand and Anr. vs. Emperor](#), 1936 SCC Online All 307: 1937 CrL. LJ 806 held thus :-

"The only rule is that there can be no offence of defamation unless the defamatory statement is published or communicated to a third party, that is, to a party other than the person defamed..."

20. Similar questions had arisen before the High Court of Andhra Pradesh in case reported as Challa Subbarayudi Vs. Darbha Ramakrishna Rao, 1967 SCC Online AP 137 : (1968) 2 ALT 101 and the following view was taken :-

"13. Publication is the communication of the words or doing the defamatory act in the presence of at least one other person than the person defamed. Communication to the plaintiff himself would not be enough because defamation is an injury to one's reputation and reputation is what other people think of man, and not his own opinion of himself. Publication of the defamatory act or statement therefore is an essential element for the constitution of defamation."



21. In the context of similar criminal complaint under Section 500 IPC, the Kerala High Court in the matter reported as P.R.Ramakrishnan Vs. Subbaramma Sastrigal and Anr., 1986 SCC Online Ker 309 : AIR 1988 Ker 18 : 1988 Cri. LJ 124 took the following view: "...To attract the definition of the offence of defamation as contained in Section 499 of the I.P.C., the imputation should have been made or published "whoever makes or publishes any imputation" are the relevant words employed in the section. The word "makes" is intended to supplement the sense of "publishes." Those words conjunctively connote "to make public." It is settled proposition that there is no publication if the libeller merely communicates his libel to the person defamed."

9. The Madras High Court in **Smt.Dr.Nagarathinam**

Vs. M.Kalirajan,¹ held thus:

"68. The Apex Court has held in Bilal Ahmed Kaloo v. State of Andhra Pradesh ,(1997) 3 Crimes 130 : (1997 Cri LJ 4091) as under (at p. 4094 of Criminal LJ):

"The words "makes or publishes any imputation" should be interpreted as words supplementing to each other. A maker of imputation without publication is not liable to be punished under that section."

69. In the decision rendered by the Kerala High Court in [P.R. Ramakrishnan v. Subbaramma](#) (AIR 1988 Ker 18 : 1988 Cri LJ 124). Hon'ble K. T. Thomas, J. (as he then was) answered such a question as follows (para 6) :

The next question is about publication of the imputation. It is contended that there is no publication. To attract the definition of the offence of defamation as contained in [Section 499](#) of the I.P.C., the imputation should have been made or published "whoever makes or publishes any imputation" are the

¹ (2001 SCC Online Madras 355 =2001 Criminal Law Journal 3007)



relevant words employed in the section. The word "makes" is intended to supplement the sense of "publishes." Those words conjunctively connote "to make public." It is settled proposition that there is no publication if the libeller merely communicates his libel to the person defamed.

70. It is held in *Miss Violet Wapshare v. Miss Maureen Froud* 70 Mad LW (Cri) 4 as follows :

The word "publish" in [Section 499,1.P.C.](#) is used in its etymological sense as connoting "to make public" or "to make known to people in general". Since "publication" implies communication to the public or the people, it follows that it is not publication if the libeller merely communicates his libel to the person defamed. Such communications may amount to an insult and be punishable as such, but it is not publication for which he would be held liable under [Section 499, I.P.C.](#)

71. The above decisions would give out the following guidelines :

- (1) ...
- (2) The words "makes" or "publishes" would conjunctively connote "to make public" or "to make known to people in general".
- (3) If the libeller merely communicates his libel to the person defamed, it is not publication.
- (4) The attack on the reputation of the complainant will follow when the words calculated to harm his reputation are communicated to some third party, that is, to some person other than the person defamed.
- (5) ...”

10. This Court is conscious of the fact that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the Court would not be justified in embarking upon an enquiry as to the reliability or



genuineness or otherwise of the allegations made in the complaint.

11. it is pertinent to refer to the judgment of the Hon'ble Apex court in *State of Haryana Vs. Ch.Bhajanlal and ors.*², wherein the Apex Court held,

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they 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;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission

² **AIR 1992 SC 604**



of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The above principle is well settled one and there cannot be any dispute with regard to the said proposition of law. But, in the very same decision, it is held that undoubtedly there could be interference in rarest of rare cases, however, one such case would be when the complaint itself does not disclose any offence.



12. In the case on hand, though counter has been filed in the court proceedings and it is by the advocate appearing for his client, the same would not in any way amount to publication. In the light of the aforesaid judgments, as the alleged defamatory statement was made only in a counter filed in a Court of law but not made it available to the general public, it cannot be said that there is a publication which is main element to see whether the offence of defamation is made out or not. Imputations in the counter, taking as they are, would not in any way amount to *per se* defamatory.

13. Further, a perusal of the complaint makes it clear that the alleged defamatory statement was not circulated or stated so, in the public at large but it is only pleaded in the counter during the proceedings in the Court. A counter in a suit, though a public document, would not be seen by others. No advocate will ever look into the brief of others, much less the counter. It is pertinent to mention here that even in the complaint, there is no averment that other persons read the counter. As such it would not in any way come within the purview of defamation under Section 499 IPC. The imputations that are made in the counter are not *per se* defamatory as there is no intention on the part of the petitioners to defame the complainant.



14. In view of the same, this Court is of the view that the complaint instituted by the 2nd respondent against the petitioners does not call for any further action in the nature of issuance of process under Section 204 of the Code of Criminal Procedure, 1973, because there is neither any averment nor any evidence showing that any defamatory material was published.

15. For the foregoing reasons, continuation of the impugned proceedings against the petitioners would amount to abuse of process of the Court and hence, the proceedings against the petitioners are liable to be quashed.

16. Accordingly, the Criminal Petition is allowed, quashing the proceedings in C.C.No.496 of 2014 on the file of the Judicial Magistrate of First Class, Rayachoty, YSR District.

Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

JUSTICE K. SREENIVASA REDDY

Date:17.02.2022.

Note:

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