

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 3820 of 2006

SAMIK GHOSH & ORS.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Sabyasachi Banerjee, Adv.
Mr. Somopriyo Roychowdhury, Adv.
Mr. S. Dutta

For the Opposite Parties : None appear

Hearing concluded on : 4th November, 2022

Judgement on : 17th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Samik Ghosh a reporter of Annadabazar Patrika – a Bengali Daily prepared a report under the heading “Panchil Bhenge Jami Dakhal. Dadar Douratme Dal-o- Chup”, “Forceful possession of land by breaking the boundary wall, the party is maintaining silence against the highhandedness of Dada.” Report was published on 25th November, 2004 under the banner “Dadagiri”.
2. Background of such report was the policy taken by the competent authority, being flooded with letters received by the newspaper office from people of different locality indicating the highhandedness of local

leaders. The newspaper authority depending on the gravity of the allegations decided to investigate and to submit the investigative report. One such report is the subject matter of this list, where allegation against Madan Mohan Manna happened to be the leader of Nischinda Local Committee of a particular political party. According to Madan Mohan Manna the report published in the newspaper was full of baseless allegations and prepared with imputation to lower down his prestige, being instigated by Binoy Majumder, the next door neighbour. It was reported that Sri Manna was illegally occupying the land of neighbouring people with the help of his associates, assaulting people without any reason, misbehaving with the female persons. By using muscle power he had taken control of a 50 years old club drove out the members. But the leaders of the District Committee, maintained silence and when confronted with such allegations, Madan Mohan Manna stated that such allegations were politically motivated.

3. But according to the reporter the neighbouring people however, were propagating views contrary to the claim of Madan Mohan Manna. The reporter cited an example of Mr. Binoy Majumder a retired Railway employee and next door neighbour of Madan Mohan Manna. According to Binay Majumdar, on 3rd March, 2003, Madan Mohan Manna came to his house along with his associates, broke down the boundary wall and took possession of the land he owned. When Binay Babu raised objection he and his family members were manhandled and assaulted. Samik Ghosh, the Reporter drew attention of Madan Mohan Manna about such allegation and rubbing all such allegations Madan Mohan Manna told the reporter that he wanted to get the property

surveyed by the Government Surveyor. He would abide by such report. Binoy Majumder told the reporter that as his boundary wall was dismantled and they were assaulted, he went to local Police Station at Bally but nothing was done by the police, so he had to file a case. After filing of the case Binoy Majumder and his family members got intimidated by Madan Babu. The female folks of the locality told the reporter that Madan Babu drove away the members of a local club and took over the control of the club with his henchmen, who were hurling indecent words towards them. However, according to Madan Mohan Manna, his political rivals were speaking lead of him. He was being accorded with respect by his neighbours and there was reciprocation from his end. The reporter further stated that the inhabitants of the locality lodged a complaint with the highest level of the State Administration as well as with the leaders of Mandamohan Manna, one Minister of State and some leaders of Howrah District Committee of CPM called the local people and listened to the grievances they made.

4. On 29th November, 2004, Madan Mohan Manna filed a complaint which was registered as Case No. 1392 of 2004 against five accused persons. Learned Judicial Magistrate was pleased to take cognizance of the case and directed the Officer-in-charge of Bally Police Station to enquire into the matter under Section 202 of the Cr.P.C. and to submit a report; subsequently learned Magistrate issued process under Section 500/120B of the I.P.C. upon the accused persons.
5. Challenging the order passed on 3rd January, 2006 by the learned Court of Judicial Magistrate, Howrah. Samik Ghosh and Aveek Sarkar being the Reporter and Editor of Anandabazar Patrika respectively and

accused no. 3, Managing Director of Satellite Printing Private Limited filed the application seeking order of quashment of the proceeding as against them.

6. Assailing the impugned order Mr. Sandipan Ganguly, learned Senior Counsel submits that to constitute of offence of defamation as provided under Section 499 of the I.P.C. there has to have an imputation and such imputation shall have to be made with the intention of harming or knowing or having reasons to believe that it would harm reputation of the person or group of person about whom it is made. The Reporter, Mr. Samik Ghosh did not subscribe his personal opinion anywhere in the report. He brought the allegations leveled against Madan Mohan Manna by his neighbours to the notice of Sri Manna and invited his comments and confronted the neighbours including female folks of the locality with the statement given by Madan Mohan Manna. There is nothing to show that he had any intention to expose the complainant to public hatred or ridicule. The report published in a newspaper, in my humble opinion is a piece of objective journalism and not defamation per se. Therefore, in the absence of basic ingredients required to constitute offence under Section 499 of the I.P.C. learned Chief Judicial Magistrate had no reason to issue process under Section 500/501/34 of the I.P.C. against the petitioners.

7. Section 499 of the I.P.C. defines defamation.

“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.

First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.—Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.
Explanation.—A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.
Illustration If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is

conveyed, or of some person in whom that person is interested, or for the public good.”

8. It is trite to say that to constitute an offence within the meaning of Section 499 of the I.P.C. there has to be imputation which is the basic requirement and such imputation shall have to be made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Causing harm to the imputation of a person is the basis on which this offence of defamation is founded and like every criminal proceeding mens rea is a condition precedent to constitute such offence.
9. Upon perusal of statement made by the Opposite Party as Complainant before the learned Chief Judicial Magistrate, I do not find anything to suggest that the petitioners had intended or known or had reason to believe that the report penned, edited and published would harm reputation of Sri Manna.
10. The criminal offence, it goes without saying emphasis on the intention of harm. Section 44 of the Indian Penal Code defines injury and it denotes any harm whatever illegally caused any person in body, mind, reputation or property. In the absence of any ingredient prima facie to show the mens rea of the accused persons to have the intention, knowledge or reason to believe that the report published in the daily newspaper, an offence within the meaning of Section 499 of the I.P.C. cannot be said to have been made out.
11. Therefore, in my humble opinion learned Judicial Magistrate, Howrah has failed to exercise jurisdiction vested upon him by issuing

the process against the petitioners which amounts to abuse of process. The order impugned should not be allowed to remain in force and should be set aside which I accordingly do by exercising the inherent jurisdiction conferred upon this Court under Section 482 of the Cr.P.C. With this observation this Criminal Revision is disposed of.

12. Let a copy of this judgement be sent to learned Judicial Magistrate, Howrah for information and taking necessary action.
13. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)