

(2007) 11 AHC CK 0127

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 2904 of 2007

Pradeep Kansal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Nov. 21, 2007**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 499, 500

Hon'ble Judges: M.K. Mittal, J**Bench:** Single Bench**Advocate:** Ramesh Sinha, for the Appellant; Prem Chandra and AGA, for the Respondent**Final Decision:** Dismissed

Judgement

M.K. Mittal, J.

This application has been filed for quashing the proceedings in Criminal Case No. 5332/2005 Sudesh Sharma @ Swadesh Sharma v. Pradeep Kansal and Others u/s 500 IPC P.S. Modi Nagar. District Ghaziabad, pending in the Court of ACJM Court No. 8, Ghaziabad.

2. Heard Sri Ramesh Sinha Learned Counsel for the applicant, Sri Prem Chandra Learned Counsel for the opposite party, learned AGA and perused the material on record.

3. The brief facts of the case are that the opposite party No. 2 Sudesh Sharma @ Swadesh Sharma filed a complaint u/s 500 IPC against the applicant and others alleging that he is a respectable person of Modi Nagar and had recently joined Congress Party and was a devoted party worker and he also contested the election of the chairman of the Municipal Board and was elected by the people with thumping majority. The accused Pradeep Kansal was also in Congress party and was jealous against him and wanted to lower his position by making false allegations against him. With that view the accused held the press conference on 10th August 2005 at his residence in Modi Nagar and made malicious and defamatory

statements against him regarding the murder of one Mahesh @ Bheem. He even declared him to be a murderer and a thief and a dishonest person who had come to loot the citizens of Modi Nagar. The statements made by the accused were given due publicity and were not only printed in the newspapers but there was telecast also on three television channels. This reduced the status of the complainant in the eyes of the citizens of Modi Nagar and several persons including Arvind Kumar Agarwal, Asharam Tyagi, Pramod Kaushik, Ved Prakash Sharma, Nand Kishore Sharma telephoned him and told him that they would have no relations with him. This lowered his prestige and status in society and it was the result of the defamatory allegations made by the accused. According to the complainant the allegations were made by the accused intentionally and without any basis. The learned Magistrate examined the complainant and his witnesses and finding a prima facie case, directed to summon the accused u/s 500 IPC by order dated 28.11.2006. Feeling aggrieved, the present application has been filed.

4. The case of the applicant is that he is a respectable person of society and is a member of the Congress Party for last 24 years. The complainant was earlier member of Samajwadi Party and then he joined BJP and thereafter the Congress Party. Hakim Singh father of deceased Mahesh @ Bheem had prayed the applicant on 2nd August 2005 and had given him an application in which it was categorically stated that the complainant was responsible for the murder of his son and in order to assist Hakim Singh and to bring the correct fact's to the notice of the concerned authorities the applicant organised the press conference. The contention of the applicant is that the statements as made by him cannot be treated to be defamatory and it was done by him in good faith to assist Hakim Singh.

5. The complainant filed counter affidavit and alleged that Hakim Singh had not given any application to the accused applicant and he, acting out of inter party rivalry and in order to defame him, made false and frivolous statements and lowered his position in the society. The opposite party also contended that the accused made the statements deliberately and intentionally to harm his reputation and it lowered his status in the eyes of the citizen of Modi Nagar.

6. The relevant portion of section 499 IPC which defines defamation, reads as under -

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 excepted, to defame that person.

7. The act is not defamatory if it is covered by one of the exceptions as mentioned in this Section. Learned Counsel for the applicant has contended that the applicant acted in good faith and therefore, his act is covered by 8th exception. This exception

provides that 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. Learned Counsel for the applicant has contended that since the father of the deceased had given him an application and in order to assist him and to bring the correct facts to the notice of the authorities, he had organised the press conference. The copy of this letter has been filed as Annexure No. 2. This application has been addressed to the Chief Minister and the copies have been forwarded to different authorities. However no copy of this letter has been forwarded to the applicant. Moreover the applicant was not the person in authority nor did he make any statement to any authority as no such authority is alleged to have been present in the press conference and therefore, if any statement was made by him in the press conference it was not covered by this exception. Moreover the allegations as made and as averred in the complaint show that in any case even if he was making statements to any authority they could not have been treated to have been made in good faith.

8. Learned Counsel for the applicant has cited the case of *Jawaharlal Darda and Others v. Manohar Rao Ganpat Rao Kapsikar and Another* 1998 (2) ACJ 47 (S.C.) : 1998(36) ACC 837(SC). In that case news item was published on the basis of the statement made by the minister disclosing misappropriation of Government fund by certain persons including the accused therein and it was held by the Hon'ble Apex Court that it is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused, bona fide believing the version of the Minister to be true, published the report in good faith, it cannot be said that they intended to harm the reputation of the complainant.

9. In that case the statement as published was based on the authoritative statement made by the minister in the assembly and therefore it was held to be in good faith. But in the present case the facts are entirely different and this ruling does not help the accused.

10. In the circumstances, I come to the conclusion that the learned Magistrate has rightly summoned the accused and the application is devoid of merits and is liable to be dismissed and is hereby dismissed.