

(1989) 08 AHC CK 0058

Allahabad High Court (Lucknow Bench)**Case No:** Criminal Miscellaneous Case No. 3204 of 1983

Mahabir and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Aug. 14, 1989**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 200, 202, 340, 482
- Evidence Act, 1872 - Section 132
- Penal Code, 1860 (IPC) - Section 181, 182, 449, 500, 52

Citation: (1990) 14 ACR 727**Hon'ble Judges:** Palok Basu, J**Bench:** Single Bench**Advocate:** P.L. Misra, for the Appellant; R.K. Sharma, for the Respondent**Final Decision:** Allowed

Judgement

Palok Basu, J.

Mahabir and three others have approached this court u/s 482 Code of Criminal Procedure praying that the complaint under 500 IPC filed by Shiv Gopal against them be quashed. One of the questions however, is whether accused can be permitted to raise a plea of an exception even before any evidence is led either by the prosecution or by the accused and the other allied question is as to whether even when the accused in the former case have been acquitted by extending to them benefit of doubt, can they still institute a complaint u/s 500 IPC against the complainant and witnesses of the former case ?

2. Shiv Gopal preferred a complaint u/s 500 IPC in the court of Magistrate on the allegations that Jagdish Prasad applicant No. 3 had lodged a false complaint about a dacoity charge against Shiv Gopal, his three sons and others, which case was committed to the court of Sessions and ultimately ended in acquittal from the court of 1st Additional Sessions Judge, Sitapur, and, applicant nos. 1, 2 and 4 have

deposed falsely in support of the aforesaid false case, the relevant statements of Jagdish Peasad and three witnesses were incorporated in the complaint. On examining the allegations and the statements of the complaint and the witnesses recorded under Sections 200 and 202 Code of Criminal Procedure the Magistrate summoned all the four applicants. On appearance, an application on behalf of the accused was filed before the Magistrate that the proceedings be quashed on the ground that no offence was made out from the reading of the complaint because the complainant and others had been acquitted in that case by extending to them benefit of doubt. It was specifically pleaded that the said case was thus covered by exception-8 of section IPC and, therefore, proceedings for defamation punishable u/s 449 IPC were not maintainable.

3. I have heard Sri P.L. Misra Learned Counsel for the applicant and Sri R.K. Sharma appearing on behalf of the complainant and also the Addl. Public Prosecutor at length.

4. Normally the question of proving the exception would depend always on the evidence produced by the person who seeks its benefit. Even so far as the question of good faith is concerned, relevant evidence will have to be led at the trial. The argument of Sri Mishra, however, in the instant case is that the certified copy of the judgment filed before the Magistrate itself indicated that the action of filling the complaint was not false because the accused were acquitted on extending to them benefit of doubt. The argument proceeds on the basis that an acquittal recorded by any competent court by extending benefit of doubt to an accused does not render the allegations made in that complaint false and therefore charge of defamation is out of question. Sri Sharma on the other hand has argued that so far as the complaint is concerned, he must be given an opportunity to prove his case that the allegations in the earlier complaint were wholly false and by preferring it the prestige and character of the complainant had been lowered down in the estimation of others. It is further argued that if the mere recital in the order of acquittal that the accused were being acquitted by extending to them benefit of doubt was the only relevant consideration, right of the prosecution or the complainant will be seriously transgressed because they did not have any control as to on what ground the court will be recording the order of acquittal.

5. In order to determine this controversy we have no option but fall back on provision of law contained in Section 499 IPC. Exception-8 of 499 IPC reads as follows :

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 accuses Z before a Magistrate. If A in good faith complains of the conduct of Z, a servant to Z's master s If A in good faith complains of the conduct of Z, a child, to Z's father-A is within this exception.

6. Section 52 of the Indian Penal Code defines good faith as under :

Nothing is said to be done or believed in \diamond good faith \diamond which is done or believed without due care and attention.

7. It may be noted here that the aforesaid definition of good faith does not require honesty of purpose provided the act was done with the care and attention. Therefore, in deciding whether there was good faith or not in a given action, the point to be decided is not whether the allegations are true but whether the accused had good reason to believe that they were true. Thus, it can be safely held that accused will have to show preponderance of probabilities in his favour in order to establish good faith. A mere belief by him may not be enough because it must be backed up by a reasonable belief.

8. The controversy in the instant case is quite interesting. In the complaint by the applicant, they could not prove their case beyond doubt hence the accused were acquitted. In the present case, the accused of the earlier case say that they had been defamed because of the said case and the complainant and the witnesses of that case be punished for defamation. What is therefore, the effect of such an acquittal ? Only partially disbelieving the prosecution case and thus extending benefit of doubt to accused, would not normally be held to re-open another innings of criminal litigation where evidence will have to be led by the parties to justify or criticise the said judgment of the competent court. Viewing from practical angle the accused in the present case i.e. applicants will have to lead evidence to show that incident of the type referred in the earlier complaint had happened. Therefore, the basis of the present complaint is an acquittal in the former case and the statement attributable as defamatory is dependant upon supposition that it was false. If that be so, that statement is or should be categorised as a \diamond false evidence \diamond attracting Section 181 or 182 IPC as the case may be. Then, will or will not the complaint be barred under the provisions of Section 195 Code of Criminal Procedure ? Again, the making of such false statement in court one appearing as a witness may attract the provisions contained in Section 340 Code of Criminal Procedure. In either case the court's sanction will be necessary to initiate the prosecution against such a witness.

9. There is another way of looking at the things Section 132 of the Indian Evidence Act provides as follows ;

132. Witness not excused from answering on ground that answer will criminate :

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings, upon the ground that the answer to such question will criminate, or may tend

directly or indirectly to criminate such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso :

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

10. The said provision saves the action of a witness in the court. It must be added at once that if so much of protection is not available to witnesses, they may not come at all to depose in courts. Therefore, a combined reading of the provisions noted above indicates that all the applicants in the present case who were undoubtedly witnesses in the former complaint case on dacoity charge, will avail the protection u/s 132 of the Indian Evidence Act inasmuch as they can not be prosecuted unless the provisions of Sections 340 and 195 Code of Criminal Procedure are complied with. The privilege of the courts which have been safeguarded by these two Sections in Code of Criminal Procedure must have to be upheld. Consequently, it follows that the accused applicants had a right to raise the question of seeking dropping of the proceedings by relying upon the judgment itself which was sought to be made the basis of the defamation charge.

11. In view of the aforesaid discussions, it can not be permitted that the same parties litigate over the same points in order to undo a judgment by a competent criminal court. Acquittal of accused by giving benefit of doubt would not mean clear acquittal, in other words when accused is acquitted by extending to him a benefit of doubt, it can not be permitted to be held that the case itself was false.

12. This application, therefore, succeeds and is allowed. The complaint dated 4-6-1981 and further proceedings therein pending before the court of 5th Additional Munsif Magistrate, Sitapur, Shiv Gopal v. Jagdish Prasad, u/s 500 IPC are quashed.