

(2010) 12 AHC CK 0178

Allahabad High Court

Case No: Criminal Miscellaneous Writ Petition No. 13270 of 2010

Ganga Ram Sharma

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Dec. 13, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 380, 498, 499, 500, 52

Citation: (2011) 2 ADJ 479 : (2011) 8 RCR(Criminal) 1678

Hon'ble Judges: Kant Tripathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Shri Kant Tripathi, J.

Supplementary affidavit filed on behalf of the Petitioner is taken on record.

Heard learned Counsel for the Petitioner, the Respondent No. 2 and the learned AGA and perused the record.

2. This is a petition under Article 226 of the Constitution of India for quashing the proceeding of Complaint Case No. 4078 of 2008 (Harveer Singh V. Ganga Ram Sharma) as well as the orders dated 24.4.2006 and 25.5.2010 passed respectively by the learned Additional Chief Judicial Magistrate, Court No. 6, Bareilly and the Additional Sessions Judge, Court No. 10, Bareilly mainly on the ground that the Petitioner filed a false complaint under Sections 498/380 IPC against him and one Smt. Rekha Sharma, who is the Petitioner's wife and publicized the filing of the complaint in various news papers and thereby defamed him (the Respondent No. 2) and, thereby, committed the offence punishable u/s 500 read with Section 499 IPC. The learned Additional Chief Judicial Magistrate passed the summoning order, in pursuance whereof the Petitioner appeared and moved an application for discharge. The learned Magistrate rejected the application for discharge and framed

the charge u/s 500 IPC against the Petitioner. Thereafter the Petitioner filed criminal revision No. 246 of 2006 Ganga Ram Sharma v. State of U.P. and Anr. in the Court of the learned Sessions Judge, Bareilly which was heard and dismissed by the Additional Sessions Judge, Court No. 10, Bareilly on 25.5.2010.

3. The learned Counsel for the Petitioner further submitted that the complaint filed by the Petitioner against the Respondent No. 2, under Sections 498 and 380 IPC was based on the allegations that Respondent No. 2 had kept his wife knowing well that she was a married lady and he did so because the Petitioner's wife was serving under him, therefore, the proceeding launched by the Petitioner by way of filing the aforesaid complaint was protected by VIIIth and IXth exceptions to Section 499 of the Indian Penal Code. It was next submitted that whatever news items had been published, the Petitioner had no concern with that publication and there was no evidence that the news items were published at the instance of the Petitioner. The argument was advanced by submitting that the news items published in the news papers are also protected by IXth exceptions to Section 499 of the Indian Penal Code.

4. Section 499 of the Indian Penal Code defines defamation, according to which, whosoever 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.

Section 499 IPC has four explanations and the fourth explanation seems also to be relevant for the purpose of the present case, which is reproduced as follows:

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.

5. There are as many as ten exceptions to the definition of the term "defamation". The exceptions VIIth and IXth, according to the learned Counsel for the Petitioner, are relevant in this case, which are reproduced as follows:

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.

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.

6. In view of the aforesaid exceptions, nothing is defamatory, if any accusation is preferred in good faith against any person before any lawful authority having jurisdiction in respect of the subject matter of the accusation. It is also no defamation if any imputation on the character of any person is made in good faith for the protection of the interest of the person making it or of any other person or in the interest of public good. Section 52 IPC defines good faith, according to which nothing is said to be done or believed in good faith, which is done or believed without doubt care and attention, therefore, in order to establish good faith and bonafides, as contemplated by the aforesaid exceptions, it is required to be seen (i) whether the accusation or imputation was made with any malice; (ii) whether any inquiry had been made before making the imputation; (iii) whether there are reasons to accept the version that the person making the imputation acted with care and caution; (iv) whether there is preponderance of probability that the accused acted in good faith. In other words, good faith requires due care, caution and prudence in the background of context and circumstances. If someone else launches a criminal prosecution in the competent Court against any person making certain accusations against him and the allegations are neither based on any malice nor they are improbable, the person launching the prosecution cannot be prosecuted for the offence of defamation against the accused and his case would be covered by the VIIIth exception to Section 499 IPC, therefore, what was required from the learned Magistrate as well as the Additional Sessions Judge was to see whether the allegations made in the complaint filed by the Petitioner were based on any malice or were not probable and also whether the exceptions VIIIth and IXth to Section 499 IPC were attracted or not. It was also required to be seen as to whether the Petitioner was in any way instrumental for publication of the news items in various news papers regarding filing of the complaint against the Respondent No. 2. If the facts stated in the complaint filed by the Petitioner u/s 498 and 380 IPC were probable and were not absurd, he cannot be prosecuted for the offence of defamation and in that eventuality his case may come within the purview of exceptions VIIIth and IXth to Section 499 IPC. If the allegations made in the complaint in regard to offence u/s 498 and 380 IPC were frivolous and false and had no reasonable basis and had been made merely to scandalize the Respondent No. 2, the position would be different and in that situation exceptions VIIIth and IXth to Section 499 IPC would hardly be of any help to the Petitioner. Therefore, the Courts below were required to examine the matter in the backdrop of the aforesaid settled principles but they failed to do so, consequently, the impugned orders, framing charge against the Petitioner, suffer from material irregularity resulting in causing failure of justice in the case.

The writ petition is, accordingly, allowed. The impugned orders dated 24.4.2006 and 25.5.2010 passed respectively by the learned Additional Chief Judicial Magistrate,

Court No. 6, Bareilly and the Additional Sessions Judge, Court No. 10, Bareilly are quashed. The learned Additional Chief Judicial Magistrate is directed to reconsider the matter and pass a fresh order in accordance with law.