
Ganga Ram Sharma Vs State of U.P. and Another

Criminal Miscellaneous Writ Petition No. 13270 of 2010

Court: Allahabad High Court

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, according, 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.