

AFR

Court No. - 84

Case :- APPLICATION U/S 482 No. - 10431 of 2021

Applicant :- Rajesh Churiwala

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Birendra Prasad Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Birendra Prasad Shukla, learned counsel for the applicant and Ms. Sushma Soni, learned Additional Government Advocate appearing for the State-opposite party.

2. The present application under Section 482 Cr.P.C. has been filed seeking to quash the proceedings of Complaint Case No.10 of 2019 (Mohan Lal Saravagi Vs. Rajesh Churiwala), under Section 500 I.P.C., pending before the Additional Chief Judicial Magistrate, Court No.3, Varanasi, within a stipulated time period.

3. Counsel for the applicant has also sought to assail the order dated 18.01.2020 in terms of which the applicant has been summoned.

4. The only contention which is sought to be canvassed to challenge the proceedings is that the offence under Section 499 I.P.C. is not made out inasmuch as the case is covered under the first exception to the section which provides that if the imputation is made for public good, the same would not amount to defamation.

5. Learned AGA points out that the question as to whether an imputation is made for public good or not would be a question of fact which is to be seen in the trial

and the same cannot be taken as a ground to seek quashing of the proceedings.

6. In order to appreciate the rival contentions, the relevant statutory provisions relating to defamation under Chapter XXI of the Indian Penal Code, 1860¹ would be required to be referred to. Section 499 reads as follows :-

"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."

7. The first exception to Section 499, which is also relevant for the purpose of the controversy at hand, is being extracted below:

"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."

8. Section 499 of the Penal Code states as to when an act of imputation amounts to defamation. It contains four explanations and ten exceptions and section 500 prescribes punishment in such cases. The ten exceptions to Section 499 state the instances in which an imputation, *prima facie* defamatory, may be excused. The first exception corresponds to the defence which may be set up by taking the plea of the imputation being true and for public good. This exception recognizes the publication of truth as a sufficient justification, if it is made for the public good. Truth by itself would be no justification in criminal law, unless it is proved that its publication was for the

1. Penal Code

public good.

9. The plea of defence of public good, under the first exception to Section 499, fell for consideration in **Chaman Lal Vs. State of Punjab**², and it was held that public good is a question of fact and the onus of proving the two ingredients under the first exception i.e. the imputation is true and the publication is for public good, is on the accused. It was stated thus:

“8. Public good is a question of fact. Good faith has also to be established as a fact.

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15. In order to come within the First Exception to section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant...”

10. The provisions relating to defamation under Section 499 were again considered in the case of **Subramanian Swamy Vs. Union of India**³, and in the context of the plea for justifying the imputation by referring to the first exception, it was observed as follows:-

“179. Having dealt with the four Explanations, presently, we may analyse the Exceptions and note certain authorities with regard to the Exceptions. It is solely for the purpose of appreciating how the Court has appreciated and applied them. The First Exception stipulates that 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. "Public good" has to be treated to be a fact. In *Chaman Lal v. State of Punjab* : (1970) 1 SCC 590, the Court has held that in order to come within the First Exception to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the Respondent is true and the publication of the imputation is for the public good. The onus of proving

2. (1970) 1 SCC 590

3. (2016) 7 SCC 221

these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good, is on the accused.

180. It is submitted by Dr. Dhawan, learned senior Counsel for the Petitioners that if the imputation is not true, the matter would be different. But as the Exception postulates that imputation even if true, if it is not to further public good then it will not be defamation, is absolutely irrational and does not stand to reason. It is urged that truth is the basic foundation of justice, but this Exception does not recognize truth as a defence and, therefore, it deserves to be struck down.

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191...It is submitted that the Exceptions make the offence more rigorous and thereby making the concept of criminal defamation extremely unreasonable. The criticism advanced pertain to truth being not a defence, and unnecessary stress on 'public good'. The counter argument is that if a truthful statement is not made for any kind of public good but only to malign a person, it is a correct principle in law that the statement or writing can amount to defamation. Dr. Singhvi, learned senior Counsel for some of the Respondents has given certain examples. The examples pertain to an imputation that a person is an alcoholic; an imputation that two family members are involved in consensual incest; an imputation that a person is impotent; a statement is made in public that a particular person suffers from AIDS; an imputation that a person is a victim of rape; and an imputation that the child of a married couple is not fathered by the husband but born out of an affair with another man. We have set out the examples cited by the learned senior Counsel only to show that there can be occasions or situations where truth may not be sole defence. And that is why the provision has given emphasis on public good. Needless to say, what is public good is a question of fact depending on the facts and circumstances of the case. ”

11. Defamation i.e. an injury to a person's reputation, is both a crime and a civil wrong. In a civil action for defamation in tort, truth is a defence, but in a criminal action, the accused would be required to prove both the truth of the matter and also that its publication was for public good and no amount of truth would justify a defamatory act unless its publication is proved to have

been made for public good. The defence of truth is not satisfied merely by proving that the publisher honestly believed the statement to be true, he must prove that the statement was in fact true.

12. Truth by itself, would be not a defence to an action for criminal defamation if other ingredients are present, unless it can be shown that imputation in question besides being truthful was made for the public good. As to what is public good would be a question of fact depending upon the facts and circumstances of the case and the onus of proving two ingredients, namely, truth of the imputation and the publication of the imputation for the public good, would be on the accused.

13. The question whether or not the imputation was made for public good would therefore be a question of fact which would be required to be proved by the accused to seek the benefit of the first exception to Section 499. The defence in this regard being a question of fact, can be decided during trial only and the benefit of the first exception cannot be claimed at the stage of issuance of summons.

14. It is well settled that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. At this stage, there is no requirement to enter into the detailed factual aspects or on the merits or demerits of the case.

15. In the present case the applicant has sought to raise

a challenge to the order dated 18.01.2020 in terms of which he has been summoned. At this stage, the Magistrate is required only to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused and the defence of the accused is to be seen only during the course of the trial. The protection of the first exception to Section 499 of the Penal Code, which is being relied upon on behalf of the applicant, is not to be seen at this stage.

16. Learned counsel for the applicant does not dispute the aforesaid legal position and states that the applicant would appear before the court below, submit to its jurisdiction and place his defence during the trial.

17. Having regard to the aforesaid, this Court is not inclined to entertain the present application in exercise of its inherent jurisdiction under Section 482 Cr.P.C.

18. The application stands accordingly dismissed.

Order Date :- 14.7.2021

Shahroz/Pratima

(Dr. Y.K. Srivastava,J.)