

**HIGH COURT OF TRIPURA
AGARTALA**

CRL REV. P NO.02 OF 2018

Sri Subal Kumar Dey,
son of late Chandi Charan Dey,
Owner, Editor, Printer & Publisher of Syandan Patrika,
41, Sakuntala Road, Agartala, West Tripura

..... **Petitioner**

Versus

- 1. Sri Gora Chakraborty**
son of late Anil Chakraborty, resident of Office Tilla,
P.S.- Bishalgarh, District-Sepahijala, Tripura
- 2. The State of Tripura**
Secretary, Home to the Government of Tripura, Agartala,
Capital Complex, Agartala, West Tripura

..... **Respondents**

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| For Petitioner(s) | : | Mr. SC Majumder, Advocate |
| For Respondent(s) | : | Mr. S. Chakraborty, Advocate Mr. S. Debnath, Addl. PP |
| Date of hearing | : | 25.03.2021 |
| Date of delivery of judgment | : | 08.04.2021 |
| Whether fit for reporting | : | Yes |

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGEMENT AND ORDER

This criminal revision petition has been filed challenging the judgment and order dated 29.07.2017 passed by the learned Sessions Judge, West Tripura, Agartala in case no. Criminal Appeal 39 of 2014 affirming the judgment and order dated 17.05.2014 passed by the learned SDJM, Bishalgarh, Sepahijala in case No. CR 08 of 2009 wherein the petitioner was sentenced to a fine of Rs. 5,000/- for the offence punishable under Section 500 IPC with default stipulation and, further sentenced to pay a fine of Rs. 5,000/- for the offence punishable under Section 502(b) IPC with default stipulation.

2) Briefly stated, Sri Gora Chakraborty, being the Secretary of Bishalgarh Sub-Divisional Committee, a wholtime activist of Communist Party of India (CPI) has filed a complaint alleging that he has been defamed by the publication of some news item published in 'Syandan Patrika'.

3) The petitioner is the Publisher, Editor and Printer of the said publication. The complaint petition was filed, and later on, it was taken into record after examination of the complainant under Section 200 Cr.P.C. The petitioner appeared before the learned SDJM, Bishalgarh after receipt of summon. Charge was framed against the petitioner under Section 500 /501 IPC to which the petitioner pleaded not guilty and claimed to be tried. In course of trial, the complainant adduced 8 witnesses including himself. The petitioner, being the accused, did not adduce any evidence. After closure of the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C. to which the petitioner pleaded his innocence and denied to adduce any evidence on his behalf.

4) Having heard the learned counsel and on consideration of the evidences and materials brought on record, the learned trial court convicted and sentenced the accused-petitioner, as aforestated. Being aggrieved, the accused-petitioner preferred an appeal before the court of learned Sessions Judge, West Tripura, Agartala. The learned Sessions Judge, after hearing the parties had affirmed and upheld the judgment and order of conviction and sentence returned by the learned trial court. Hence, the accused-petitioner has challenged the said judgment and order of conviction and sentence by means of filing the present revision petition before this court.

5) Heard Mr. SC Majumder, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned counsel appearing for the respondent-complainant. Also heard Mr. S. Debnath, learned Additional PP appearing for the respondent-State.

6) Mr. Majumder, learned counsel for the accused-petitioner, primarily urged that there is nothing detail in the averments, either in the complaint or in the sole statement with reference to the imputation which was said to be contained in the article published in 'Syandan Patrika' dated 22.09.2008 and 02.10.2008, but, both the Courts below have failed to appreciate these primarily ingredients of Section 499 Cr.P.C. while returning the findings of conviction and sentence imposed upon the accused. Mr. Majumder, learned counsel has drawn my attention to paragraph 7 of the complaint filed by the complainant-respondent which is reproduced hereunder, for convenience:

“That, on 22nd September, 2008 a news item had been published in the Syandan Patrica a leading daily newspaper of Tripura against the complainant and Sri Kajal Bhowmik with malicious intention and in that news a totally false and fabricated story had been published against the complainant. According to that publication the said complainant had been alleged for giving political support to one Jayanta Paul who was a worker of the concerned L.P.G. Bottling Plant at Bishalgarh and with the help of that political support the said Jayanta Paul had allegedly started to create different nuisances and illegal and immoral activities in the said Plant during the office hours”.

Mr. Majumder, learned counsel has further submitted that the same contents are reproduced in his sworn statement.

7) On the other hand, Mr. S. Chakraborty, learned counsel for the complainant-respondent has submitted that there is no need to reproduce the contents of imputation published in the newspaper for the reason that those imputations are well founded in the newspaper itself. As such, the learned counsel for the complainant-respondent has prayed for upholding the judgment and order of conviction and sentence passed by the courts below.

8) It is settled law that a person cannot be said to have committed an offence under Section 500 IPC merely because some articles or news items are published attributing certain utterances to that person. Unless it is shown that the imputation or mentionable words had been used by the

accused and only at his instance, the said objectionable words were published, the accused cannot prima facie said to have committed the offence punishable under Section 500 IPC.

9) In a trial for defamation, it is quite essential that the details of imputation containing the words alleged to be defamatory in character should be precisely set out in the complaint itself. It is the said imputation or the words so set out in the complaint that will constitute the foundation for defamation.

10) In a defamation case, the only document containing the accusation of offences supplied to the accused is the complaint. By issuance of process to the accused, he is called upon to answer the accusation relating to the imputation containing defamation mentioned in the complaint. In other words, cause of action is the accusation with reference to the imputation alone. What is required further is only adducing evidence by the complainant in support of those accusations. Therefore, the accused is entitled to know what are the accusations with regard to the imputation made against him then only he will be able to answer the accusations and shape his defence.

11) Learned counsel appearing on behalf of the complainant-respondent to counter the submission of learned counsel for the appellant, has strongly emphasized that the accused being the Editor and Publisher of the newspaper, is well aware of the imputation, he made through his newspaper, but, according to me, this submission is not in accordance with the established principle of law. It is required by law that from the complaint itself, the accused is entitled to know what are the accusations which formulated the basis of the complaint. The complainant of a defamation case is under legal obligation to state the parts of the news item or publication which has defamed him.

12) A similar question arose before the apex court in a defamation case where the Supreme Court held in ***Balraj Khanna vs. Motiram [(1971) 3 SCC 399]*** in the following terms:

"The purpose or object will be served if the complainant is able to reproduce in his complaint or evidence in a substantial measure the words of imputation alleged to have been uttered. If the statements or the words placed before the Court by the complainant are held to be not defamatory, it will mean that the complainant will have to lose. Therefore, it is to his interest to get a proper adjudication from the Court that as far as possible the words spoken or the statements actually made and which he alleges to be defamatory are before the Court. ... From the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be so stated as to enable the accused to know the nature of the allegations that they have to meet."

13) Following the above judgment, the Kerala High Court also in ***Konath Madhavi Amma vs. S.M. Sheriff (1985 CRI.L.J.1496)*** has held that *in the absence of the imputation constituting the offence of defamation in the complaint, the Court cannot enter the complaint on defamation as the mere allegations contained in the complaint without imputation would not be sufficient for the accused as he is entitled to know about the imputation to face the charge.*

14) The very same principles have been laid down in ***Laloo Prasad vs. State of Bihar and another (1997(2) Crimes 498 Patna H.C.)***. Again, the Supreme Court in ***Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi (1997 CRI.L.J.212)*** and Madras High Court in ***Karthikeyan vs. S. Ananthanarayanan (1998(1) Crimes 44)*** held that *in the absence of necessary averment containing the imputation constituting the ingredient of defamation, the complaint could not be said to be valid in law.*

15) In the light of the above principles, if we look at the contents of the complaint, it is clear that the complainant in para 7 has only stated that "news item as published in the newspaper of the accused has levelled allegation against the complainant for giving political support to one Jayanta Paul who was the worker of the concerned LPG Bottling station of Bishalgarh and with the help of that political support the said Jayanta Pal

had allegedly started to create different nuisances and illegal and immoral activities in the said Plant during the office hours”. In the entire complaint there is total absence of any statement even in substantial measures, which part of the publication, and, what are those words which allegedly caused imputation. Thus, it is clear that the complaint lodged by the complainant could not fulfill the basic requirement of Section 500 IPC.

16) The learned trial court during inquiry under Section 200 Cr.P.C., examined the complainant only and recorded his sworn statement. Even in his sworn statement, he has simply referred to the articles. The complainant also did not make any averment in the complaint that the words used by the accused were too many or the statements made are too long with incapacitated him to reproduce the words or statements of imputation in the complaint. In *Balraj Khanna (supra)* the Apex Court held that from the point of view of accused also it is necessary that the matters alleged to be defamatory in the complaint must be stated as to enable him to know the nature of the allegations that he has to meet. In view of this, in my opinion, it is the obligation upon the complainant, atleast to reproduce the substance of defamatory statements or words of imputation in gist alleged to have been uttered to enable the accused to know the nature of the allegations that he has to meet in trial.

17) It is revealed from the proceeding before the learned trial court that the complainant did not make any endeavour to rectify the defect in the complaint by way of incorporating the imputation alleged to have been made by the accused in his newspaper. As such, in my opinion, the accused had been deprived of knowing the actual allegation levelled against him to which he had to meet in course of trial.

18) Another striking feature is that none of the witnesses adducing evidence in support of the complainant has stated in their deposition that the imputation made in the publication had harmed the reputation of the

complainant directly or indirectly in their estimation and had lowered the moral or intellectual character of the complainant in respect of his political activity. What the witnesses have only stated are that the news items are false and published only to disrepute the complainant. This nature of evidence should be considered in the light of Explanation (4) of Section 499 of the IPC. Moreso, mere statement that the complainant was providing political support to some person that encouraged the said person to involve in immoral activities does not *per se* falls within the scope and ambit of Section 499 IPC because such statement cannot be said to be defamatory or derogatory by any sort of imagination as contemplated under Section 499 of IPC.

19) For the reasons discussed and stated here-in-above, in my opinion, the entire proceeding before the learned trial court as well as before the learned appellate court was vitiated and the judgment and order of conviction and sentence imposed by the courts below are liable to be set aside.

20) Accordingly, the judgment and order of conviction and sentence dated 29.07.2017 passed by the learned Sessions Judge, West Tripura, Agartala in case no. Criminal Appeal 39 of 2014 affirming the judgment and order dated 17.05.2014 passed by the learned SDJM, Bishalgarh, Sepahijala in case No. CR 08 of 2009, stand set aside and quashed.

21) In the result, the instant criminal revision petition is allowed and thus, disposed off.

JUDGE