

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

Reserved On: 03/05/2021
Pronounced On: 20/05/2021

CRM (M) 214/2019

Altaf Hussain Mufti

... Petitioner/Appellant(s)

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. A. Hanan, Advocate

V/s

Javed Choudhary

... Respondent(s)

Through: None

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

1. The petitioner herein is a well-known doctor and acknowledged pediatrician of the Valley, besides being a columnist. He has approached this court for seeking quashment of complaint No. 31 pending in the court of Judicial Magistrate (Special Mobile Magistrate), Srinagar, (for short, the trial court) filed by respondent herein for the offences contemplated under sections 499, 211 RPC, as also the order of cognizance dated 15.10.2018 passed by the trial court.
2. Before proceeding to deal with the petition in hand, it would be appropriate to give a brief resume of the case hereunder as emerging from the petition:
 - i) According to the petitioner, on 27.12.2016 an article appeared in daily newspaper "*Rising Kashmir*" written by one Dr. Sabina Vij, Pediatrician, (annexed with the instant petition), mentioning therein that the complainant respondent herein is being considered for the coveted post of Principal of

Government Medical College (for short GMC) Srinagar and reactions thereto by the “Kashmir Chamber of Commerce and Industries” (KCCI), “Kashmir Economic Alliance” (KEA), “Civil Society Forum Kashmir” (CSFK) and Federation of Chamber of Industries Kashmir (FCIK). These organisations, the article stated, had issued a joint statement to Kashmir News Service in which it was stated that the complainant respondent herein has huge question mark of his past as Medical Superintendent and HoD of G.B. Panth Hospital, Srinagar, where hundreds of infants died right under his nose in the year 2012 and that he has many cases registered against him in the Vigilance, Crime Branch and other agencies. It is being stated that the article also referred that eminent doctors have expressed their shock over the disclosure so made and that justice is still awaiting in that matter and that no society can forget death of hundreds of infants, children and kids.

- ii) It is being stated that another article (news item) in daily newspaper “*Greater Kashmir*”, adversely commented on the steps being taken by the government to reinstate the complainant respondent herein consequent to the report submitted by Shri Bipul Pathak, details of which were not mentioned in the article.
- iii) It is stated that the petitioner herein as a conscientious citizen and being sensitive to the death of children in the G. B. Panth Hospital, where the complainant respondent herein was holding the position of HoD, decided to express his views and

accordingly got published an article written by him on 28.12.2016 in daily newspaper "Greater Kashmir". The petitioner in the said article in the first place is stated to have highlighted importance of the GMC, the nature of service it had rendered ever since its establishment, high position which the principals of the college enjoyed and services rendered by them not only in the college but also in the associated hospitals. The petitioner, besides above, is also stated to have questioned the decision of the government in planning to install a person as the principal of the college "who leaves a lot desired for the coveted job".

- iv) In the article the petitioner is stated to have also mentioned what previously had been reported by the newspapers about the death of the children in G. B. Panth Hospital, without mentioning anywhere the name of the complainant respondent herein. The article and the comments therein are stated to have been made by the petitioner fairly as having been previously made in the press note of the aforesaid organisations/institutions as also being emotionally connected to GMC Srinagar, wherefrom the petitioner had obtained his graduation in medicine. The petitioner is also stated to have mentioned in the article the report of one man commission headed by Director SKIMS who after inquiry had concluded that the HoD Pediatrics/Medical Superintendent was guilty of dereliction of duty, incompetence, lack of integrity and that he was responsible

for the loss of life. Besides mentioning about the house committee of Legislative Assembly which had probed the matter and corroborated the conclusions drawn and arrived at by the Director SKIMS, the petitioner in the article is also stated to have mentioned that spurious drugs and unethical practices were in use in G. B. Panth Hospital and that a claim was made for the post of Principal by a person who was working as HoD or MS in the said hospital.

- v) The petitioner in the article is stated to have fairly commented that seniority alone was not conclusive and final for the purposes of promotion but other important considerations of ethics and uprightness were also part of essential criteria. The petitioner is also stated to have fairly commented that GMC Srinagar is not only responsible for imparting training to future doctors but also has the overriding responsibility of producing doctors with necessary virtues of personal and professional integrity.

3. Mr. Z. A. Shah, senior counsel appearing for the petitioner, while reiterating his submissions raised in the petition and grounds urged therein, would contend that in the backdrop of what has been stated in the petition, no offence whatsoever is made out in the complaint against the petitioner and that in essence the article in question falls within the “Exception-I” and “Exception-II” appended to section 499 IPC. According to learned counsel, the petitioner has in good faith written the article in question, which was based on the information and

write-ups published in the newspapers, with a view to ensure that the post of principal of GMC Srinagar is held by a person being above board, man of integrity and possessed of professional ethics. According to learned counsel, by stating these as norms for purposes of appointment, which undoubtedly are for public good having regard to the nature of appointment, the petitioner under no circumstances can be said to have defamed the complainant respondent herein.

4. According to the learned counsel, the complaint is based on certain motives and illwill discernable from the perusal of the complaint itself and that the documents annexed with the complaint show that there were inquiries held against the complainant respondent herein by the Director SKIMS, Crime Branch and Shri Bipul Pathak. According to learned counsel for the petitioner, the article in question being written in good faith, is protected by law and the trial court ought not to have entertained the complaint or else initiated proceedings thereupon. According to learned counsel for the petitioner, entertaining of the complaint in question by the trial court and passing of order of cognizance on 15.10.2018 so much so the pendency of the complaint constitute an abuse of process of court.
5. Heard learned counsel for the petitioner and perused the record.
6. A reference to the relevant and germane provisions of section 499 Cr.PC would be appropriate and advantageous hereunder which reads as under

“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.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

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 disgrace-ful.

Exception-I.—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.

Exception-II.—Public conduct of public servants.—It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

7. A conjoint reading of the aforesaid provisions would reveal that the same brings under the criminal law the person who publishes as well as the person who makes defamatory imputations. It emphasizes the word “makes” or “publishes”. The gist of the offence of defamation lies in the dissemination of the harmful imputation. Therefore, in brief, the essentials of defamation are firstly the words must be defamatory, secondly they must refer to aggrieved party, thirdly they must be maliciously published. The explanations appended to the section amplify the scope of the section whereas the Exceptions take certain things out of the application of the section. Thus in order to constitute an offence of defamation the essential ingredient is to make an imputation concerning any person with intention to harm or with a knowledge or reason that such imputation will harm the reputation of the said person. An imputation without an intention to harm or without knowledge or having reason to believe that it will harm the reputation of such person will not constitute an offence of defamation. The Exception-I in particular postulate that it is not defamation to impute anything which is true concerning any person, if it be for public good that the imputation should be made or published, whereas the Exception-II postulates that where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments were made honestly and he honestly believes the facts to be as he states them, and there is no willful misrepresentation of fact or any mis-statement which he must have known to be a mis-statement if he had exercised ordinary care.

8. Keeping in mind the aforesaid position of law, the article in question out of which the complaint in question has arisen needs to be examined and analyzed in order to find out as to whether the allegations in the impugned complaint constitute *prima facie* case of a defamation.
9. Perusal of the record tends to show that the article in question and comments made therein had been essentially based on previous newspaper articles, findings of Director SKIMS in the inquiry report against the complainant respondent herein, and petitioner's association with the GMC, Srinagar. The article of the petitioner is primarily based on the write-ups and statements given by various organisations which came to be reproduced in daily newspapers and not only that, the petitioner had also pointed to excerpts of the report of Crime Branch which had inquired into the death of the children in the G. B. Panth Hospital and thus all these write-ups, statements and reports that had appeared in the press invited comment from the petitioner.
10. Further perusal of the record reveals that as per the complainant respondent herein he was exonerated of the charges leveled against him by the government way back on 22.4.2014. The said exoneration as stated by the petitioner at no stage, till the petitioner wrote the article was in public domain. The said contention of the petitioner in the facts and circumstances of the

case cannot be disbelieved more so when there is no denial of the said fact by the complainant respondent herein.

11. The views based on the facts as reported by the newspapers in law cannot form subject matter of a criminal complaint as in the article in question, the petitioner had disclosed sources from which the information had become available to him inviting fair comments thereof inasmuch as his emotional connection with the GMC Srinagar. In the article the petitioner is stated to have wrote his estimation of the GMC Srinagar, its standard of teaching and the staff including the principal who had held the office in the past and were doctors of high integrity, moral values and practiced medicine expected of a truly professional person.
12. Further perusal of the record would demonstrate that the article in question captioned "The Principal Question" had clearly stated that the selecting authorities need to take into consideration status, position of the college and the service it had rendered and in particular of the men who held the position of the Principal in the college in the past. As per the record, the petitioner had made clear in the article that standards should not be lowered of a college which was petitioner's *alma mater*.

Interestingly, the article and the comments made therein did not adversely affect in any manner the complainant respondent herein as the selection committee despite it, recommended the

complainant respondent herein for the post of Principal GMC Srinagar and placed him at serial No. 1 in the order of merit.

13. Here a reference to the judgment of the Apex court titled as **S. Khushboo Vs. Kanniammal reported in 2010 (5) SCC 600** would be relevant and germane herein, wherein the Apex Court while dealing with the case of defamation under section 499 – 500 IPC made following observations relating to defamation and freedom of speech and expression at paras 44, 45 and 50.

“44. . . . It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the ‘freedom of speech and expression’ is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it

should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused.

“45. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as ‘decency and morality’ among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.

“50. Thus, dissemination of news and views for popular consumption is permissible under our constitutional scheme. The different views are allowed to be expressed by the proponents and opponents. A culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author.”

14. Further a reference to the judgment of the Apex Court passed in **Kartar Singh and others Vs. the State of Punjab, reported in AIR 1956 SC 541** while considering a case relating to section 499 IPC noticed and observed as under:

“50. Those who fill a public position must not be too thin skinned in reference to comment made upon them. Whoever fills a public position, renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to this office.”

15. What emerges from the aforesaid analysis it is deducible that both the elements i.e. *mens rea* and *actus rea*, sine qua non for constituting an offence of defamation are found missing in the article in question in its entirety. There has been neither any intent on the part of the petitioner to cause harm to the reputation of the complainant respondent herein nor is it discernible that any actual harm has been done to the reputation of complainant respondent herein, more particularly in view of the fact that the complainant respondent herein has been found eligible for promotion as Principal GMC Srinagar by the government. The case of the petitioner indisputably can be said to fall within the above Exceptions appended to section 499 IPC.
16. The case set up by the petitioner in the instant petition is a fit case wherein the inherent jurisdiction is exercisable in view of the law laid down by the Apex Court in case titled as “**State of Haryana and others versus Bhajan Lal reported in 1992 Supp. (1) SCC 335.**”
17. For all what has been discussed in the preceding paras, the petition in hand deserves to be accepted and is accordingly allowed. The impugned complaint, order of cognizance dated 15.10.2018 and consequent proceedings are quashed.
18. Disposed of.

(JAVED IQBAL WANI)
JUDGE

Srinagar
20-05-2021
N Ahmad

Whether the order is speaking: Yes
Whether the order is reportable: Yes