

Karnataka High Court Sri E Prasanna S/O Eshwarappa vs Sri H R Sanjeeva  
on 11 December, 2013 Author: N.Ananda 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF DECEMBER 2013

BEFORE

THE HON'BLE MR.JUSTICE N. ANANDA

CRIMINAL APPEAL No.52/2007

BETWEEN:

SRI E.PRASANNA S/O.ESHWARAPPA AGED ABOUT 46 YEARS ,PHYSICAL EDUCATION TEACHER G.M.H.P. SCHOOL, KELAPETE KOPPA - 577 126, CHICKMAGALUR DISTRICT. ... APPELLANT

(BY SRI K.N.PHANINDRA, ADVOCATE)

AND:

SRI H.R.SANJEEVA EDITOR & PUBLISHER & PRINTER VARADA MALNAD KANNADA WEEKLY 71/99, JINASHREE PRINTERS KOPPA - 577 126, CHICKMAGALUR DISTRICT. ... RESPONDENT

(BY SRI S.RAJENDRA, ADVOCATE FOR SRI S.V.PRAKASH, ADV.)

THIS APPEAL IS FILED UNDER SECTION 378 CR.P.C.,

PRAYING TO SET ASIDE THE JUDGMENT DATED 29.09.2006, PASSED BY THE PRESIDING OFFICER, FAST TRACK COURT-II AT CHIKMAGALUR IN CRL.A.NO.51/2004, ACQUITTING THE RESPONDENT-ACCUSED FOR OFFENCES PUNISHABLE UNDER SECTIONS 500 & 502 IPC.

THIS APPEAL COMING ON FOR HEARING THIS DAY, THE

COURT DELIVERED THE FOLLOWING: 2

#### JUDGMENT

The appellant (hereinafter referred to as 'complainant') has initiated a complaint under section 200 Cr.P.C., alleging offences punishable under sections 500 & 502 IPC against respondent (hereinafter referred to as 'accused'), inter alia contending that accused being the Editor, Printer and Publisher of "Varada Malnad",

a Kannada weekly publication, published defamatory statement against complainant in “Varada Malnad” publication dated November 20-26, 1999. The learned Magistrate on appreciation of evidence has convicted accused. Therefore, accused was before I-appellate court. The learned Judge of I-appellate court has held that alleged defamatory statement falls within exceptions 1 and 2 of section 499 IPC. Therefore, accused has not committed offences punishable under sections 500 & 502 IPC and acquitted accused. The complainant has filed the instant appeal against the judgment of acquittal of accused by I-appellate court. 2. I have heard Sri K.N.Phanindra, learned counsel for complainant and Sri S.Rajendra, learned counsel for Sri S.V.Prakash, learned counsel for accused. 3. It is not in dispute and cannot be disputed that accused is the Editor, Printer and Publisher of “Varada Malnad”, a Kannada weekly publication, which is in circulation in Koppa Taluk, Chikmagalur District. It is not in dispute at the relevant time, complainant was working as a Physical Education Teacher in Thomarashetty Government Higher Primary School, Kelapete, Koppa. The alleged defamatory statement published in “Varada Malnad”, a Kannada weekly publication dated November 20-26, 1999 is marked as Ex.P.1. The gist of alleged defamatory statement marked as Ex.P.1 is stated thus:- “The complainant has failed to uphold noble tradition of teaching profession. The complainant in order to satisfy his lust is misusing several students. The complainant had illicit intimacy with one of his lady colleagues. The complainant after marking his attendance would leave school premises and indulge in aforesaid illegal activities. The complainant has brought disrepute to entire teaching community. The complainant had threatened Head Mistress and his colleagues and swallowed R.D. amount of his colleague teachers.” 4. The complainant had caused legal notice dated 15.03.2000 to accused, narrating defamatory statement and calling upon accused to pay damages of a sum of Rs.1,00,000/- and face legal consequences. The accused had not bothered to cause reply. 5. The learned trial Judge on appreciation of evidence, in particular, defamatory statement (Ex.P.1) has held that statements made in Ex.P.1 are per se defamatory and do not fall within exception 1 or 2 of section 499 IPC and held the accused guilty of offences punishable under sections 500 & 502 IPC. The learned trial Judge sentenced accused to undergo simple imprisonment for a period of six months and pay fine of Rs.2,000/-, in default to undergo simple imprisonment for a period of one month for an offence punishable under section 500 IPC. The learned trial Judge has further sentenced accused to undergo simple imprisonment for a period of four months and pay fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of fifteen days for an offence punishable under section 502 IPC. The learned trial Judge has directed, out of fine amount, a sum of Rs.2,000/- shall be paid as compensation to complainant. 6. The learned Judge of I-appellate court after re-producing defamatory statement as published in Ex.P.1 has held that accused is a journalist and he is entitled to make such statements as it was pertaining to the conduct of complainant, (a public servant) and defamatory statements published by accused fall within exceptions 1 & 2 of section 499 IPC. There was nothing wrong on the part of accused in publishing the statements. The learned Judge of I-appellate court

has complimented accused for causing such publication. The learned Judge of I-appellate court has also expressed need for such publications to prevent illegal acts, as action taken by police authorities would be preventive in nature. The learned Judge of I-appellate court has accepted defence version that publication of statement against complainant was necessary in public interest and also to protect young girl students being raped by teachers. The learned Judge of I-appellate court has held that so called Police Department will come into picture in such a situation after teachers ruining the modesty and chastity of young girls. In my considered opinion, the observations of learned Judge of I-appellate court are not only erroneous but also unwarranted. The learned Judge of I-appellate court has made a sweeping statement that teachers are going to ruin the modesty and chastity of school girls and observed that prevention is better than cure. 7. The learned Judge of I-appellate court has failed to notice that burden of proving the defamatory statement falls within exception 1 or 2 to section 499 IPC would lie upon accused. The learned Judge of I-appellate court has failed to notice pre-requisites to invoke exception 1 or 2 to section 499 IPC. The accused has to prove that alleged imputation is true. The first exception to section 499 IPC postulates 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. The second exception to section 499 IPC deals with right of constructive criticism about conduct of public servants. It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. However, such constructive criticism cannot be done for malice and slander. In order to bring accused under second exception to section 499 IPC, it is necessary for accused to prove that imputation is true and accused as a citizen of this country had caused publication of imputation. In the case on hand, accused has not controverted the contents of defamatory statement stated supra. The accused has not established that defamatory statement made against complainant is true. Though accused has contended that statement was published in public interest, yet the accused should not have made such imputation without ascertaining the truth. When accused has failed to prove that statement published by him is true, accused cannot invoke exception 1 or 2 to section 499 IPC. The learned Judge of I-appellate court, without referring to exceptions 1 and 2 to section 499 IPC has made unwarranted observations, which are omnibus in nature. The learned Judge of I-appellate court was not justified in reversing the judgment of trial court. Therefore, impugned judgment cannot be sustained. 8. The learned counsel for accused would submit that sentence of imprisonment made by trial court may be substituted with fine. 9. The learned counsel for complainant submits that accused being the Editor, Printer and Publisher of “Varada Malnad”, a Kannada weekly has been repeatedly publishing defamatory statements against public servants. The accused had offered his weekly publication for sale. Therefore, sentence of imprisonment would mend future conduct of accused. 10. The evidence on record does not disclose that accused bear criminal antecedents

and he has been tried and convicted for similar offences in the past. Therefore, I deem it proper to substitute sentence of imprisonment with fine and direct payment of compensation to the complainant. 11. In the result, I pass the following:- ORDER The appeal is accepted in part. The impugned judgment is set aside. The judgment of trial court as it relates to conviction of accused for offences punishable under sections 500 & 502 IPC is confirmed. The accused is sentenced to pay fine of Rs.25,000/- each, for offences punishable under sections 500 & 502 IPC, in default to undergo simple imprisonment for a period of six months. Out of the fine, a sum of Rs.40,000/- shall be paid as compensation to complainant. Sd/- JUDGE SNN.