

Kishor Balkrishna Nand vs The State Of Maharashtra on 2 August, 2023

2023 INSC 675

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2291 OF 2011

KISHORE BALKRISHNA NAND

VERSUS

STATE OF MAHARASHTRA & ANR.

O R D E R

The respondent No.2 (original complainant) although served with the notice issued by this Court, yet has chosen not to remain present before this Court, either in-person or through an advocate, and oppose this appeal.

This is an appeal at the instance of the original accused summoned for the offence of defamation punishable under Section 500 of the Indian Penal Code (for short, “the IPC”) and is directed against the order passed by the High Court of Judicature at Bombay, Nagpur Bench, dated 03.02.2010 in Criminal Writ Petition No.676 of 2009, by which the High Court rejected the writ petition filed by the appellant – Kishore Balkrishna Nand and thereby declined to quash the order of issue of process by the Magistrate for the offence of defamation.

It appears from the materials on record that the appellant SWETA BALODI Date: 2023.08.05 10:57:16 IST herein Reason:

lodged a complaint in writing addressed to the Sub- Divisional Magistrate (for short, “the SDM”) stating that the respondent no.2 herein (original complainant) had put up a shop by encroaching upon some land. In the complaint. the appellant is said to have further stated that such shop put up by the complainant was creating nuisance, as many anti-social elements and road romeos had started visiting the said shop and were creating all sorts of problems.

The SDM upon receipt of the complaint dated 25.01.2002 filed by the appellant issued notice to the complainant. While the proceedings before the SDM were pending, the complainant thought fit to lodge a private complaint in the Court of the Judicial Magistrate, Worora, Chandrapur, State of Maharashtra for the offence of defamation. The learned Magistrate took cognizance on the said complaint and

issued process. The cognizance for the offence of defamation was taken by the Magistrate on the basis of the averments said to have been made by the appellant in his written complaint addressed to the SDM, referred to above.

As the record reveals, the appellant thereafter moved an application before the Court of the Judicial Magistrate with a prayer that the order of issue of process be recalled. The Magistrate concerned recalled the order. The complainant being aggrieved by such order of recall passed by the Magistrate, challenged the same before the Sessions Court by filing a revision application. The revision application was allowed and the order recalling the order of issue of process was quashed. In such circumstances, the appellant went before the High Court. In the High Court, the appellant thought fit not to press his petition and withdrew the same.

Eight years thereafter the appellant thought fit to challenge the original order of issue of process before the High Court. The High Court without entering into the merits of the matter, declined to entertain such petition only on the ground of delay. In such circumstances referred to above, the appellant is here before this Court with the present appeal.

Mr. Anshuman Ashok, the learned counsel appearing for the appellant vehemently submitted that the learned Magistrate committed a serious error in taking cognizance on a complaint, which fails to disclose commission of any offence. According to him even if the entire case, as put up by the complainant, is accepted or believed to be true, none of the ingredients to constitute the offence of defamation as defined under Section 499 of the IPC and made punishable under Section 500 of the IPC are disclosed. He pointed out that his client (appellant), in good faith, brought to the notice of the SDM that the complainant had encroached upon some portion of the land and had put up a shop which was creating nuisance. This, according to the learned counsel, would not constitute any offence of defamation. He submitted that even otherwise since the alleged defamatory words or statements are said to have been made in a complaint made in writing addressed to a public authority like SDM and not made public, the same would not attract the rigours of Section 499 of the IPC.

In such circumstances as above, the learned counsel prayed that there being merit in his appeal, the same be allowed and the criminal proceedings be quashed.

We also heard Mr. Aaditya Aniruddha Pande, the learned counsel appearing for the State. However, this is a case of a private complaint. The State has hardly any role to play. Still learned the counsel assisted us on the question of law. ANALYSIS:

Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the allegations made in the complaint addressed to the SDM make out the offence

under Section 500 IPC or not?

Section 499 of the IPC reads, thus:

“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 excepted, to defame that person.” Eighth Exception to Section 499, to which reliance has been placed by the learned counsel, reads as under:

“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.” The word “good faith” has been defined in Section 52 of the IPC to mean:

“52. ‘Good faith’.—Nothing is said to be done or believed in ‘good faith’ which is done or believed without due care and attention.” We are of the view that no case is made out to put the appellant to trial for the alleged offence. There is no defamation as such.

Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out. In the overall view of the matter, we are convinced that the appeal deserves to be allowed and is hereby allowed. The impugned order passed by the High Court is hereby set aside. As a consequence of the same, the original order passed by the Magistrate issuing summons, is also hereby quashed and set aside. The criminal proceedings in the form of Criminal Case No.247 of 2002 pending in the Court of Judicial Magistrate First Class, Worora, Chandrapur, Maharashtra stand terminated.

Pending application(s), if any, stands disposed of.

.....J. (J.B. PARDIWALA)J. (MANOJ MISRA) NEW DELHI;

AUGUST 02, 2023.