M.N. Damani vs S.K. Sinha And Others on 2 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2037, 2001 (5) SCC 156, 2001 AIR SCW 1941, 2001 AIR - KANT. H. C. R. 2567, 2001 CALCRILR 327, 2001 SCC(CRI) 823, 2001 ALL MR(CRI) 1488, 2001 (1) JT (SUPP) 375, 2001 (2) LRI 1058, 2001 (3) SCALE 654, 2001 (6) SRJ 204, (2001) 2 CURCRIR 434, (2002) ILR (KANT) (3) 4297, (2001) MAD LJ(CRI) 862, (2001) 21 OCR 1, (2001) 4 SCJ 135, (2001) 2 CURCRIR 181, (2001) 3 SUPREME 647, (2002) 2 ALLCRIR 1886, (2001) 3 SCALE 654, (2001) 2 UC 120, (2001) 43 ALLCRIC 373, (2001) 2 CHANDCRIC 103, (2001) 2 ALLCRILR 664, (2001) 2 CRIMES 271, (2001) 2 EASTCRIC 240, 2001 (2) ANDHLT(CRI) 63 SC

Author: Shivaraj V. Patil

Bench: D.P. Mohapatra, Shivaraj V. Patil

CASE NO.:
Appeal (crl.) 596 of 2001

PETITIONER:
M.N. DAMANI

Vs.

RESPONDENT:
S.K. SINHA AND OTHERS

DATE OF JUDGMENT: 02/05/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

Shivaraj V. Patil, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T..J The appellant filed a private complaint against the respondents alleging that they made imputations against him in the application made under Section

436 Cr.P.C. before the XIth Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bangalore in C.C. No. 24877/96. The imputations made are to the following effect: -

However Mr. M.N. Damani removed the cheque book at 9-30 by forcibly breaking open the drawer and made the accused 2 and 4 to write and sign by forge/threat as mentioned in the correspondence.

Mr. M.N. Damani had collected the cheques from us forcefully at 9-30 p.m. by threatening to hit us by lifting the office chair and by forcefully break opening the drawer of table containing the cheque book which was locked by our Accountant while leaving the office for the day.

The Magistrate found these allegations as false and convicted the respondents (accused) for the offence under Section 138 of the Negotiable Instruments Act on 17.12.1998. An appeal filed against the said order was dismissed by the IV Additional Sessions Court, Bangalore on 30.7.1999. According to the appellant the respondents made false and malicious allegations with intention or knowingly or having reasons to believe that such imputations would harm his reputation; due to these imputations made by them, the reputation of the appellant has been lowered in the eyes of his partners, the staff and the workers of factory at Vapi. Hence he prayed for punishing the respondents for the offence under Section 500 IPC. The Magistrate, on the complaint, after taking cognizance of the offence, recorded the sworn statement of the complainant (appellant herein). The Magistrate in his order stated thus: -

From the sworn statement of the complainant and also from the documents produced by him, it is clear that the accused persons have made imputation against the complainant intending to harm or knowing or having reasons to believe, that such imputation will harm the reputation of the complainant. In my opinion, there are sufficient grounds to proceed the case against the accused persons for the offence punishable under section 500 of the I.P.C.

Hence he issued summons to respondents 1 to 3 for the offence punishable under Section 500 IPC.

The respondents filed a criminal petition before the High Court under Section 482 Cr.P.C. praying for quashing the proceedings in C.C. No. 25353/99 arising out of PCR 559/99, pending on the file of the XIth Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bangalore. After hearing the learned counsel for the respondents and the appellant (party-in- person) the learned single Judge of the High Court allowed the petition and quashed the proceedings in C.C. No. 25353/99. Hence this appeal is brought before this Court assailing the order of the High Court.

Mr. L. Nageswara Rao, learned senior counsel for the appellant, contended that the impugned order is, on the face of it, unsustainable. According to him the High Court was not right in interfering with the order passed by the learned Magistrate issuing summons to the respondents prima facie finding a case against them for proceeding with the complaint. In support of his submissions he cited two decisions of this Court in Sewakram Sobhani vs. R.K. Karanjia, Chief Editor, Weekly Blitz and others [(1981) 3 SCC 208] and Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi and others [(1996) 6 SCC 263].

Mr. B.B. Singh, learned counsel for the respondents, while making submissions supporting the impugned order, raised a new contention that the complaint filed by the appellant was barred by time and no cognizance of it could have been taken by the Magistrate. This argument was made on the basis that similar statements were made in the letter dated 26.2.1996 and the same were repeated in the application filed by the respondents under Section 436 Cr.P.C. seeking their discharge in CC No. 24877/96; the complaint was filed on 13.8.1999; if 26.2.1996 is taken as the starting point for limitation the complaint filed on 13.8.1999 was clearly barred and no cognizance of it could be taken under Section 468 Cr.P.C. This argument was refuted contending that this point of limitation was not raised before the Magistrate; the offence was continuing one having regard to its nature; the imputations made in the application filed by the respondents on 26.9.1996 under Section 436 Cr.P.C. seeking their discharge is considered as the date of commission of offence, the complaint filed by the appellant is not hit by Section 468 Cr.P.C. The learned counsel for the respondents in support of his submissions relied on decisions in Manjaya against Sesha Shetti [(1888) ILR 11 Mad., 477], Sayed Ally vs. King Emperor [AIR 1925 Rangoon 360], Anthoni Udayar and others vs. Velusami Thevar and another [AIR (35) 1948 Madras 469] and Baboo Gunnesh Dutt Singh vs. Mugneeram Chowdry and others [(1872) WR 11 SC 283].

We have considered the rival submissions. The High Court relying on para 7 of the judgment in Madhavrao Jiwaji Rao Scindia and another vs. Sambhajirao Chandrojirao Angre and others etc. [AIR 1988 SC 709] exercising jurisdiction under Section 482 quashed the proceedings. The learned Judge did not bestow his attention to the facts of that case and the discussions made in paras 6 and 8 of the said judgment. In that case the complaint was filed for offences punishable under Sections 406 and 407 read with Sections 34 and 120-B of the Penal Code. That was a case where the property was trust property and one of the trustees was member of the family. The criminal proceedings were quashed by the High Court in respect of two persons but they were allowed to be continued against the rest. In para 6 of the same judgment it is clearly stated that the court considered relevant documents including the trust deed as also the correspondence following the creation of the tenancy and further took into consideration the natural relationship between the settler and the son and his wife and the fall out. Para 8 of the judgment reads: -

8. Mr. Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr. Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued.

Thus, the said judgment was on the facts of that case, having regard to various factors including the nature of offences, relationship between the parties, the trust deed and correspondence following the creation of tenancy. The High Court has read para 7 in isolation. If para 7 is read carefully two aspects are to be satisfied: (1) whether the uncontroverted allegations, as made in the complaint, prima facie establish the offence, and (2) whether it is expedient and in the interest of justice to

permit a prosecution to continue. On plain reading of the order of the Magistrate, issuing summons to the respondents keeping in view the allegations made in the complaint and sworn statement of the appellant it appears to us that a prima facie case is made out at that stage. There are no special features in the case to say that it is not expedient and not in the interest of justice to permit a prosecution to continue. The learned Judge has failed to apply the tests indicated in para 7 of the judgment on which he relied. The High Court could not say at that stage that there was no reasonable prospect of conviction resulting in the case after a trial. The Magistrate had convicted the respondents for the offences under Sections 138 of the Negotiable Instruments Act and the appeal filed by the respondents was also dismissed by the learned Sessions Judge. Assuming that the imputations made could be covered by exception 9 of Section 499 IPC, several questions still remain to be examined whether such imputations were made in good faith, in what circumstances, with what intention, etc. All these can be examined on the basis of evidence in the trial. The decisions in Manjaya against Sesha Shetti [(1888) ILR 11 Mad., 477], Sayed Ally vs. King Emperor [AIR 1925 Rangoon 360] and Anthoni Udayar and others vs. Velusami Thevar and another [AIR (35) 1948 Madras 469], cited by the learned counsel for the respondents are the cases considered after conviction having regard to the facts of those cases and the evidence placed on record. The decision in Baboo Gunnesh Dutt Singh vs. Mugneeram Chowdry and others [(1872) WR 11 SC 283] arose out of a suit for damages for defamation. These decisions, in our view, are of no help to the respondents in examining whether the High Court was justified and right in law quashing the criminal proceedings that too exercising its jurisdiction under Section 482 Cr.P.C.

Para 6 of the judgment in Sewakrams case (supra) reads:

> 6. The order recorded by the High Court quashing the prosecution under Section 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons under Section 251 of the Code. The requirements of Section 251 are still to be complied with. The learned Magistrate had to ascertain whether the respondent pleads guilty to the charge or demands to be tried. The circumstances brought out clearly show that the respondent was prima facie guilty of defamation punishable under Section 500 of the Code unless he pleads one of the exceptions to Section 499 of the Code.

Xxx xxx xxx xxx It is for the respondent to plead that he was protected under Ninth Exception to Section 499 of the Penal Code. The burden, such as it is, to prove that his case would come within that exception is on him. The ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or of any other person or for the public good.

Again, in para 18 of the judgment dealing with the aspect of good faith in relation to 9th Exception of Section 499, it is stated that several questions arise for consideration if the 9th Exception is to be applied to the facts of the case. Questions that may arise for consideration depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence and that stage for deciding these questions had not arrived at the stage of issuing process. It is stated,

Answers to these questions at this stage, even before the plea of the accused is recorded can only be a priori conclusions. Good faith and public good are, as we said, questions of fact and matters for evidence. So, the trial must go on.

Para 13 of the judgment in Shatrughna Prasad Sinhas case (supra) reads: -

13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under section

500. It is the settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of defamation under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 IPC.

Having regard to the facts of the instant case and in the light of the decisions in Sewakram Sobhani vs. R.K. Karanjia, Chief Editor, Weekly litz and others [(1981) 3 SCC 208] and Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi [(1996) 6 SCC 263], we have no hesitation in holding that the High Court committed a manifest error in quashing the criminal proceedings exercising jurisdiction under Section 482 Cr.P.C.

Since the question of limitation was not raised before the High Court by the respondents and further whether the offence is continuing one or not and whether the date of the commission of offence could be taken as the one mentioned in the complaint are not the matters to be examined here at this stage. In these circumstances we have to reverse the impugned order of the High Court and restore that of the Magistrate.

In the result for the reasons stated the impugned order of the High Court is set aside and that of the Magistrate is restored. The appeal is allowed accordingly.