

GAHC010011752016



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Pet./197/2016

SMTI SUNANDA PAUL
W/O RAKESH KUMAR PAUL R/O BORBORAH HOUSE , SRIMANTAPUR
RUPNAGAR, BHANGAGARH, GUWAHATI-5, KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:SRI RAKTIMAVA SWAMY
S/O LT. RANAJIT KUMAR SWAMY R/O HOUSE NO. 91
PURBANCHAL HOUSING COMPLEX
KAUSIK APARTMENT
BORTHAKUR MILL ROAD
P.O. ULUBARI
P.S. PALTAN BAZAR
KAMRUP M
ASSAM
PIN - 78107

Advocate for the Petitioner : MS H AHMED

Advocate for the Respondent : MS. K TALUKDAR(R-2)

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner :Mr. MK Das, Advocate

For the Respondents : Mr. R Swami, Petitioner-in-person

Date of Hearing : 07.06.2024
Date of Judgment : 07.06.2024

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. MK Das, learned counsel for the petitioner. Also heard Mr. R Swami, the respondent No. 2 in person.
2. The present application is filed under Section 482 Cr.P.C. for quashing complaint petition being Complaint Case No. 1046/2014 filed by the respondent No. 2 alleging commission of offence under Section 499 IPC. The further challenge is an order dated 23.07.2015 passed by the learned Sub-Divisional Judicial Magistrate-I, Kamrup (M), whereby cognizance of offence under Section 500 IPC was taken.

3. The statement made in the complaint are to the following effect:

I. The accused has been spreading a rumor amongst his friend circle to the effect that complainant had given a marriage proposal to the accused and that the complainant is in love with the accused person.

II. The further allegation is that the complainant has also been defamed by accused as the accused had made statements before friend circle that the complainant had taken Rs. 47 Lakhs from the accused.

III. According to the statement made in the complaint petition, such action of the accused had affected the normal life of the complainant, as the fame and good reputation, he owned from his friend circle, relatives, neighbor and society at large is being hampered to great extent and he is now being looked down upon with disrespect in the society. According to the statement made in the complaint, such fact alleged by the accused are concocted and false allegation, which has led the complainant's life to misery in his economic front, since the friend circle has now stopped

working with him and his friend in the business circle started to treat the complainant with suspicion.

IV. It is the further case that the business fraternity as whole stopped involving themselves in new projects with the complainant.

V. According to him, defamatory words are so detrimental to the reputation of the complainant that now his business is being affected. Thus the accused person hampered the reputation of the complainant by her defamatory statement.

4. The complainant was examined by the learned Magistrate under Section 200 Cr.P.C. before issuing process. The complainant in his statement recorded under Section 200 Cr.P.C. stated that the accused informed the complainant that her husband used to torture her physically and mentally and she needs the help of the complainant. The said accused also requested the informant to give some false evidence against her husband. When the complainant refused to accede to her request and started ignoring her, the accused started to make such statements before her friend circle and also stated that the complainant had given marriage proposal to the accused and also taken Rs. 47 Lakhs from her. He, in his deposition stated that the accused had stated spreading rumors against him. Therefore, the esteem of the complainant has been lowered before the family members and society.

5. As many as four witnesses were examined. One of them is the wife of the complainant. The wife of the complainant deposed that the accused started to make statement before the music society of accused against the complainant that the complainant had taken a sum of Rs. 47 Lakhs from accused and also gave marriage proposal to her. After hearing the same, she was surprised. It was further stated by the said witness that for the reason of statement made by the accused, business of her husband along his name and fame has been affected and for the aforesaid statement of the accused, business partner of her husband had refused to

involve with him in new projects. According to this witness, the accused also made statement before others that the accused had initiated a divorce proceeding against her husband and after filing of divorce the accused gave her a marriage proposal. According to the said witness, it was also stated by the accused before other that as the accused was married and having children, she refused such marriage proposal given by the complainant. According to the said witness, the accused also stated before others that complainant had taken Rs. 47 Lakhs from her. She further stated due to such statement the business of the complainant got hampered.

6. Another witness, namely, Aziz Ali was examined. He is a tenant in the house of the complainant and by profession, an Auto Rickshaw Driver. He deposed that the accused while travelling in his auto told him that the complainant took a sum of Rs. 47 Lakhs from her and also gave her a marriage proposal. He further deposed that he did not believe her and remained silent. However, many persons enquired him whether complainant had married the accused or not. He further deposed that the allegation of taking Rs. 47 Lakhs by the complainant is also not correct. According to this witness, if the complainant had taken such amount of money from the accused, the complainant would have returned the money due to this witness. He also deposed that after knowing that the complainant had taken money from the accused, business partners of the complainant started refusing to give him money.

7. The learned counsel for the petitioner in the aforesaid backdrop submits that no case under Section 500 IPC is made out inasmuch as the allegation relates to a dispute between the complainant and the accused as regards financial transaction, and nowhere relates to any offence of defamation. According to him, none of the witnesses examined had stated that the allegation made by the accused has harmed the reputation of the complainant in their eyes or esteem, rather they had stated that nobody had believed such statements. Therefore, according to him, in

terms of Explanation 4 of Section 499, no case is made out either from reading of the complaint as well as from the deposition made by the witnesses. According to him, if the entire facts narrated in the complaint as well as in the deposition are taken in its face value, then also no case under Section 499 IPC is made out.

8. Per contra, the respondent No.2 in person argues that he is having good reputation and such reputation has been infringed by the action of the petitioner/ accused and there are specific averments in the petition that he has been defamed by the action of the accused person and therefore this is not a fit case where this court should exercise its extraordinary power under Section 482 Cr.P.C.

The respondent No. 2 also contends that this court should exercise its power under Section 482 Cr.P.C. in rarest of the rare cases and in exceptional circumstances. According to him, in the case in hand a bare reading of the complaint as well as the statement of the witnesses recorded clearly discloses that an offence under Section 499 IPC is made out.

The respondent No. 2 further contends that whether the complainant has actually been defamed or not is to be proved during the trial and during trial, he will be able to examine further witnesses on the basis of which, determination can be made whether the complainant is defamed or not. Therefore, at this initial stage of the prosecution, this court should not exercise its extraordinary power to quash the entire proceeding.

He contends that the learned Magistrate has rightly taken cognizance of the offences after considering the statement of the witnesses. Accordingly, he submits that this petition is devoid of any merit and liable to be dismissed. In this regard, he relies on the decision of the Hon'ble Apex Court in the case of ***Subramanian Swamy vs Union of India*** reported in **(2016) 4 SCC 243**.

9. This Court has given anxious consideration to the arguments advanced. Also perused the record including the Complaint and depositions of the witnesses, examined under section 200 CrPC.

10. An offence under Section 499 IPC is committed when reputation of a person is harmed either by word or by signs or by visible representation etc. The aforesaid provision further explains that an imputation of a person can be said to be harmed, when such reputation is harmed directly or indirectly in the estimation of others and such imputation must also directly or indirectly lower the moral and intellectual character of that person who is alleged to be defamed.

11. It is clear that Section 499 IPC presupposes “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.”

12. Thus the words “knowing or having reason to believe” and “intending to harm” carry significant meaning.

13. Further, Explanation 4 of Section 499 IPC clarifies that “no imputation is said to have harmed 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 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 disgraceful.” Thus it imposes a restriction/ puts a qualification on the definition.

14. Thus imputations shall be punishable when it lower a person's reputation in respect of some aspects of his personality and makes an imputation, which is defamatory only if it lowers a person in the estimation of others. Such reputation is held by others.

15. It is true that every men has the right to have his reputation preserved and it is also true that right of reputation is acknowledged as an inherent personal right of every person. However, for taking cognizance of the offence under Section 499 IPC, the complainant is to prima-facie show that defamatory statement has been

made or published and it tends to lower the estimation of the person defamed in the minds of right thinking member of the society in general. It is also equally well settled that to find out whether the statement is a defamatory statement or not, the court is to take note of the entire statements made in the complaint.

16. Issuance of process and the procedure for taking cognizance is not a mere formality. The Magistrate is to apply its own mind to the complaint and determine whether the statements made are prima-facie defamatory, before issuing summon to the accused.

17. It is also equally well settled that in criminal jurisprudence, if the allegation contained in the complaint does not constitute the offence complained of, then the accused should not be made to undergo the ordeal of a trial. This court can place reliance in this regard on the decision of the Hon'ble Apex Court in the cases of ***Manoj Kumar Tiwari Vs Manish Sisodia*** reported in ***2022 Live Law (SC) 853***, ***National Bank of Oman vs Barakara Abdul Aziz*** reported in ***(2013) 2 SCC 448***. From the aforesaid judgments, the principle that can be curved out is that it is the duty of the and obligation of the Magistrate to find out, if there is any matter which calls for investigation by a criminal court. The scope of enquiry under Section 200 Cr.P.C. is limited to the ascertainment of truth or falsely of the allegation made in the complaint. It is for the limited purpose to find out whether a prima-facie case for issuance of process has been made out.

18. The Hon'ble Apex Court in the case of ***M/s Iveco Magirus Brandschutztechnik vs. Nirmal Kishore Bharatia*** reported in ***(2024) 2 SCC 86***, after dealing elaborately with the earlier decisions of the Hon'ble Apex Court, dealing with the offences under Section 499 IPC had laid down certain principles of law, which can be summarized as follows:

I. A Magistrate taking cognizance of an offence proceed under Section 200 Cr.P.C. based on a prima-facie satisfaction that the criminal offence is made out. He is required to satisfy himself by looking into the allegation

leveled in the complaint, the statement made by the complainant in support of the complaint, the documentary evidence in support of the allegation, if any produced by him as well as the statement of any witnesses, the complainant may choose to produce to stand by allegation in the complaint.

II. A Magistrate while deciding to pass an order summoning the accused, examination of material is not intended for forming an opinion as to whether materials are sufficient for conviction, instead, he is required to form an opinion whether the materials are sufficient for proceeding.

III. Since the accused does not enter the arena at that stage, the question of accused raising a defence to the issuance of process does not arise.

IV. The accused is not before the Magistrate, at that stage, shall not mean that the Magistrate need not apply its judicial mind.

V. At that stage, a Magistrate can even look into the exception to Section 499 to prevent a frivolous complaint from triggering an unnecessary trial.

19. In the aforesaid context of facts and law, let this court deal with the present case.

20. A reading of the complaint, as a whole and also reading the statements of the complainant's witnesses examined discloses that the complainant had made statement before different persons that the accused had given a marriage proposal to the complainant and according to the complainant such statement made by the accused has defamed his reputation in the eyes and esteems of the society, more particularly amongst his friend circle.

21. To prima-facie show that the name and fame of the complainant has been defamed in the eyes and esteems of his fellow men, he had examined three witnesses. None of the witnesses had disclosed/stated that the statements made by the accused as discussed hereinabove, had lowered the esteems of the complainant in their eyes. The wife of the complainant though stated that for the statements made by the accused, business of her husband along with his name and fame has

been affected, however, she has not deposed that his reputation has been lowered in her eyes and esteems or that the accused made the defamatory statements before her.

22. The other witnesses also clearly deposed that though the accused had made those statements before him but he had not made any statements before the Magistrate that such statement had lowered the reputation of the complainant in his esteem. Rather he stated that he knew those statements are incorrect and therefore, kept silent.

23. The other statement/allegation is to the effect that the accused has made a statement before the friends of the complainant and other persons of the society that the complainant had taken an amount Rs. 47 Lakhs from the accused and such statement had harmed the business reputation of the complainant inasmuch as his business partners had lost faith upon him. In the considered opinion of this court, such statement, even if taken to be correct in its face value, same will not come within the definition of defamation in terms of Section 499 IPC.

24. In the present case, though the complainant has led evidence to establish how his reputation was harmed or his moral or intellectual character was lowered as a result of the statement made by the accused, however, none of his witnesses supported his assertion, rather, they stated that they did not believe such statements. Thus the learned trial court fell into serious error in not applying its mind to these aspects and mechanically issued the process.

25. In view of the reasons and discussions made hereinabove, this court is of the unhesitant view that no case under Section 499 has been made out from the complaint as well as statement of the witnesses, even if they are taken to be correct, in their face value. Accordingly, the present petition stands allowed by setting aside and quashing the complaint petition being Complaint Case No. 1046/2014 filed by the respondent No. 2 and the order dated 23.07.2015 passed by the learned Sub-Divisional Judicial Magistrate-I, Kamrup (M), whereby

cognizance of offence under Section 500 IPC was taken.

JUDGE

Comparing Assistant