

Reserved**Court No. - 12****Case :- APPLICATION U/S 482 No. - 6048 of 2019****Applicant :- Aroon Purie****Opposite Party :- State of U.P. and Another****Counsel for Applicant :- Nadeem Murtaza, Imran Ullah, Kumar Ayush, Riya Ghosh****Counsel for Opposite Party :- Govt. Advocate, Deokant Tripathi, Pranshu Agrawal****&****Case :- APPLICATION U/S 482 No. - 6219 of 2019****Applicant :- Supriya Prasad****Opposite Party :- State of U.P. and Another****Counsel for Applicant :- Imran Ullah, Kumar Ayush, Mariya Fatima, Nadeem****Murtaza, Sheeran Mohiuddin Alavi****Counsel for Opposite Party :- Govt. Advocate, Deokant Tripathi, Pranshu Agrawal****&****Case :- APPLICATION U/S 482 No. - 7895 of 2019****Applicant :- Shashank Shantanu****Opposite Party :- State Of U.P. And Anr.****Counsel for Applicant :- Nadeem Murtaza, Kumar Ayush, Maria Fatima****Counsel for Opposite Party :- G.A., Pranshu Agrawal****Hon'ble Rajeev Singh, J.**

1. Heard Shri Rishikesh Barma, Senior Advocate, assisted by Mr. Kumar Ayush, learned counsel for the applicants and Shri Avinash Singh, learned counsel for the private respondent.

2. These applications have been filed seeking quashing of the entire proceedings as well as summoning order dated 22.02.2018 passed by Special Judge, Pollution, Lucknow in Complaint Case No.2577 of 2017 (Rajendra Singh Vs. India Today and Ors.) under Sections 500, 501 and 502 I.P.C.

3. As all the applications have been filed assailing the same order as well as same proceedings, hence, are being decided by this common order.

4. Learned counsel for the applicants submitted that applicants are associated with the Living Media India Limited (LMIL).

5. Applicant in Application U/S 482 No.6048 of 2019 is the Editor-In-Chief in Living Media India Limited (LMIL) which is a news portal in the name of “indiatoday.in”. Applicant has been arrayed as a private respondent on the basis of incorrect facts.

6. Applicant in Application U/S 482 No.6219 of 2019 has no concern with the alleged social media platform as he is the Managing Editor, Broadcast Division of the aforesaid news channel but without examining the correct facts, he has been arrayed as a private respondent in the complaint in question.

7. Similarly, applicant in Application U/S 482 No.7895 of 2019 was working as Assistant Editor in the Living Media India Limited (LMIL) and also in the news portal “indiatoday.in”.

8. Learned counsel for the applicants submitted that it is duty of the applicants to bring into the notice of the citizens of the country all the authentic news without intending to harm anyone. He further submitted that as per the prosecution case, on 19.06.2017, defamatory news item was published at the social media in question, in which, various imputations were leveled that the former U.P. Minister Prajapati’s bail was part of a deep conspiracy involving senior judges, massive corruption in the posting of judges in courts, handling sensitive crime and rape cases as well as Mr. Om Prakash Mishra was posted as POCSO Judge on 07.04.2017 when he had just three weeks left for retirement and he was appointed bypassing norms. He further submitted that the complaint in question was filed by the private respondent with the allegation that news item was defamatory.

9. Submission of the learned Senior Counsel is that without any *mens rea*, only in good faith, the said news item was published on the basis of authentic information, i.e., one communication of this Court to the Hon'ble Supreme Court dated 3rd May, 2017. He

further submitted that the communication in between two constitutional authorities is of sensitive nature and, therefore, it has not been made part of the record of the present case, however, a copy of the said communication was provided to the learned counsel appearing for private respondent on 24th January, 2018 in pursuance of the order of this Court in Application u/s 482 No. 80 of 2018. Learned counsel for the applicants vehemently submitted that neither the genuineness of the aforesaid letter nor its contents are challenged by the private respondent.

10. It has also been submitted that the contents of the aforesaid communication reveals that under the direction of the then Hon'ble Chief Justice of this Court, some discreet inquiry was conducted, and thereafter, communication was done in between two Constitutional Authorities. It has been submitted by the learned Senior Counsel that in the present era, media has a very important role to play in the democracy by highlighting the deeds and misdeeds of the Government as well as Public authorities. It has next been submitted that there is no derogatory words in the news item against any person. The said news items were published in the news paper on 19.06.2017 on the basis of the substance of the aforesaid correspondence in between two Constitutional Authorities.

11. Learned counsel for the applicants submitted that the said communication was made in between this Court and Hon'ble Supreme Court on 03.05.2017 on the basis of report of Intelligence Bureau. Thereafter, on 26.05.2017, private respondent was transferred to District Chandauli and he took charge as District & Sessions Judge there on 03.06.2017. Respondent no. 2, after his superannuation on 31.08.2017, legal notice was sent alleging publication of alleged defamatory news. It has been submitted that the reply to the said notices was also given on 07.10.2017. Thereafter, on 15th November, 2017, Complaint No. 2577 of 2017 was filed and statement of the complainant/respondent no. 2 was recorded on 16.11.2017 under Section 200 Cr.P.C. In his statement, respondent no. 2 stated that only with the intention to harm his reputation, the said news item was

published, due to which, his image was tarnished. In the aforesaid statement, respondent no. 2 also stated that by way of notice, he asked from the applicants about the press note of the High Court as well as the Intelligence Bureau report, being not available with him, but the same was not provided.

12. Thereafter, statements of Mr. Ashok Kumar Dhar Dwivedi and Mr. Raj Narayan were recorded under Section 202 Cr.P.C. It has been submitted by the learned counsel for the applicants that general statement was made under Section 202 Cr.P.C. by the witnesses that the private respondent was honest and reputed Officer of his cadre and belongs to a reputed family background and after publishing the news items dated 19.06.2019, his image was tarnished in their eyes.

13. It has further been submitted by the learned counsel for the applicants that as by way of notice, the correspondence in between the High Court and Hon'ble Supreme Court was asked by the complainant, the copy of the same was already provided to him after passing of the order dated 24th January, 2018 by this Court in Application u/s 482 Cr.P.C. No. 80 of 2018, but no rebuttal about the contents of the letter is made by the private respondent in the counter affidavit filed by him in the said application or in the present case. However, in the counter affidavit of aforesaid case, he has stated that the alleged letter is a privileged communication in between two Constitutional Institutions and the applicants along with all the accused are liable to be prosecuted under the Official Secrets Act, 1923 for publishing a confidential communication between the authorities.

14. Learned counsel for the applicants submitted that the word 'defamation' derived from the Latin term 'Diffamare', which means 'Spreading evil report about someone'. He also relied on the decision of Queens Bench in the case of **Scot Vs. Sampson, 1882 9 QB 491** and submitted that defamation is simplest way as 'a false statement to a man to his discredit'. This definition is smaller yet it encompasses everything about the concept. It

has also been submitted that to constitute 'defamation under Section 499 I.P.C., there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of complainant, irrespective of whether complainant actually suffered directly or indirectly from the imputation. Further relying on the decision of the Gujarat High Court in the case of **Narottamdas L. Shah Vs. Patel Maganbhai Revabhai & Anr., 1984 CrI.L.J. 1790**, learned counsel for the applicants submitted that the term 'reputation' means, "What is generally said or believed about the persons' or things' character". The two terms 'character' and 'reputation' are prone to be confused. Character, in the context, would mean, fortitude or moral constitution or strength of a person. It has no relevance with the belief or opinion of others in respect to a person. Therefore, character is what a person "actually is", while reputation is what neighbours and others say "what he is". The man may have, in fact, a good character and yet suffer from bad reputation or vice versa. In short, 'reputation' is, what is reputed about, that is to say, common knowledge or general opinion in respect to a person. It is the estimation in which a person is held by others and not the opinion which he himself may have about himself. It may be said that 'reputation' is a composite hearsay, being the community's opinion which implies the definite and final formation of belief by the community. By no stretch of reasoning the term 'reputation' can imply one's belief about himself.

15. Learned counsel for the applicants vehemently submitted that the object of the inquiry under Section 202 of the Code is the ascertainment of the fact whether the complaint has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action needs to be taken. The Section does not require any adjudication to be made about the guilt or otherwise of

the person against whom the complaint is preferred. It has lastly been submitted that the case of the applicants is squarely covered by Exception 1st and 3rd to Section 499 I.P.C. It has, thus, been submitted that the impugned proceedings are liable to be quashed.

16. On the other hand, learned counsel for the private respondent vehemently opposed the prayer of the applicants and submitted that the alleged news item was published by the applicants and other persons without getting it verified and while doing so, they failed to comply the norms of Code of Ethics & Broadcasting Standards prepared by the News Broadcasters & Digital Association, New Delhi. The applicants also failed to comply the guidelines of Press Council of India. It has further been submitted that the respondent no. 2 applied for the alleged privileged communication between this Court and Hon'ble Supreme Court dated 3rd May, 2017 under the provisions of Right to Information Act, but he could not succeed. However, he did not dispute the fact vide order dated 24th January, 2018, photocopy of the aforesaid document was provided to him and the content of privileged communication is not being disputed.

17. It has vehemently been submitted that the applicants are also liable to be prosecuted under the provisions of Official Secrets Act. While submitting that all these arguments raised by the learned counsel for the applicants may be ventilated before the court below at appropriate stage, it has been submitted that the present application is liable to be dismissed.

18. I have considered the arguments advanced by the learned counsel for the applicants, learned counsel for the respondent and gone through the contents of the application, counter affidavit, rejoinder affidavit, statements recorded under Section 200 and 202 Cr.P.C. as well as other relevant documents and the office copy of letter dated 03.05.2017 placed by Senior Registrar of this Court.

19. It is evident from the record that the photocopy of the privileged communication was given to the private respondent on 24.01.2018, it is photocopy of the letter dated

03.05.2017 produced by the Senior Registrar of this Court. It is further evident that the allegations made in the complaint against the applicants and other accused persons is of tacit consent and criminal conspiracy for commission of the offence of defamation.

20. While considering all the arguments raised by the learned counsel for the parties as well as going through the complaint, the only question, which arises before this Court, is whether the defamatory act was committed by the applicants and other persons, under a conspiracy. 'Defamation' is defined in Section 499 I.P.C., which clearly provides that 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 mentioned in the Exception clauses.

21. Admittedly, in the present case, the news items were published on 19th June, 2017. Thereafter, notice was given by the private respondent and asked the copy of the privileged communication as well as Intelligence Bureau report. It is evident from the record that the photocopy of the privileged communication was placed by the learned counsel for the applicants before this Court on 24.01.2018 in Application u/s 482 No. 80 of 2018 and under the order of this Court of the date, the copy of the same was provided to the private respondent. The inclination of respondent no. 2 appears to be that for publishing a confidential communication, all the accused persons are liable to be prosecuted under the provisions of Official Secrets Act, 1923.

22. Hon'ble Apex Court in the case of **Jawaharlal Dadra & Ors. Vs. Manoharrao Ganpatrao Kapsikar & Anr., (1998) 4 SCC 112**, held that in the case of accurate and true reporting published in good faith, it cannot be said that the accused intended to harm the reputation of the complainant. Para 5 (relevant) of the said decision is as under :

"It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court."

23. Indisputably, the privileged correspondence between the High Court and Hon'ble Supreme Court is not denied by respondent no. 2.

24. In view of above facts and discussions, this Court is of the view that the action of the applicants is squarely covered in the Exception (1) & (3) of Section 499 I.P.C. Section 499 along with Exception (1) & (3) is reproduced hereunder :

"First Exception:- 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.

Third Exception:- Conduct of any person touching any public question:- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public

question, and respecting his character, so far as his character appears in that conduct, and no further.

25. In view of the above facts and discussions, this Court is of the view that the complaint in question is nothing but a sheer abuse of the legal provisions and no offence, as alleged, can be said to be made out.

26. The impugned proceedings are hereby quashed. The applications stand allowed.

27. Office is directed to communicate this order to the court below, forthwith.

Order Date :- 22nd December, 2023.

V. Sinha