

Sukra Mahto

Vs

Basdeo Kumar Mahto and Another

Criminal Appeal No. 53 of 1968

(C. A. Vaidilingam, A. N. Ray JJ)

02.04.1971

JUDGMENT

RAY, J. -

This is an appeal by special leave from the judgment and order of the Patna High Court, dated 30th October, 1967. dismissing an application in the criminal revisional jurisdiction against the judgment of the First Additional Judicial Commissioner, Ranchi, dated July 31, 1967 upholding the conviction and sentence passed by the Judicial Magistrate, First Class, Ranchi. The appellant was convicted under Section 500 of the Indian Penal Code and sentence to pay a fine of Rs. 500 and in default to suffers simple imprisonment for three months.

2. There was a proceeding under Section 144 of the Criminal Procedure Code between the respondents and the appellant regarding some land in the village Hatma in the district of Ranchi in the State of Bihar. The land was recorded in the names of two brothers Karma Ahir and Faizu Ahir. The appellant is the grandson of Karma Ahir. Faizu Ahir had two sons by his first wife. Both of them died during his lifetime. The respondent and his brother Sahdeo Mahto claimed the land as sons of Faizu Ahir by his second wife. This led to a dispute between the parties. There was a proceeding under Section 144 of the Criminal Procedure Code. Both the parties were called upon to show cause. The appellant in showing cause described Basudeo Mahto and his brother. Sahdeo Mahto as illegitimate sons of Faizu Ahir having been born of concubine.

3. The prosecution case was that the complainant's brother-in-law was present in the Court of the Sub-Divisional Officer in the month of November, 1965 when the appellant's lawyer submitted before the Sub-Divisional Officer that the respondent and his brother were illegitimate sons of Faizu Ahir having been born of concubine. The complainant. Thereafter the complainant filed the complaint. The case of the complainant was that Faizu Ahir had married Mst. Sauni, who was a widow, in Sagai form more than 40 years ago according to the custom prevalent among the Yadav community. She was living with Faizu Ahir as his wedded wife and was treated as such by the community. The appellant and his brother were born long after the marriage and were the legitimate sons of Faizu Ahir. The complainant alleged that the appellant made the statements with a view to humiliating and defaming the appellant and his brother.

4. The appellant pleaded not guilty. His defence was that the statements made in the written statements were true. The appellant further said that he had to disclose this fact as the respondent and his brother dishonestly claimed the property to which they had no right.

5. The findings of fact are these. Faizu Ahir married Sauni in Sagai form. The respondent was the

legitimate son of Faizu Ahir. On these findings the Magistrate held that the statements in the written statement were false and defamatory. The appellant was convicted under Section 500 of the Indian Penal Code.

6. The First Additional Judicial Commissioner of Chota Nagpur, Ranchi heard the appeal preferred by the appellant and upheld the conviction and confirmed the sentence. The Additional Judicial Commissioner held that the appellant did not lead any oral evidence to show that he acted in good faith. The appellant relied on a certified copy of the deposition of the respondent in case No. G.R. 775/65. There the respondent was asked a question in that case as to whether Faizu Ahir had kept a concubine and whether he was the son of that concubine. The respondent replied that he did not know that Faizu Ahir kept a concubine and that he was the son of the concubine. On this evidence of the respondent in case No. G.R. 775/65 it was argued on behalf of the appellant before the Judicial Commissioner that the respondent did not categorically deny the suggestion that Faizu Ahir had kept a concubine and that he was the son of the concubine, and therefore, the appellant did not act out of malice. The Judicial Commissioner held that the entire evidence of the respondent in that case was that Puran and Jitu were his step brothers and the answers were sufficient to show that there was a denial of the suggestion that he was the son of the concubine. The answer that the respondent did not know would not mean that he accepted or did not deny the suggestion.

7. The relevant provision in the present case is the Ninth Exception to Section 499 of the Indian Penal Code. Section 499 deals with defamation. Section 500 prescribes punishment for defamation. These are nine Exceptions to Section 499. These nine Exceptions are the cases in which there is no defamation. The Ninth Exception covers the present case and is as follows :

"It is not defamation to make an imputation on the character of another provided that the imputation he made in good faith for the prosecution of the interests of the person making it, or of any other person, or for the public good".

8. The ingredients of the Ninth Exception are first that the imputation must be made in good faith; secondly, the imputation must be for the protection of the interest of the person making it or of any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a question of fact. This Court in *Harbhajan Singh v. State of Punjab* ((1965) 3 SCR 235 : AIR 1966 SC 97 : 1966 Cri LJ 82.) in dealing with the Ninth Exception to Section 499 of the Indian Penal Code said that it would have to be found out whether a person acted with due care and attention. This Court said there "Simple belief or actual belief by itself is not enough. The appellant must show that the belief in his impugned statement had a rational basis and was not just a blind simple belief. That is whether the element of due care and attention plays an important role". The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true. The proof of the truth of the statement is not an element of the Ninth Exception as of the First Exception to Section 499. In the Ninth Exception the person making the imputation has to substantiate that his enquiry was attended with due care and attention and he was thus satisfied that the imputation was true. The accent is on the enquiry, care and objective and not subjective satisfaction.

9. This Court in *Chaman Lal v. State of Punjab* (1970 (1) SCC 590 : 1970 SCC (Cri) 253 : AIR 1970 SC 1372.) dealing with good faith in the Ninth Exception said that "in order to establish good faith and bona fide it has to be seen first the circumstances under which the letter was written or words were uttered; secondly whether there was any malice; thirdly, whether the appellant made any

enquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the appellant acted in good faith".

Judged by these tests laid down in the ruling of this Court the findings of fact in the present case are that there is no evidence to show that before making the imputation the appellant had made any enquiry in good faith and the appellant had not shown due care and attention before making the imputation. By reason of the finding of fact that the appellant was related to the respondent and thirdly that no enquiry was made by the appellant, the appellant could not claim good faith.

10. The second ingredient in the Ninth Exception is that the imputation is to be made for the protection of the interest. The protection of interest contemplated in the Ninth Exception is that communication must be made bona fide upon a subject in which the person making the communication has an interest or duty and the person to whom the communication is made has a corresponding interest or duty. The illustration (a) to the Ninth Exception typifies that idea :

"A, a shopkeeper, says to B, who manages his business - 'Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty'. A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests".

11. There was a proceeding under Section 144 of the Criminal Procedure Code. Just because a proceeding is pending it will not be open to a person to impute the statements of the nature in the present case. There was no question of title involved. Even if title is involved that by itself will not entitle a person to make a defamatory statement and then take the plea that it was for the protection of interest. Protection of interest of the person making the imputation will have to be established by showing that the imputation was itself the protection of interest of the person making it. In the present case, the question was who was in possession of the land. It would not be open to a person to deny or resist possession in proceeding under Section 144 of the Criminal Procedure Code hiring defamatory invective and then claim the benefit of protection of interest.

12. The High Court was justified in dismissing the revision application and not interfering with the judgment an order of the Judicial Commissioner. The appeal fails and is dismissed.

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