

Dr. Dhanwanti Vaswani

Vs

State and another

Spl. Leave Petn. (CRL) No. 461 of 1991

(S. R. Pandian, K. Jayachandra Reddy JJ)

12.09.1991

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. The above petition is directed against the impugned judgment and order dated 25th May, 1990 of the High Court of Delhi in Cr.M. (M) 127/87 : (reported in 1991 Cri LJ 5) partly allowing the petition so far as the second respondent Girish Kakkar is concerned and consequently quashing the criminal proceedings initiated against him by the petitioner, complainant herein, and dismissing the prayer for quashing the criminal proceedings so far as the respondents 3 to 6 before the High Court, who are not the parties to this SLP. Brief facts of the case are thus:-

The petitioner herein filed a complaint against 7 accused persons under S. 500, I.P.C. on the accusation that accused Nos. 2 and 3 made imputations both by signs and visible representations as well as in writing that the petitioner/ complainant is not the wife of D. M. Vaswani, intending to harm and having reasons to believe that such imputations would harm the reputation of the complainant in the eyes and estimation of relatives, friends and associates of the complainant and in the eyes of general public. Similar imputations were also made by the accused Nos. 4 and 5. Accused Nos. 6 and 7 also made similar allegations. Summons were issued to all the accused by the Metropolitan Magistrate on 24th July, 1982. It appears from the impugned judgment that the above order of the Magistrate was challenged by the respondents 3 to 6 before the High Court (presumably accused Nos. 3 to 6) and D. M. Vaswani by filing a petition in Cr.M. (M) 257/ 84. In that petition, Girish Kakkar and Ram Saran (who were petitioners 1 and 2 before the High Court in Suit No. Cr.M. (M) 127/87 and accused Nos. 6 and 7 before the Magistrate were not impleaded as the parties in the said petition which was dismissed. Thereafter, notice under S. 251 of the Code of Criminal Procedure was given on 10-10-1986 to all the accused persons which led to the filing of the petition before the High Court under Sec. 482 of the Code of Criminal Procedure seeking quashing of the criminal proceeding and the order dated 10-10-86 passed by the, Magistrate. The learned Judge of the High Court after examining the matter in detail passed the impugned judgment.

2. We heard the petitioner and perused the judgment and other connected documents. It is seen from the impugned judgment that Ram Saran Kakkar, who was the second petitioner in the petition filed under S. 482, Cr. P.C. and accused No. 7 in the criminal proceeding died during the pendency of the matter before the High Court. According to the petitioner, a prima facie case is made out against all the accused inclusive of the second respondent herein and the learned Magistrate has issued the summons only on being satisfied that a case punishable under Section 500, I.P.C. has been clearly made out against all the accused persons and issued the notice under S. 251, Cr. P.C. on 10-10-86. According to the petitioner, the facts cited in the impugned judgment are contrary to the real facts

and the learned Judge has overlooked and ignored certain salient features and passed the order quashing the proceeding as against the second respondent herein and the impugned judgment is opposed to the principle laid down by this Court in J. P. Sharma v. Vinod Kumar Jain, 1987 (1) CLR 1: (1986) 3 SCC 67: (AIR 1986 SC 833).

3. We have meticulously examined the above contentions of the petitioner. In Sharma's case, this Court after examining the ambit and scope of S. 482 of the Code has held that the question to be determined by the Court at the stage of summoning the accused is whether on the basis of the allegations in the complaint without adding or subtracting anything a cognizable offence is made out and at that stage the truth or otherwise of the allegations does not come for scrutiny.

4. Reliance was also placed on some more decisions, namely (1) Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose, AIR 1963 SC 1430 and (2) Nagawwa v. Veeranna, AIR 1976 SC 1947.

5. In fact, the learned Judge of the High Court has referred to various decisions inclusive of J. P. Sharma's case (AIR 1986 SC 833) and State of West Bengal v. Swapan Kumar, AIR 1982 SC 949 and has come to the conclusion that the facts of the case have not disclosed the offence of defamation against the second respondent even "taking of the allegations in the complaint as correct on its face value".

6. In our considered opinion, impugned order of the High Court quashing the criminal proceedings against the second respondent does not warrant interference even in the light of the principles enunciated in the decisions cited by the petitioner. In the result, the SLP is dismissed.

Petition dismissed.

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