

# SUPREME COURT OF INDIA

Ram Swarup

Vs.

Mohammed Javed Razack

CrI.A.No.1239 of 1999

(B.P.Singh and Arun Kumar JJ.)

23.02.2005

## JUDGMENT

### **B. P. Singh, J.**

1. In this appeal by special leave the appellant has impugned the order of the High Court of Judicature at Andhra Pradesh, Hyderabad in Criminal Petition No. 5314 of 1998 dated 8th June, 1999 whereby the application filed by the appellant under Section 482 of the Code of Criminal Procedure for quashing the order of the XVTH Metropolitan Magistrate, Hyderabad taking cognizance was rejected.

2. We may notice that a complaint was filed by the respondent before the Metropolitan Magistrate complaining that when he had gone to the chambers of the appellant, he had addressed him and his father in abusive language in the presence of several persons.

3. We need not reproduce the words used but it is clear to us on a reading of the complaint that the words used are defamatory per se, particularly, when a vice-president of the Income tax appellate tribunal is said to have addressed those words to a practicing lawyer and to the father of the complainant, who was also a member of the Income tax appellate tribunal.

4. It is argued before us that cognizance taken by the Metropolitan Magistrate of an offence under Sections 499 and 503 IPC is not warranted, and in any event, before taking cognizance the Magistrate ought to have referred the matter to the police under Section 156(3) of the Code of Criminal Procedure for investigation by the police. We are not impressed by the argument. The magistrate after examining the complainant on oath came to the conclusion, prima facie, that an offence was made out. We find no fault with the Metropolitan Magistrate so far as this aspect of the matter is concerned. Moreover, since the Magistrate has exercised his power to take cognizance, the same cannot be faulted on the ground that he had not referred the matter to the police for investigation under Section 156(3) of the Code of Criminal Procedure.

5. It was submitted before that the imputations are mainly against the father of the

complainant and, therefore, a complaint ought to have been made by the father of the complainant. Reference was made to provisions of Section 199 of Cr.P.C. On perusal of the complaint, we find that similar defamatory words were used against the complainant also apart from his father and, therefore, the right of the complainant to move the court and lodge a complaint before the competent magistrate cannot be challenged.

6. In the result, we find no merit in the appeal and the same is accordingly dismissed.