

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH NAHARLAGUN

1. Crl. Petn. 50 (AP)2017

Shri Nyamar Rike, S/o Lt. Jumnya Rike,
Permanent resident of Village Kombo-
Pomte, P.O/P.S Aalo, West Siang
District, Arunachal Pradesh.
Ph. No. 9402410250

.... Petitioner

-Versus-

Shri Kenba Diyum, S/o Shri Poken Diyum,
Permanent resident of Village Kombo Tarsu Mobuk
P.O/P.S Aalo, West Siang District, Arunachal
Pradesh.

..... Respondents

Advocates:

For the petitioners: P.D. Nair
K. Lollen
L. Bam
B. Riba

For the respondents: T. Pertin
U. Bori
K. Sexena
H. K. Jamoh
R. L. Thungen

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 28.02.2018

Date of Judgment: 28.02.2018. 2

JUDGMENT & ORDER (ORAL)

Heard Mr. P. D. Nair, learned counsel for the petitioner and Mr. T. Pertin, learned counsel appearing for the respondent.

1. By this petition under Section 482 Cr.P.C., the petitioner has sought for setting aside the impugned order dated 07.02.2017, passed by the learned Chief Judicial Magistrate, West Siang District at Aalo, in CR Case No. 01/2017 and to quash the said complaint case registered Under Sections 499/500 I.P.C.

2. The case of the petitioner, in a nutshell, is that the petitioner and the respondent, being members of a WhatsApp group, had uploaded certain posts in the group. The respondent had admitted the post uploaded by the petitioner was factually correct. The said fact of the incident published by the petitioner in his post is in the common knowledge of the public in general and the WhatsApp group as well. Therefore, the factum of those posts in the social media are admittedly correct and known to everybody and their mere reiteration did not defame the respondent. However, the respondent has filed the said complaint case in the court of the learned Chief Judicial Magistrate, West Siang District at Aalo, which is registered as Aalo CR Case No. 01/2017 against the petitioner alleging defamation and thereupon, the learned Court below has taken cognizance and issued process against the petitioner.

3. Mr. P. D. Nair, learned counsel for the petitioner, submits with reference to the definition of the term "defamation" given in Section 499 IPC, that the petitioner has committed no offence under Section 500 IPC as the incident which was uploaded by the petitioner in WhatsApp group is based on truth known to the every member of the group and therefore, it cannot conclusively be said that any harm

to the reputation of the respondent was thereby caused, in view of the Exception Nos. 8th & 9th of Section 499 IPC. Mr. Nair has relevantly drawn attention to the ratio of the judgments tendered by the Supreme Court in the case of R. P. Kapur Vs State of Punjab, reported in AIR 1960 SC 866 and State of Haryana Vs Bhajan Lal, reported in 1992 supp. (1) SCC 335 and also in Madhavrao Jiwajirao Scindia and ors Vs Sambhajirao Chandrojirao Angre and ors, reported in (1988) 1 SCC 692, in support of the petitioner's case.

4. Mr. T. Pertin, learned counsel appearing on behalf of the respondent submits that the publication was made intentionally by the petitioner in the social media WhatsApp group and it contained imputation against the respondent which affected the reputation of him in the estimation of the public in general. Mr. Pertin further submits that the mere facts that the petitioner believed that what he published was true by itself cannot sustain his case of good faith under the Exception 9th to Section 499 IPC and as such, on the face of the complaint, and having taken cognizance of the case by the learned Court below, there is, *prima-facie*, case in favour of the respondent and therefore, the same cannot be quashed and set aside invoking the inherent jurisdiction under Section 482 Cr.P.C. Mr. Pertin, referring to the ratio of the judgment tendered by the Supreme Court in Sewakram Sobhani Case, reported in (1981) 3 SCC 208, submits that under Exception 9th to Section 499 and 52 IPC, the onus lies on the accused to prove that he is so protected. According to Mr. Pertin, learned counsel, 'good faith' and 'public good' are questions of fact and therefore, those are matters of evidence.

5. I have gone through the instant case record and the record of Aalo Complaint Case No. 01/2017, as well as the judgments cited by both the sides.

6. The impugned order, dated 07.02.2017, passed by the learned Magistrate is herein below extracted-

"The complainant Shri Kenba Diyum is present along with his Id. Counsel Mr. K. Tase, Advt. And recorded his/complainant's statement and discharged.

Upon going through the averment made by the complainant above on oath U/S 200 of Cr.P.C. 1973 and

going through the material record/annexure annexed with the complaint, I find sufficient incriminating records against the alleged accused Shri Nyamar Rike Lendo to proceed for recording of statement of witness, if any as a part of trial. Accordingly, formal cognizance is taken and this complaint is admitted.

Summons shall be issued to the accused as well as the witness(s) subject to filing of the list of witness by the complainant along with the service copy of the complaint to be served upon the accused U/S 204 of Cr. PC, 1973.

Next date is fixed on 15.03.2017 at 1000 hrs for evidence .

*Sd/- Chief Judicial Magistrate
Chief Judicial Magistrate –cum- Civil Judge
(Senior Division)
West Sinag District Aalo”*

7. On perusal of the complaint case filed by the respondent, whereupon Aalo CR case No. 01/2017 is registered under Sections 499/500 IPC, it appears that the respondent has alleged that by uploading defamatory remarks by the petitioner against him in their WhatsApp group consisting of more than 180 members has maligned his reputation in the estimation of those members and the public in general, as he is a renowned business-man and political personality in the state. The respondent/complainant has contended that the said publication in the electronic media was made intentionally and knowingly that the publication would harm the reputation of the respondent/complainant.

8. It needs to be mentioned that in a case of defamation, it is enough if the complainant establishes that the accused intended or knew or atleast had reason to believe that the defamatory imputation made by him would harm the reputation of the complainant. Such defamatory remarks must be published to make known to others. The definition of 'good faith' in Section 52 IPC presupposes a presumption that the accused acted *bona fide* until the contrary is proved and the accused has to show that he made the imputation not without due care and circumspection and as such, it is a pure question of fact to

be proved by evidence, because, the truth set up as a defence is no defence unless it is for the good of the public.

9. The learned Court below, by passing the impugned order, dated 07.02.2017, has taken cognizance of the case and issued summons to the petitioner/accused, in accordance with law and therefore, it cannot be said that any illegality has been committed thereby warranting setting aside of the said impugned order and quashing of the said complaint case.

10. Consequently, the petition stands dismissed.

11. Send back the LCR along with a copy of this judgment and order.

JUDGE

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