IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: May 3, 2008
Date of decision: 4th July, 2008

CRL.M.C. No. 4870-72 of 2006

RAKESH SHARMA & ORS. ….. Petitioners
Through: Mr. M. Dutta, Advocate.

versus

MAHAVIR SINGHVI .....Respondent
Through: Mr.Raj Kumar Sherawat, Advocate.

&

CRL.M.C. No. 5049-50 of 2006

RAKESH SHARMA & ORS. ….. Petitioners
Through: Mr. M. Dutta, Advocate.

versus

MAHAVIR SINGHVI .....Respondent
Through: Mr.Raj Kumar Sherawat,Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

JUDGMENT

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

Dr. S. Muralidhar, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') arising out of the same set of facts raise similar questions and are therefore being disposed of by this common

judgment. Criminal M.C. No. 4870-72 of 2006 seeks the quashing of Criminal Complaint No. 802/1/2004 titled ***Mahavir Singhvi v. Rakesh Sharma*** pending in the court of the learned Metropolitan Magistrate ('MM') Delhi and all proceedings consequent thereto. Criminal M.C. No. 5049-50 of 2006 seeks the quashing of Criminal Complaint No. 801/2/2004 titled ***Mahavir Singhvi v. Rakesh Sharma*** pending in the court of the learned MM Delhi and all proceedings consequent thereto.

2. Petitioner No. 1 is the Publisher of Hindustan Times, New Delhi. Petitioner No. 2 is its Editor and Petitioner No. 3 its Reporter/ Correspondent. The Respondent was a member of the Indian Foreign Service ('IFS') of the 1999 batch. He was appointed as a Probationer by an order dated 21st September, 1999 issued by the Government of India. On the ground that the Respondent's conduct and performance during the period of the probation was found to be unsatisfactory, the Respondent was discharged from service by an order dated 13th June, 2002.

3. In the Delhi edition of Hindustan Times dated 19th June, 2002 a news item under the heading "IFS probationer sacked after tapes 'prove' misconduct" appeared. The news line was under the authorship of Petitioner No. 3 Saurabh Shukla. Inter alia, the news item stated:

"Sources say this is the first time an IFS

> probationer has been sacked for misconduct. The tapes proved "Mahaveer Singhvi of the 1999 batch, had obnoxious conversation with a woman.
>
> Apparently, the tapes were heard even by the then Foreign Minister Jaswant Singh, who ordered the probationer be immediately sacked.
>
> According to IFS conduct rules, a probationer can be sacked without notice. However, in this case, an inquiry was conducted by the then Additional Secretary (Administration) P.L. Goyal initially. But once the minister passed the order, action against the officer was instant. Though Singhvi was due for a posting abroad; the conversation on the tape, which reportedly contained "abusive and expletive language", was so incriminating, that the extreme action taken against him was inevitable, Sought Block sources say.
>
> They add that the sacking has sent a strong message around the Foreign Officer; misconduct would not be tolerated."

4. Simultaneously, in the Hindi newspaper 'Hindustan' a similar news item appeared in the Delhi edition of 21st July, 2002. The rough translation of the heading and sub heading of the news item reads as under:

> "OFFICER MAKES LIFE HELL FOR A LADY AFTER BEING DENIED MARRIAGE BY HER. AFTER INTERFERENCE BY A CENTRAL MINISTER. THE OFFICER WORKING IN THE MINISTRY OF EXTERNAL AFFAIRS IS SUSPENDED.
>
> Inter alia the translated portion of the news item read:
>
> "According to the information received, from the last three years the lady Anjali

(changed named) is very disturbed. Her problem started the day she met Mahaveer in IAS Coaching Academy. Since Mahaveer was good at studies since beginning, so Anjali befriended him. Mahaveer passed the Union Public Service Commission examination and was selected for Indian Foreign Service but Anjali could not get through. She started her work. One day Mahaveer proposed marriage to her but she denied. Denial of marriage proved to be so much costly for her that her life became hell. Anjali's mother became heart-patient. Brother is disturbed due to threats to her sister. Anjali herself neither could sleep in night nor she can work properly.

This suspended officer of Indian Foreign Service made the life of Anjali such hell that she could not meet even her family members and friends. Every minute listening to abuses on phone became her destiny. Misusing his Official Post, he collected information about the lady. The most surprising thing is that all those who have helped this officer are all senior administrate officer. Anjali was harassed sometimes from the Income-tax department and sometimes from the home Ministry. At last the lady complained to the officials of the MTNL and sought their help for telephone recording. She recorded all the talks and made the then External Affairs Minister listen to it who ordered an enquiry.

After enquiry, the said officer had been suspended but ever after the suspension, Mahaveer continues to harass the lady. Disturbed by her threats, Anjali is expecting help from someone else also. The most intriguing thing is that Mahaveer Singhvi had been a very brilliant student of Rajasthan Board."

5. The Respondent challenged the order passed by the Government of India discharging him from service by filing OA No. 2038 of 2002 before the Central Administrative Tribunal ('CAT'),

Principal Bench, New Delhi. In its reply to the said application the Government of India took the stand that it was a discharge simpliciter and did not contain any stigma and was in accordance with the terms and conditions of the Respondent's appointment as a Probationer. A reference was made to the complaint received from Mrs. Narinder Kaur Chadha alleging that Respondent had been making calls to her daughter using abusive language.

6. The Respondent filed Civil Suits Nos. 275 and 276 of 2004 in this Court seeking damages from the Petitioners herein in the sum of Rs. Five crores alleging that the published news items were defamatory.

7. On 19th July, 2004 the aforementioned two criminal complaints were filed by the Respondent in the Court of the learned ACMM, New Delhi under Section 500, 211 and 120-B of the Indian Penal Code ('IPC'). The Respondent examined himself and six others as witnesses. On 21st March 2006, the learned ACMM after perusing the statements of the witnesses and the documents came to the conclusion that there was prima facie sufficient material to proceed against the accused for the offence under Section 500 IPC of which he, therefore, took cognizance. Summons were issued to the accused to face trial for the said offence.

8. On 21st August, 2006 the present petitions were filed and by an

order dated 23rd August, 2006 the criminal proceedings before the trial court were stayed by this Court.

9. Mr. M. Dutta, the learned counsel appearing for the Petitioners submitted that the two complaints when read as a whole do not even prima facie bring out a case against the Petitioners for the offence under Section 500 IPC. Learned counsel sought to contend that in light of the Second, Third and Ninth Exceptions under Section 499 IPC, the news items could not be considered to be defamatory. In other words, the news items constituted an expression in good faith of an opinion respecting the conduct of a public servant in the discharge of his public functions, or an expression in good faith "respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct" or at best they were imputations made in good faith "for the protection of the interest of the person making it, or of any other persons, or for the public good". Reliance was placed on the judgments in ***Pepsi Food Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar (1998) 4 SCC 112, Prabhu Chawla v. A.U. Sheriff 1995 Crl.L. J. 1922, N.V. Kumaran v. State 1995 Crl. L. J. 1928, O.N. Khajuria v. State of Maharashtra 1981 Crl.L.J. 1729, Harbhajan Singh v. State of Punjab AIR 1961 Punjab 215, N. Ram v. Siby Mathew 2000 Crl. L. J. 3118, Sukra Mahto v. Basdeo Kumar Mahto 1971 (1) SCC 885, Harbhajan Singh vs. State of Punjab, AIR 1986 SC. 97, Manju Mohanka v.***

Smt. Renuka Banerjee 1996 Crl. L. J. 4422 and ***Purushottam Vijay v. State AIR 1961 MP 205***.

10. On behalf of the Respondent it was submitted by Mr. Rajkumar Sehrawat, learned counsel that the reading of the complaints as a whole do bring out a prima facie case against the Petitioners for the offence under Section 500 IPC. Relying on the judgments in ***Maninder Kaur v. Rajinder Singh 1992 SCC (Crl) 522*** and ***Chand Dhawan v. Jawahar Lal AIR 1992 SC (1) 379*** he contended that once the learned MM had applied his mind after perusing the documents and examining the pre-summoning evidence in the form of the complaint's witnesses, it cannot be said that the taking of cognizance and issuing of summons by the learned MM was bad in law. The High Court ought not to interfere with the criminal proceedings under Section 482 CrPC. Referring to the judgments in ***Balraj Khanna v. Moti Ram 1971 SCC (Crl.) 647*** and ***Sewakram Sobhani v. R.K. Karanjia (1981) 3 SCC 208***, it is submitted that at the present stage it is premature to conclude whether the defence of the Petitioners with reference to the exceptions under Section 499 IPC was made out. This was a matter for trial and evidence would have to be led to come to a definitive conclusion. He further submitted that the evidentiary value of the reply by the Union of India ("UOI') to the petition filed by the Respondent before the CAT would in any event have to be decided only at the trial. He submitted that the imputation in the news item was contrary to the stand of UOI that the order dated 13th June,

2002 was a discharge simpliciter and not on account of any misconduct by the Respondent. He referred to the statement made in the counter affidavit by the UOI that the complaint lodged by Mrs. Chadha against the Respondent was not the basis for his discharge from service.

11. It must be mentioned that during the course of the arguments, Mr. Dutta referred to another news item titled "Foreign office in a quandary over probationer's sacking", which appeared in the Delhi edition of Hindustan Times dated August 29th 2002. It was sought to be contended that the subsequent news item acknowledges the confusion within the Ministry of External Affairs whether the decision to terminate the services of the Respondent through a discharge was correct. However, the subsequent news item is not in the form of an apology to the Respondent and does not in any manner constitute a retraction of the earlier news item in respect of which the complaints have been filed.

12. The question which arises for the consideration of this Court is whether at this stage of the proceedings it can be said that complaints in question do not even bring out a prima facie case against the Petitioners for the offence under Section 500 IPC.

13. It may be mentioned here that by judgment dated 4th September 2003, the CAT dismissed OA No. 38 of 2002 thus upholding the order

dated 13th June, 2002 passed by the Government of India discharging the Petitioner from the service. Against the said order the Petitioner has filed Civil Writ Petition No. 8091 of 2003 in this Court. In reply to the said writ petition, the Government of India has taken a stand similar to the one taken before the CAT. Annexed thereto is letter dated 12th January 2004 written by the Deputy Secretary (FSP & Cadre) to the Petitioner clarifying as under:

> "i. That the Ministry of External Affairs does not share any information with the Media about any official action initiated or contemplated against his officers.
>
> ii. Ministry of External Affairs is not the source of information in so far as the news article enclosed to your representation, and
>
> iii. The information sought for, should be addressed to the newspaper who have published the same.

14. On a perusal of the two complaints, this Court is unable to come to the conclusion that not even a prima facie case is made out against the Petitioners for the offence under Section 500 IPC. The question is really whether at this stage, without the case going to trial, the defence of the Petitioners with reference to the exceptions under Section 499 IPC can be adjudicated upon. The learned ACMM has perused the pre-summoning evidence of the complainant and come to the conclusion that a prima facie case has indeed been made out. To this Court, there appears to be no perversity vitiating this conclusion. The veracity of the statements made by these witnesses can at best be tested during the trial through their cross-examination.

15. As evident from ***Sukra Mahto v. Basdeo Kumar Mahto,*** where a defence was raised with reference to the ninth exception to Section 499 IPC, the ingredients of that defence can at best be demonstrated during the course of trial. It must be recalled that the said judgment was given by the Supreme Court at the post conviction stage when the entire evidence was available to it. A contention similar to the one raised by the Petitioners here was rejected by the Supreme Court in ***Sewakram Sobhani v. R.K. Karanjia***. The Supreme Court reversed the judgment of the High Court which had, in exercise of its powers under Section 482 CrPC, quashed the criminal case on the ground that the publication of the news item in that case fell within the ambit of the ninth exception to Section 499 IPC. It was held that the High Court had prejudged the issue and the case ought to have been allowed to proceed to trial. Reference was made by the High Court to the first exception to Section 499 IPC and it was held that the publication of the defamatory news item was for public good. Repelling this contention, Sen, J, in the Supreme Court held (SCC, p 217):

> "The High Court appears to be labouring under an impression that journalists enjoyed some kind of special privilege, and have greater freedom than others to make any imputations or allegations, sufficient to ruin the reputation of a citizen. We hasten to add that journalists are in no better position than any other person. Even the truth of an allegation does not permit a justification under First Exception unless it is proved to be in the public good. The question whether or not it was for public good is a question of

> fact like any other relevant fact in issue. If they make assertions of facts as opposed to comments on them, they must either justify these assertions or, in the limited cases specified in the Ninth Exception, show that the attack on the character of another was for the public good, or that it was made in good faith: per Vivian Bose, J. in *Dr. N.B. Khare v. M.R. Masani*."

16. In his concurring judgment Justice Chinappa Reddy observed as under (SCC, p 219):

> "Several questions arise for consideration if the Ninth Exception is to be applied to the facts of the present case. Was the article published after exercising due care and attention? Did the author of the article satisfy himself that there were reasonable grounds to believe that the imputations made by him were true? Did he act with reasonable care and a sense of responsibility and propriety? Was the article based entirely on the report of the Deputy Secretary or was there any other material before the author? What steps did the author take to satisfy himself about the authenticity of the report and its contents? Were the imputations made rashly without any attempt at verification? Was the imputation the result of any personal ill will or malice which the author bore towards the complainant? Was it the result which the complainant belonged? Was the article merely intended to malign and scandalize the complainant or the party to which he belonged? Was the article intended to expose the rottenness of a jail administration which permitted free sexual approaches between male and female detenus? Was the article intended to expose the despicable character of persons who were passing off as saintly leaders? Was the article merely intended to provide salacious reading material for readers who had a peculiar taste for scandals? There and several other questions may arise for consideration, depending on the stand taken by the accused at the trial and how the complainant proposes to demolish the defence. Surely the stage for deciding these questions has not arrived yet. Answers to these questions at this stage, even before the plea

> of the accused is recorded can only be a priori conclusions. 'Good faith' and 'public good' are, as we said, questions of fact and matters for evidence. So, the trial must go on."

17. In ***Balraj Khanna v. Moti Ram***, an order discharging the accused under Section 202 CrPC for the offence involving Section 500 IPC was reversed by the High Court. It was observed (SCC, p 615):

> "10……..At that stage what the Magistrate has to see is whether there is evidence in support of the allegations made in the complaint and not whether the evidence is sufficient to warrant a conviction. It has been further pointed out that he function of the Magistrate holding the preliminary inquiry is only to be satisfied that a prima facie case is made out against the accused on the materials placed before him by the complainant. Where a prima facie case has been made out, even though much can be said on both sides, the committing Magistrate is bound to commit the accused for trial and the accused does not come into the picture at all till the process is issued.
>
> 11. The question arises whether in an action for defamation under Section 500 IPC, it is necessary that the actual statements containing the words alleged to have been used by the accused must be before the Court or whether it is enough that the statements alleged to have been made are substantially reproduced in the complaint. The further question is whether the complaint in this case is defective in the sense that the actual statements alleged to have been made by the individual accused have not been stated in the complaint."

18. As far as the present case is concerned on an application of the above principles, this Court is of the considered view that a prima

facie a case is indeed made out against the Petitioners for the offence under Section 500 IPC. As observed in ***Balraj Khanna*** (SCC, p 217):

> "the question of the application of the Exceptions to Section 499, I.P.C, does not arise at this stage. Rejection of the complaint by the Magistrate on the second ground mentioned above cannot be sustained. It was also unnecessary for the High Court to have considered this aspect and differed from the trial Magistrate. It is needless to state that the question of applicability of the Exceptions to Section 499, I.P.C, as well as all other defences that may be available to the appellants will have to be gone into during the trial of the complaint."

19. Ultimately each case turns on its own facts and circumstances. On that yardstick, many of the judgments referred to by the learned counsel for the Petitioners can be understood as having been rendered on the facts of the particular case before the Court. In the considered view of this Court, no case has been made out by the Petitioners for interference at this stage. The petitions are dismissed.

S. MURALIDHAR, J

4th July, 2008

sb