

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 364 of 2014
With
CRAN 2/2015 (Old CRAN 2542 of 2015)

Sripati Sarkar & Ors.
Versus
Sri Debangshu Das & Another

For the Petitioner : Mr. Rajdeep Mazumder, Sr. Adv.
Mr. Pinaki Ranjan Chakraborty, Adv.
Ms. Triparna Roy, Adv.
Mr. Soumya Raha, Adv.

Heard on : 25.02.2025

Judgment on : 28.03.2025

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners being the accused persons seeking for quashing of the proceeding being C.R. Case No. 542 of 2013 under Sections 500/506/120B of the Indian Penal Code, 1860 pending before the Learned Judicial Magistrate, 4th Court at Burdwan.

2. The brief facts of the case are essential for the purpose of fair and proper disposal of this case as under:

2a. One Sri Bijoy Kumar Bhattacharya (since deceased) was a great, well-known educationist and freedom fighter was the founder of an educational institution known as 'Siksha Niketan'. The said institution has a branch known as 'Satish Chandra Shilpa Bidyalaya'.

2b. In the year 2000, the complainant/opposite party no. 1 assumed the charge of the Superintendent of the said Bidyalaya. After taking the charge of the said institution, the complainant/opposite party no. 1 started to behave in inappropriate manner which is unbecoming of a Superintendence of the institution. Several people made several allegations against him, *inter alia*, are as follows: -

i. The said person used to compel the students to attend party's meetings by closing the school.

ii. The said person used to stay at students' hostel till late night and to take intoxicating materials with the students.

iii. The said person had appointed a lady known to be of immoral character and living in adultery as the in-charge of the ladies' hostel of the said institution.

iv. The said person used to misappropriate the money/property of the institution obtained from the students' caution money and also misappropriated huge amount of money by selling old properties of the school.

v. The said person had employed some persons in the said school who are known as notorious antisocial of the locality.

2c. The petitioners are local educated persons of the village with significant contribution to the school were deeply concerned by the illegal activities taking place and in effect to protect the students and villagers' interest submitted a confidential complaint by large villagers against the opposite party no. 1 before the Hon'ble Chief Minister, who is the constitutional head of the State Executive in West Bengal.

2d. The said confidential letter of complaint was never made public at large in the locality and the accused/petitioners had no intention to cause any harm to the reputation of the complainant/opposite party no. 1. There was no intent to damage the complainant's character in the eyes of public.

2e. Additionally, petitioners also informed the Hon'ble Minister of Technical Education Department, Government of West Bengal in hope of a proper enquiry. However, the petitioners remain unaware, if any action has been taken against the opposite party no. 1 or not on the basis of said complaint.

2f. Subsequently, the petitioners were served with the notice and copy of the complaint of C.R. Case No. 542 of 2013 filed before the Learned Chief Judicial Magistrate, Burdwan. The said complaint filed under Section 200 of the CrPC was delivered without supporting documents, suggesting that the complainant/opposite party no. 1 treated the same as defamation case. However, the petitioners' intention was not to defame the complainant but to uncover the truth.

2g. After filing of the complaint, the learned Chief Judicial Magistrate, Burdwan by Order No. 1 dated 22.07.2013 took cognizance of the case and transferred it to the Court of the Learned

Judicial Magistrate, 4th Court at Burdwan for enquiry and trial. The Learned Magistrate examined the complainant/opposite party no. 1 on 03.08.2013 and issued process to the accused/petitioners herein and fixed a date on 31.12.2013 for service return and appearance. The petitioners appeared and obtained regular bail from the Learned Trial Court.

2h. The petitioners contended that the learned Chief Judicial Magistrate acted with material irregularity and failed to apply judicious mind in not recognizing that the complainant/opposite party no. 1 filed the complaint case as a desperate attempt to stop the serious enquiry going on against the complainant/opposite party no. 1. As such, the complaint is mala fide, motivated and is an abuse of the process of law and the proceeding is liable to be quashed. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Mazumder, learned senior counsel appearing on behalf of the petitioners along with others submitted that a complaint under Section 200 of the CrPC has been filed by the complainant/opposite party no. 1 is totally a mala fide, motivated and frivolous complaint. The petitioners along with 287 local villagers of the locality submitted a mass petition to the Hon'ble Chief Minister of West Bengal with

their signatures and those persons are the local villagers where the institution is situated. The complaint was made confidentially which was not at the domain of the public. The written complaint was signed by 287 villagers save and except petitioner no. 2 who had not signed the said written complaint but he was also implicated in the court complaint.

4. Despite the said facts, the complainant/opposite party no. 1 filed a frivolous complaint against the present petitioners including the petitioner no. 2 with an allegation that they have committed offence punishable under Sections 500/506/34 of the IPC. From the complaint itself, it appears that upon receipt of the written mass complaint, the Department of Technical Education and Training sent the said mass petition to the Director of Directorate of Industrial Training, Bikash Bhawan for causing enquiry into the said mass petition and/or complaint and, accordingly, enquiry was initiated against the complainant/opposite party no. 1. In such a situation, the petitioners remain in dark regarding the final outcome of the proceeding or enquiry.

5. Allegations made against the petitioners by the complainant fall under the Exception 8 of Section 499 of the IPC. The allegations are baseless, yet without considering these facts, the Learned Trial

Court has issued summons and started proceeding under Sections 500/506/120B of the IPC though no sufficient ingredients were disclosed by the complainant.

6. Learned senior counsel appearing on behalf of the petitioners has placed reliance of two judgments in support of his contention that whatever allegations made against the present petitioners are false, frivolous and mala fide and none of the ingredients fulfilled under Section 500/506/34 of the IPC as such proceeding is liable to be quashed. Those judgments are as under: -

i. M/s. Pataka Industries (Pvt.) Ltd. Vs. The State of West Bengal & Ors.¹;

ii. Shatrughna Prasad Sinha Vs. Rajbhau Surajmal Rathi and Others².

7. It was further submitted that in order to justify a charge under Section 500 of IPC, the allegations must satisfy the requirement of Section 499 of IPC and its accompanying explanation. The complainant must demonstrate that the statements harm their reputation directly or indirectly and lower their moral and intellectual character in the estimation of others.

¹ CRR No. 3277 of 2008 with CRR No. 3278 of 2008 with CRR No. 3279 of 2008 with CRR No. 3280 of 2008 with CRR No. 3283 of 2008

² (1996) 6 SCC 263.

8. It was further submitted that the accusation made by the public to the higher authority is not an act of defamation. Therefore, the entire proceeding is an abuse of process of law. It is liable to be quashed and orders passed therein are also liable to be set aside.

9. On the other hand, none appears on behalf of the opposite party no. 1/complainant at the time of call despite good service.

DISCUSSION AND FINDINGS BY THIS COURT:

10. Heard the arguments and submissions made by the learned senior counsel appearing on behalf of the petitioners and on perusal of the materials available on record, this Court finds that a written mass complaint signed by 287 persons including present petitioners except petitioner no. 2 has been submitted to Hon'ble Chief Minister and the Hon'ble Minister of Technical Education Department, Government of West Bengal pointing out several allegations perpetrated by the complainant/opposite party no.1 as, *inter alia*, as under:-

i. By renting buses, the said person used to compel the students to attend marches of CPM party meetings by closing the school.

ii. The said person used to stay at students' hostel till late night and to take intoxicating materials (i.e. Ganja, alcohol) with the students.

iii. The said person had appointed a lady known to be of immoral character and living in adultery as the in-charge of the ladies' hostel of the said institution.

iv. The said person misappropriated Lakhs of money by selling old machines of the school worth crores of rupees.

v. The said person used to misappropriate the students' caution money.

vi. Disrupting grassroots organizations by engaging in unethical politics among students.

vii. Exploiting education of institution by appointing a prostitute, whom he made the hostel superintendent.

viii. He has no relationship with his wife for a long time due to his dirty behaviour.

ix. One Benim Chatterjee left his wife for dirty behaviour of his wife.

x. He is consistently involved in multiple financial and moral corruptions.

xi. The said person had employed some persons in the said school who are known as notorious antisocial of the locality.

11. Be that as it may, it is evident from the mass complaint that a significant number of individuals had appended their signatures to the aforesaid mass petition against the complainant. However, some

of individuals later gave written declarations stating therein that they did not sign any paper or document in support of any complaint against the said I.T.I. or any student or any teacher or staff thereof or against the complainant/opposite party no.1 and that if anybody has or had filed any complaint allegedly signed by them, it was declared therein that the said signatures appearing in the mass written complaint were forged or their signatures had been obtained falsely instigating them in respect of some other matter.

12. Those written declarations were also annexed with the petition. As such, the local people and all concerned of the said Institution came to learn about the aforesaid false, baseless and malicious allegations made against the complainant/opposite party no.1 by the accused persons named in the mass petition and others.

13. In response to the said mass petition/complaint filed against the complainant, the teachers, students, staff of the said institution along with several local residents addressed a mass petition dated 21.06.2013 to the Hon'ble Minister-in-Charge of the Department of Technical Education and Training, Government of West Bengal refuting the false and baseless allegations made against the complainant. Thereafter, the Director of the Directorate of Industrial Training, Bikash Bhawan initiated an enquiry into the said mass

petition and/or complaint made by the accused persons. However, the allegations made against the complainant in the said mass petition could not be substantiated as the accusers failed to provide any proof in support of their allegations. Therefore, the imputations and/or insinuations made against the complainant by the accused persons in the written mass complaint are not only false and malicious but also the deliberate intent to remove the complainant from his position at the helm of affairs of the said Institution. The ultimate aim of the accused persons was to replace the complainant, but their efforts proved unsuccessful.

14. The complainant asserts that the accused persons have not only to malign the complainant but they have also tarnished the image and/or prestige of the complainant in the estimation and/or in the eyes of all concerned including the teachers, students and staff of the said Institution and the local residents and also the guardians of the students. By doing so, the accused persons have committed an offence of defamation within the meaning of Section 499 of the IPC which is punishable under Section 500 of IPC. They have also committed an offence under Section 503, IPC which is punishable under Section 506(i) of IPC because the accused persons have criminally intimidated the complainant by threatening him with an injury to his reputation with intent to cause alarm to him.

15. Now, to decide the issue whether the mass complaint made against the complainant/opposite party no. 1 would constitute an offence punishable under Sections 500/506/120B of IPC or not?

16. To decide this issue, this Court would like to indicate some relevant Sections for ready reference as under: -

“S. 500. Punishment for defamation. -Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

S. 506: - Punishment for criminal intimidation. - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc
 – And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

S. 34. Acts done by several persons in furtherance of common intention. —When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

S. 499. Defamation- Whoever, by words, either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

*First Exception.—**Imputation of truth which public good requires to be made or published.**—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.*

*Second Exception.—**Public conduct of public servants.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.*

*Third Exception.—**Conduct of any person touching any public question.**—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public*

question, and respecting his character, so far as his character appears in that conduct, and no further.

*Fourth Exception.—***Publication of reports of proceedings of courts.**—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

*Explanation.—*A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

*Fifth Exception.—***Merits of case decided in Court or conduct of witnesses and others concerned.**—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

*Sixth Exception.—***Merits of public performance.**—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his

character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Seventh Exception.—***Censure passed in good faith by person having lawful authority over another.***—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.*

*Eighth Exception.—***Accusation preferred in good faith to authorised person.***—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.*

*Ninth Exception.—***Imputation made in good faith by person for protection of his or other's interests.***—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection*

of the interests of the person making it, or of any other person, or for the public good.

*Tenth Exception.—**Caution intended for good of person to whom conveyed or for public good.**—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”*

17. Upon careful perusal of aforesaid provisions, it reveals Section 499 of the Indian Penal Code defines the term ‘Defamation’. The punishment for Defamation has been laid in Section 500 of Indian Penal Code. In order to make out an offence punishable under Section 500 of the IPC, defamation must be proven by showing that a person through words either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm. The reputation of that person is said to defame subject to some exception mentioned in Section 499 of the Indian Penal Code.

18. In the present case, it is an admitted fact that a mass petition was submitted alleging illegal activities perpetrated by the

complainant/opposite party no. 1 at the educational institution known as 'Siksha Niketan' which has a branch known as 'Satish Chandra Shilpa Vidyalaya'. The mass petition was addressed to the head of the State, the Hon'ble Chief Minister and other relevant officials seeking for an inquiry and appropriate action for the benefits of the students and institution. The allegations against the complainant/opposite party no. 1 are under inquiry and investigation. Moreover, it is essential to establish the existence of mens rea or with intention or knowledge or having a reason to believe on the part of the accused as the case falls under the Exception 8 of the Section 499 of the IPC. According to this Exception, it is not defamation if make an accusation in good faith to a person has lawful authority over that person with respect to the subject matter of accusation.

19. In the present case, not only the petitioners but more than 280 persons signed the mass petition alleging same allegations against the complainant/opposite party no. 1. The petition was submitted to the appropriate authorities in exercise of their legal and natural rights, and it was done confidentially. This mass petition is for the protection of institution or the students or their own rights and interest cannot be construed as malice and imputation of reputation in public or society as such, cannot be said to have been

made with intent to defame the Complainant/opposite party no. 1. The imputations and/or insinuation, which have not harmed his reputation, directly or indirectly lowered his moral and intellectual character in the estimation of others. In the event, the moral or intellectual character of the aggrieved person is not lowered in the estimation of other persons, making of the imputation cannot per se lead to commission of the offence of defamation.

20. In the present case, neither the petition of complaint nor the statement recorded by the Learned Trial Court on solemn affirmation has alleged that complainant's reputation and/or intellectual /moral character of the complainant/opposite party no. 1 was diminished in the eyes of any other person. The opposite party no. 1/complainant did not examine any other person to substantiate even prima facie in the eyes of the said person or others. Opposite party no. 1 has failed to make out a case of defamation as alleged against the petitioners without any materials. In absence of mens rea or with intention or knowledge or having a reason to believe on the part of the petitioners, the offence cannot constitute offence of defamation, thus, the continuance of the impugned proceeding would be a sheer abuse of the process of court.

21. In *M/s. Pataka Industries (Pvt.) Ltd. Vs. The State of West Bengal & Ors.*, the Hon'ble Court held therein that:

“Defamation is a species of which mens rea is the genesis. The complaint of all cases cannot be equated with defamation. The complaint may not have any mens rea but defamation must have it. Any sort of allegation with a touch of imputation against any person per se cannot be categorised as “defamation”. Had it not been so, there cannot be any birth of complaint against anybody. Every complaint is more or less having a touch of imputation. There is a marked difference between ‘defamation per se’ and ‘implied defamation’, which is prima facie not actionable. The former manifests only defamation while the latter is an allegation mixed with imputation. The allegation necessarily includes imputation to some extent while the vice versa is not correct.

Every citizen has a right to freedom of speech subject to restriction as covered under Section 19(1)(a) of the Constitution of India. Ventilation of grievances to superior controlling authority against any Officer in respect of an interest inversely suffered by a person does not fall within the ambit of Section 499 IPC to warrant punishment under Section 500 IPC.”

22. The Mass Complaint, filed against the complainant/opposite party no. 1 by 287 individuals, is privileged in nature as it pertains to a matter of public interest outweighing the right to reputation. This privilege can be classified in two types; Absolute and Qualified. Absolute privilege is when the statements made regardless of how harsh derogatory, they may be are protected because they relates to a matter of public concern as in the case of the mass complaint sent to the higher authority alleging some allegations against the Complainant/opposite party no. 1 without circulating it to public. Qualified privilege is when anyone makes any statement in a good intention and without the intent to defame. In such cases, the statement does not constitute offence punishable under Section 500 of the Indian Penal Code. Moreover, the ingredients required for an offence under Section 506 of the IPC are also not fulfilled or found either in the complaint filed under Section 200 of the CrPC or in the statement recorded in Solemn Affirmation. Therefore, allowing such defamation complaints to proceed would amount to an abuse of process of law.

23. In view of the abovementioned facts and circumstances, **CRR No. 364 of 2014** is hereby **allowed**. **CRAN 2/2015 (Old CRAN 2542/2015)** and all connected applications, if any, are also, thus, disposed of.

24. Proceeding being C.R. Case No. 542 of 2013 under Sections 500/506/120B of the Indian Penal Code, 1860 pending before the Learned Judicial Magistrate, 4th Court at Burdwan is hereby quashed insofar as to the petitioners are concerned.

25. Let a copy of this Judgment be sent to the Learned Trial Court for information.

26. Interim order, if any, stands vacated.

27. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)