

SHATRUGHNA PRASAD SINHA

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v.

RAJBHAU SURAJMAL RATHI AND ORS.

SEPTEMBER 10, 1996

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

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*Indian Penal Code, 1860 :*

*Sections 295-A, 499, 500 r/w. 34—Defamation—Interview to a film magazine—Appellant making statements against a particular community—Alleged to be deliberate, malicious and outraging the religious feelings of that community—Complaint—Magistrate taking cognizance and issuing notice to appellant—Challenge before High Court which held that no offence under S.295A made out but the allegations constitute prima facie offence triable by Magistrate under S.500—On appeal held the allegations do not contain essential facts constituting offence under S.295A—The complaint filed before the Judicial Magistrate Pune does not contain allegations to constitute an offence of defamation punishable under S.500—Hence that complaint quashed—Complaint filed before the Judicial Magistrate Nasik—High Court was right in refusing to quash the complaint under S.500.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1696 of 1996.

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From the Judgment and Order dated 21.1.91 of the Bombay High Court in CrI. W.P. No. 1545 of 1990.

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Indrajeet Roy, P.N. Misra for the Appellant.

Sushil Kumar Jain, (A.C.) and Ms. Pratibha Jain for the Respondents.

The following Order of the Court was delivered :

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Leave granted.

Though the respondents were duly served and on an occasion appeared in person, subsequently they did not appear. Resultantly, we requested Shri Sushil Kumar Jain, Advocate of the Bar to assist the Court

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A as *amicus curiae*. We place on record our deep appreciation for the valuable assistance rendered by him.

B This appeal by special leave arises from the judgment and order of the High Court of Bombay made on January 21, 1991 in Crl. Writ Petition No. 1545 of 1990. The facts relevant for the purpose of this case and we proceed on the basis thereof are that allegations were made in the complaint filed by the respondents in the Courts of Magistrate at Pune and Nasik; we deal with those allegations as they constitute offence for which the judicial Magistrate, Ist Class, could take cognizance. In paragraph 2 it is narrated that the complainant-respondent was a social activist belonging to the Marwari Community, and that the *respondent- second accused* respectively is the editor and publisher of Stardust, Film Magazine. An interview she had with the appellant in June 1989, came to be published at page 82 of that magazine. During the course of the interview, the appellant was alleged to have made statements outraging the religious feeling of the Marwari community and also defamed the members of Marwari community as a class. In the complaint filed at Pune, what he has stated is as under :

E "The Complainant submits that in June 89 the Accused No. 1 has with deliberate and malicious intention of outraging the religious feelings of Marwari Community made the said statement. By the statement of the Accused No.1, the structure of National Integrity is being paralysed. The feelings of Marwari Community also being hurt by the Statement made by the Accused No. 1. The Statement of Accused No. 1 goes to show that Marwari Community is not a Class belonging to India and they have not faith and love towards India, their mother land. It is implied from the said statement that Marwaris are traitors and enemies of India. So also accused No. 2 has also printed and published the said statement in 'Star Dust' Magazine of 1989 with deliberate and malicious intention of outraging the religious feelings of Marwari Community."

G The rest of the paragraphs are only the consequential narration of the allegations in paragraph 3. According to the respondents, these allegations constitute offence punishable under Section 295-A and Section 500 read with Section 34 of the Indian Penal Code (IPC, for short). The H Magistrate had taken cognizance and issued notice to the appellant for

appearance. When it was challenged in the writ petition, the learned single Judge of the High Court had held that on a reading of the complaint as a whole, no offence under Section 295A could be made out; however, the allegations constitute *prima facie* offence triable by the Magistrate under Section 500, IPC. Thus, these appeals by special leave. A

Section 295A of the IPC envisages the essential ingredients of the punishment and provides that whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. The quoted para does not contain essential facts constituting the offence. B C

Section 200 of the Code of Criminal Procedure, 1908 (Cr. P.C., for short) in Chapter XV provides as under : D

"A magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses." E

The High Court may take cognizance of any offence under Section 190(1)(a) upon receiving a complaint containing facts which constitute such offence. It is a matter of discretion. Criminal proceedings are initiated by a Magistrate taking cognizance of the offence. Taking cognizance of the offence would include the intention of the Magistrate of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purpose. F G

It would thus be seen that when a private complaint is made to the Magistrate, before the Magistrate takes cognizance of the offence on the complaint so as to take the other steps, the complaint shall contain all the necessary facts constituting the offence for which the complaint was laid, so that the Magistrate can proceed further in taking further steps after H

A cognizance of the offence is taken by issuing the process etc. It is seen from reading of para 3 of the complaint, which is the foundation to taking cognizance of the offence, that the complainant-respondent has concentrated mainly on the offence punishable under Section 295A of IPC; the High Court had quashed the said complaint and no appeal has been filed in this Court.

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The next question is : whether the learned Judge was right in holding that the complaint discloses offence punishable under Section 500 IPC? Section 499 defines 'defamation' thus :

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"Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any persons 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".

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Explanation 2 to the said section envisages that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

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Explanation 4 provides that 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.

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A reading of the complaint does not contain any of the allegations constituting the offence of defamation punishable under Section 500, IPC. The contents of the magazine are alleged to be defamatory against the Marwari Community, lowering them in the estimate of the public or their reputations is lowered in the society. But we do not find any allegation made in the complaint. Accordingly, we hold that the complaint filed in the Court of the Judicial Magistrate, First Class in Court No. 4 at Pune does not contain any of the allegations so as to constitute the offence of defamation defined in Section 499 and punishable under Section 500.

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H Consequently, the Magistrate was not justified in issuing the process

against the appellant. The complaint is accordingly quashed.

As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, Ist Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned senior counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate *prima facie* came to the conclusion that the allegations might come within the definition of 'defamation' under Section 499 IPC and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either defences open to be taken or other steps of framing a charge at the trial at whatever stage known to law. *Prima facie* we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, Ist Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500, IPC.

The appeal is accordingly allowed in part.

G.N.

Appeal allowed in part.