

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 4241 of 2018

WITH

I.A. No. 4948/2019

Rahul Gandhi Petitioner

- Versus -

1. The State of Jharkhand

2. Navin Jha Opposite Parties

CORAM: - HON'BLE MR. JUSTICE AMBUJ NATH

For the Petitioner : M/s. Kaushik Sarkhel, Advocate
For the O.P. No.2 : M/s. Ajit Kumar, Sr. Advocate
: M/s. V. K. Sahu, Advocate
: M/s. Kumar Harsh, Advocate
: M/s. Abhishek Abhi, Advocate
: M/s. Surya Prakash, Advocate
: M/s. Suraj Kishore Prasad, Advocate

21/16.02.2024 Heard the parties.

The petitioner has challenged the legality, correctness and propriety of the order dated 15.09.2018, passed by Sri Navneet Kumar, learned Judicial Commissioner, Ranchi (As his lordship was then) in Criminal Revision No. 281 of 2018, whereby and wherein, the learned Judicial Commissioner, Ranchi set aside the order dated 07.07.2018 in connection with C.P. No. 1698/2018, passed by Sri Ajay Kumar Guria, learned S.D.J.M., Ranchi, who had dismissed the complaint petition filed by the opposite party no. 2 under section 203 of the Cr.P.C. The petitioner has further challenged the order dated 28.11.2018, passed by learned S.D.J.M., Ranchi whereby and wherein the learned S.D.J.M., Ranchi after the observation made in Cr. Rev No. 281/2018 had found the prima facie case to be true against the petitioner under section 500 of the Indian Penal Code and directed for issuance of process.

The complainant/ O.P. No. 2 had filed a complaint case against the present petitioner Sri Rahul Gandhi, alleging therein that in the AICC Plenary Sessions dated 18.03.2018, Sri Rahul Gandhi

made a speech against Bhartiya Janata Party stating therein that: -

“The people of this country will accept a lying Bhartiya Janata Party leadership drunk with power because they know that, what the Bhartiya Janata Party is designed for”. Further he went on to say:

“They will, accept a man accused of murder as the President of Bhartiya Janata Party but the people will never accept the same in the Congress Party”

Being aggrieved by the aforementioned statement, the Opposite Party No. 2, who has claimed to be a member of Bhartiya Janata Party, has filed the present complaint case. It has been stated in the complaint petition that the statement made by Mr. Rahul Gandhi was not only false rather, it was an insult to all workers, supporters and the leaders who have been working selflessly for the Bhartiya Janata Party. The opposite party no. 2 being hurt and anguished by such statements made by Mr. Rahul Gandhi, filed this complaint petition with a prayer to conduct an enquiry and after such inquiry to issue process against Mr. Rahul Gandhi under sections 499/ 500 of the Indian Penal Code and to proceed with the trial of the case. The opposite party no. 2 has also prayed for an adequate compensation of Rs.10 crores along with cost.

Sri Ajay Kumar Guria, learned S.D.J.M, Ranchi dismissed the complaint of the opposite party no. 2 by order dated 07.07.2018 under section 203 of Cr.P.C. The opposite party no. 2 being aggrieved by the order of the rejection of the complaint filed Criminal Revision No. 281 of 2018 before the learned Judicial Commissioner, Ranchi. The Judicial Commissioner, Ranchi vide order dated 15.09.2018, set aside the order dismissing the complaint petition and observed that:-

“A Prima facie reading of the speech indicates that the reference to the Bhartiya Janata Party and members has been abundantly and repeatedly made. It is to be seen whether these references amount to defamation or not. It is not to be seen whether they are incidental or not, because a portion may amount to an

imputation made to harm one's reputation while also being indicated to the entire speech at the same time".

The learned Judicial Commissioner, Ranchi by setting aside the order dated 07.07.2018, passed by Sri A. K. Guria, learned S.D.J.M., Ranchi, dismissing the complaint of the opposite party no. 2 remanded the matter back to the learned S.D.J.M., Ranchi with a direction to re appreciate the evidence available on the record and pass an order afresh on the point of determining prima facie material to proceed in the matter.

The learned S.D.J.M, on the basis of the direction given in Criminal Revision No. 281 of 2018, passed a fresh order dated 28.11.2018 and came to a finding that a prima facie case was made out against Sri Rahul Gandhi under section 500 of the Indian Penal Code and issued process for his appearance.

Mr. Kaushik Sarkhel, learned counsel appearing on behalf of the petitioner submitted that the opposite party no. 2 has no locus standi to file this case.

Learned lawyer appearing on behalf of the petitioner has further submitted that provision under section 199 Cr.P.C. has not been complied with.

Learned lawyer for the petitioner also submitted that the learned Revisional Court had overlooked the mandate of law as enshrined in Section 398 of Cr.P.C. as it had directed the subordinate magistrate to make further enquiry into the complaint.

Mr. Ajit Kumar, learned Senior Counsel appearing on behalf of the opposite party no. 2, submitted that the present application was filed after the second order was passed by which the learned S.D.J.M., Ranchi has found the prima facie case to be true under Section 500 of the Indian Penal Code and issued processes for appearance of the petitioner, but that order has not been challenged in this application. The petitioner has challenged the order passed by the learned Judicial Commissioner, Ranchi in Cr. Revision No. 281/2018. Thus, there was suppression of this fact in this Criminal Miscellaneous Petition. Later on, Interlocutory

Application was filed on behalf of the petitioner and the order passed under section 204 Cr.P.C. was brought on the record with a further prayer to make an amendment in the order passed in Cr. M.P. No. 4241 of 2018 for setting aside this order as well.

Mr. Kaushik Sarkhel appearing on behalf of the petitioner at this instance submitted that the order dated 28.11.2018 was passed by learned S.D.J.M, Ranchi under section 204 Cr.P.C. At the time of filing of this criminal miscellaneous petition, petitioner was not aware that the order dated 28.11.2018 has been passed under section 204 Cr.P.C. Only when the summon was issued, then he came to know the fact that an order under section 204 Cr.P.C. had been filed and subsequently an amendment petition was filed by virtue of filing an interlocutory application.

It was further submitted that since the petitioner was residing outside the territorial jurisdiction of the inquiring magistrate, the provision of section 202 Cr.P.C. had not been complied with.

Section 202 of the Cr.P.C. mandates that a magistrate on the receipt of complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192 Cr.P.C. may if he thinks fit (and shall, in case where the accused is residing at a place beyond the area in which he exercises his jurisdiction) postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other persons as he thinks fit.

In the present case the process under section 204 Cr.P.C. has been issued by Subordinate Judicial Magistrate, Ranchi after conducting an enquiry. Accordingly, it is apparent that the provision of section 202 Cr.P.C., with regards to the fact that the petitioner was residing outside the territorial jurisdiction of the Subordinate Judicial Magistrate, Ranchi, has been fully complied with.

Reliance has been placed upon the following decisions reported in:-

(i) AIR 1938 Calcutta 22, wherein it has been held that, the learned Sessions Judge cannot direct the magistrate to issue summons to the accused in appellate or revisional jurisdiction where complaint was dismissed under section 203 Cr.P.C.

In the present case, from the perusal of the order passed by the learned Judicial Commissioner, Ranchi in Cr. Rev. No. 281/2018, it is apparent that he has not directed the subordinate magistrate Ranchi to issue process under section 204 Cr.P.C. rather he has directed the inquiring magistrate to re appreciate the evidence available on the record and pass an order afresh.

(ii) AIR 1932 Lahore 362, Wherein it was held that a Sessions Judge cannot direct the magistrate to frame charge under particular section.

The ratio of this case is not applicable in the present case.

(iii) (2010) 5 SCC 600, Wherein it was held that any statement not directed against any individual or even a company or association for collection of persons will not constitute prima facie case of defamation.

In the present case the petitioner has specifically taken the name of Bhartiya Janata Party and has imputed against its leadership.

(iv) (1972) 2 SCC 680, Wherein it was held that:- Where Explanation-2 of Section 499 of the Indian Penal Code is resorted to, the identity of the company or the association or the collection of persons must be established so as to be relatable to the defamatory words or imputations.

The present case will be examined in the light of the ratio laid down in this decision.

(v) MANU/DE/0365/2021, the ratio of this case leads to the locus of a complainant in filing a case. It has been held that the complainant has to show as to how he is aggrieved within the definition of section 199 (1) of Cr.P.C.

(vi) MANU/WB/ 0927/2015, in the present case it

was held that in an offence of defamation against specified office holders cognizance cannot be taken without previous sanction of the State Government.

(vii) MANU/ MH/ 0730/2002, the present case also deals with the locus standi of the complainant in filing a case under section 499/500 of the Indian Penal Code. It has been held that the complainant has to show as to how he is aggrieved within the definition of section 199 (1) of Cr.P.C.

(viii) MANU/ BH/ 0112/1975, in the present case it was held that the cognizance shall be taken against the person who has the reason to believe that such imputation will harm the reputation of such person.

In my opinion whether there was any intention on the part of the petitioner to harm the reputation of the Bhartiya Janata Party cannot be decided during the stage of enquiry. It has to be decided during the stage of trial.

(ix) MANU/ HY/0390/ 2018, it was held that where a criminal proceeding is manifestly malafide it must be set aside.

Learned lawyer for O.P. No. 2 has drawn the attention of the court towards the provision of Section 499 and Explanation-2 of the I.P.C., which reads as follows:-

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

It was submitted that the opposite party no. 2 being a member of Bhartiya Janata Party was aggrieved by the statement made by Mr. Rahul Gandhi and as such he had the locus to file the present complaint case and there is full compliance of Section 199

Cr.P.C.

On specific query made by this court from learned lawyer appearing for the petitioner whether Mr. Rahul Gandhi has made the aforesaid statement in the AICC Plenary Sessions dated 18.03.2018, the learned counsel appearing on behalf of the petitioner does not dispute this fact. It further appears from the perusal of the record that witness Pawan Kumar Sahu as E.W.1 in his statement recorded during enquiry has stated that he is a member of the Bhartiya Janata Party for the last 25 years and Mr. Rahul Gandhi has made the aforesaid statement which is the subject matter of the complaint case. It has also been mentioned in the complaint petition that the aforesaid portion of the speech made by Sri Rahul Gandhi was reported in several newspaper which the opposite party no. 2 has personally gone through. The speech is also available at <https://www.Youtube.com/watch?v=8RCirts0I4Y>.

Mr. Rahul Gandhi has made the statement on 18th March, 2018 in AICC Plenary Sessions stating that:-

“The people of this country will accept a lying Bhartiya Janata Party leadership drunk with power because they know that, what the Bhartiya Janata Party is designed for”. Further he went on to say:

“They will, accept a man accused of murder as the President of Bhartiya Janata Party but the people will never accept the same in the Congress Party”

Now, the question is, whether the aforesaid statement will give rise to:-

- (i) Cause of action to the opposite party no, 2 to file the present complaint case as it was not made against him in personal capacity.

And

- (ii) Whether the aforesaid statement will prima facie amount to defamation.

Opposite party No. 2 is a member of Bhartiya Janata Party. It has been mentioned that he is a member of Bhartiya Janata

Party for the last 25 years. Learned lawyer for the petitioner has argued that no defamatory statement was made against opposite party no. 2 and as such the opposite party no. 2 does not come within the expression of person aggrieved, as defined under section 199 (1) of the Cr.P.C.

It was further submitted that the expression “person aggrieved” will mean that a person who is wrongly deprived of an entitlement which they are legally entitled to receive and it does not include any kind of disappointment and personal inconvenience. “Person aggrieved” means a person who is injured or one who is adversely affected in a legal sense.

The speech made by Mr. Rahul Gandhi has imputed the Bhartiya Janata Party leadership to be liars who are drunk with power and that the Bhartiya Janata Party workers will accept a person accused of murder as the president of Bhartiya Janata Party but people will never accept the same in the congress party.

Prima facie this statement points out that Mr. Rahul Gandhi has imputed that the Bhartiya Janata Party leadership was drunk with power and was composed of liars. It further means that the party workers of Bhartiya Janata Party will accept such person/persons as their leader. This imputation is prima facie defamatory in nature.

A plain reading of Section 499 read with Explanation-2 of the Indian Penal Code reflects that whoever by words spoken makes any imputation concerning any person intending to harm the reputation of such person is said to defame that person. Explanation-2 provides that it may amount to defamation if an imputation is made against a company, or an association or collection of persons as such.

Thus, it is evident that the expression “any person” in Section 499 of the Indian Penal Code includes a company or association or a collection of a persons and Bhartiya Janata Party is a prominent political party which is well identifiable and will come within the meaning of Explanation-2 of Section 499 of the Indian

Penal Code.

Opposite party no. 2 being a party worker of Bhartiya Janata Party in my view, has locus standi to file the aforesaid complaint case under Sections 499/500 of the Indian Penal Code.

It appears that prima facie case under sections 499/500 of the Indian Penal Code is made out against the petitioner Mr. Rahul Gandhi for imputing the Bhartiya Janata Party leadership as liars and drunk with power.

Learned lawyer appearing on behalf of the petitioner has submitted that the learned Revisional Court had directed the learned S.D.J.M. to make further enquiry into the complaint. Thus, by making this observation the learned Judicial Commissioner, Ranchi has overlooked the mandate of law as enshrined under section 398 Cr.P.C.

On plain reading of the provision of Section 398 Cr.P.C., it transpires that on examining any record under section 397 of the Cr.P.C. or otherwise, the High Court or Sessions Judge, may direct any magistrate sub-ordinate to him to make further enquiry into the complaint which has been dismissed under section 203 of Cr.P.C. However, proviso to this section provides that no court shall make any direction under this section or enquiry into the case of any person who has been discharged unless such person of showing cause why such a direction should not be made.

From the perusal of the record, it appears that the learned Judicial Commissioner Ranchi has not directed the Subordinate Magistrate, Ranchi to conduct further enquiry in this case. The learned Judicial Commissioner, Ranchi has only directed the Subordinate Judicial Magistrate, Ranchi to re appreciate the evidence available on the record and to pass an order afresh on the point of determining prima facie material to proceed in the matter. It does not appear that Mr. Rahul Gandhi was discharged after making his appearance or otherwise from the case. Learned S.D.J.M., Ranchi at the very first instance had dismissed the complaint case under section 203 of the Cr.P.C. and as such proviso of section 398

of the Cr.P.C. will not be applicable. However, be that as it may, from the perusal of the case records of complaint case no. 1698/2018, it transpires that no further enquiry was made by the learned Magistrate and just after the receipt of the order passed in Criminal Revision No. 281 of 2018, the learned Judicial Magistrate passed fresh order finding prima facie case to be true under section 500 of the Indian Penal Code and thereby directed for issuance of process under section 204 Cr.P.C.

In view of the aforesaid facts; I do not find any illegality in the order dated 15.09.2018, passed by learned Judicial Commissioner, Ranchi in Criminal Revision No. 281 of 2018 and order dated 28.11.2018, passed by learned S.D.J.M., Ranchi, finding the prima facie case to be true against Mr. Rahul Gandhi under Section 500 of the Indian Penal Code.

Accordingly, this Cr.M.P. is dismissed.

The aforesaid I.A. stands disposed of.

(Ambuj Nath, J.)