

Complaint Case No. 11/2022
CNR No.DLCT12-000122-2022
Ravinder Kumar v. Durgesh Pathak & Anrs.

19.01.2023

Present:- Complainant is absent today.

Sh. Deepanshu Badiwal, Ld. Counsel for complainant.

1. The case at hand pertains to the offence of defamation under Section 499/500 IPC wherein Complainant Sh. Ravinder Kumar, elected Councilor from Bhartiya Janata Party, has approached the court with a complaint under Section 200 Cr.P.C., against the two persons namely Sh. Durgesh Pathak, presently, sitting MLA from Aam Aadmi Party and Sh. Vikash Goel, sitting Councilor in Delhi from Aam Aadmi Party, stating that they have published defamatory statements which have lowered his moral and intellectual character in the eyes of third persons.

Pre-summoning evidence has already been tendered by the Complainant in support of his complaint. **Vide this Order, the issue of summoning of the proposed Accused persons shall be decided.**

2. Succinctly put, the case brought forward by the Complainant is as follows :-

2.1 Complainant alleges that in order to gain mileage in the then upcoming elections of Municipal Corporation of Delhi and in order to tarnish the image of Bhartiya Janata Party and its councilors, the proposed Accused persons, who belonged to the Aam Aadmi Party, started spreading rumors and making false and defamatory statements against Bhartiya Janata Party, its leaders and councilors.

2.2 It is stated that the alleged accused persons in conspiracy with each other held a Press Conference on 01.11.2020 on the issue of collection of property tax by the North Delhi Municipal Corporation and leveled false and defamatory allegations against the Municipal Councilors of Bhartiya Janata Party in the following manner :-

a) Accused Durgesh Pathak alleged that Bhartiya Janata Party has turned the Municipal Corporation of Delhi into a centre/factory of corruption because of which salaries of doctors, nurses, teachers and employees of Municipal Corporation of Delhi cannot be released for want of funds.

b) Accused Durgesh Pathak also alleged that the North Delhi Municipal Corporation identified 12 lakh properties for collection of property tax and has issued Universal Property Identification Code to them and if tax is collected from the said properties without any corruption then the same will be approximately Rs. 2100 Crores, however, data shows that property tax has been collected only from 4 lakh properties i.e. around Rs. 700 crores. As per the Complainant, Accused Durgesh Pathak made a false imputation that the remaining approximate amount of Rs. 1400 Core has been illegally collected as property tax from approximately 8 lakh houses and has been distributed amongst the councilors of Bhartiya Janata Party. Further, it is stated that Accused Durgesh Pathak alleged that every year approximately Rs. 1400 crore is usurped by Bhartiya Janata Party leaders and officers.

c) With respect to alleged Vikash Goel, it is stated that he made false imputations that Bhartiya Janata Party Leaders through Property Tax Inspectors get notice issued on various

properties and then summon the owners in their offices; allegedly thereafter negotiations are held with the owners and after taking money from them in cash notices are cancelled.

d) Further, it is stated that Vikash Goel has also averred that Bhartiya Janata Party leaders have fixed monthly bribes from big property owners and builders.

2.3 Complainant submits that the aforesaid allegations and imputations made by the proposed Accused persons in their Press Conference were also published on 02.11.2020 in daily newspapers namely Times of India (Ex.CW1/1) and Dainik Jagran (Ex.CW1/2). It is stated that the press conference held by them was streamed live on the web page of Aam Aadmi Party and the complete video is still available on official YouTube Channel of the Aam Aadmi Party. (Pen Drive containing the video footage is Ex. CW1/3, Certificate of the Complainant u/s 65B of the Indian Evidence Act is Ex.CW1/4 and Transcript of the Press conference is Ex.CW1/5).

2.4 The grievance of the Complainant arose on 03.11.2020 in the evening, when one Mr. Rajiv Agarwal and Mr. Rakesh Kumar Gupta met the Complainant in his office and told him that *“Ravinder Ji kya isiliye hum log aapke saath hain? Hum log aapke party ko ek desh bhakton ki party maante hain aur aapko imandaar aur ek sache samajsewak sochke aapke saath khade hote hain aur hum log abhi kya sunn rehe hain... Ae dekhiye newspaper mein kya nikla hai ki Aam Admi party ke Durgesh Pathak and Vikas Goel kah rahe hain ki BJP parshado ne itna bada ghotala kiya hai”*. Allegedly, the said persons showed the newspaper to the Complainant and told him that they always thought that the Complainant and his party are righteous but after

seeing the press conference and reading the newspapers they have no trust on the Complainant.

2.5 Complainant further submits that the imputations made by the proposed Accused persons are utter falsehood and nothing but a self-made propaganda to defame the Complainant and his party in order to win the then upcoming corporation elections and are neither true nor were required to be made in public good.

2.6 Complainant alleges that the proposed Accused persons with the dishonest intention to lower the moral and intellectual character of the Complainant and his party/colleagues in the eyes of general public have made defamatory statements which were widely published in print and electronic media resulting in the commission of offence of defamation as covered under Section 500 of IPC.

2.7 Referring to the provision pertaining to defamation of a class of persons as covered under Section 499 IPC, Complainant has stated that if a class of persons is defamed, any individual member of the class can file a complaint of defamation. Relating the said provision to the present case, Complainant submits that in the present case defamatory statements have been made pertaining to an identifiable and determinate body i.e. Bhartiya Janata Party Councilors and the Complainant is very well covered within a class of persons as he himself is a Bhartiya Janata Party Councilor from North Delhi Municipal Corporation.

2.8 As per the Complainant, he had sent a legal notice dated 05.11.2020 (Ex.CW1/6) to the proposed Accused persons calling them to tender an unconditional apology in writing, which was duly served upon the Accused Durgesh Pathak but he neither tendered any apology nor replied to the same. With respect to the

Accused Vikash Goel, it is stated that the notice sent to him was received back unclaimed.(Post Office reports are Ex.CW1/7)

In this background, Complainant has prayed for summoning of the proposed Accused persons namely Durgesh Pathak and Vikash Goel and conducting trial in the matter and punishing them for the offence of defamation under Section 500 of IPC.

3. In his pre-summoning evidence, Complainant brought only two witnesses to support his case i.e. CW-1 Complainant himself and CW-2 Sh. Rajiv Aggarwal.

During his testimony as CW-1 Complainant reiterated the allegations made by him in his complaint and exhibited the documents as already mentioned above. CW-2 Sh. Rajiv Aggarwal also supported the case of the Complainant and stated that he along with Late Sh. Rakesh Kumar had met the Complainant on 03.11.2020 in his office and had questioned the credentials of the Complainant on the basis of the newspaper reports pertaining to the Press Conference held by the alleged persons namely Durgesh Pathak and Vikash Goel.

Apart from these two witnesses no other witness was examined by the Complainant at this stage and accordingly the matter was taken up for arguments on the point of summoning.

4. Ld. Counsel for the Complainant argued in detail on the issue of summoning of the Accused persons giving the background and facts of the case as well as the legal aspects involved in the case at this stage.

4.1 Ld. Counsel for the Complainant stated before the Court that property tax is one of the sources of income of the Municipal Corporation of Delhi. He added that the then North Delhi

Municipal Corporation had powers to levy and collect property tax with respect to the properties in its own territorial jurisdiction.

Ld. Counsel further stated that no councilor has any active role in the Municipal Corporation of Delhi and they only check the Government which is running the Municipal Corporation of Delhi. Further, it was stated that there is a specific procedure prescribed for tax collection, which involves identification of the property on which property tax is to be levied, giving a unique identification code to each property and thereafter, Municipal Corporation of Delhi officials assess, levy, collect and deposit property tax.

It was strongly pressed by Ld. Counsel for the Complainant that none of the corporators have any role in collection or assessment or levy of property tax.

4.2. Coming thereafter to the facts of the case at hand, Ld. Counsel for the Complainant stated that there is a tussle with respect to revenue sharing between the Bhartiya Janata Party and the Aam Aadmi Party. It was stated that the Bhartiya Janata Party Councilors were demanding their due funds from the Delhi government, run by the Aam Aadmi Party, which were not being released and resultantly, BJP councilors were sitting on protest. It was further stated that in order to divert the issue of non-payment of revenue by the Aam Aadmi Party to Bhartiya Janata Party councilors, Aam Aadmi Party leaders namely Durgesh Pathak and Vikash Goel started leveling false allegations against the Bhartiya Janata Party Councilors pertaining to tax collection. Ld. Counsel for the Complainant vehemently put forward that allegations made by the Accused persons against the Bhartiya

Janata Party Councilors, which includes the Complainant, are politically motivated for enhancement of their vote share as at the time of making such allegations, the elections of the Municipal Corporation of Delhi were approaching.

4.3 Reliance was placed by Ld. Counsel for the Complainant on the judgment titled as *Bikramjit Ahluwalia & Ors. vs Simran Ahluwalia* [MANU/DE/1389/2015] to emphasize the meaning and constituents of defamation and show how *vis-a-vis* the present case, the same are prima-facie fulfilled so much so as to merit taking of cognizance and summoning of the Accused persons. Following paragraphs of the judgment were relied upon by the Ld. Counsel for the Complainant :-

16. To constitute defamation under Section 499 IPC, there must be an imputation and such imputation must have been made with intention of harming or with a knowledge or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the Accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the Complainant, irrespective of whether the Complainant actually suffered directly or indirectly from the imputation alleged.

17. Ingredients of Section 499 IPC were discussed by this Court in „Standard Chartered Bank v. Vinay Kumar Sood“, 2010 CrLJ 1277 wherein it was observed as under:-

"7. For an offence of defamation as defined under Section 499 IPC, three essential ingredients are required to be fulfilled:-

(i) Making or publishing any imputation concerning any person;

(ii) Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations.

(iii) The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned."

Ld. Counsel for the Complainant pointed out that holding of the Press Conference by the proposed Accused persons itself fulfills the first ingredient of defamation i.e. *publication* and the words spoken by them in the press conference and published in the daily newspapers covered the second ingredient that is *imputations made by words, either spoken or intended to be read by third persons*. He further added that the third ingredient i.e. *intention to harm the reputation of the Complainant* is apparent from holding of the press conference by the Accused persons at a time when the elections were approaching so as to gain more vote shares.

4.4 Ld. Counsel further stated that the newspaper reports as well as the video of the press conference and the transcripts thereof have already been exhibited on record to support the case of the Complainant.

Lastly, referring to the judgment of the Hon'ble Delhi High Court titled as *Manoj Kumar Tiwari Vs. Manish Kumar Sisodia and others* [Crl. M.C. No. 2342/2020 dated 17.12.2020], Ld. Counsel for the Complainant pressed that at the stage of pre-summoning evidence neither the certificate under Section 65-B of the Indian Evidence Act is mandatory nor the newspaper editor is required to be examined for proving the newspaper reports and thus, as such technically there is no further evidence required at this stage for taking of cognizance and summoning of the Accused persons.

With these arguments, Ld. Counsel for the Complainant

concluded his submissions stating that the Accused persons have made baseless and defamatory allegations against the Bhartiya Janata Party Councilors including the Complainant in order to tarnish his image and thus, Accused persons be summoned and put to trial in the present matter.

5. Submissions have been heard. Record, which includes the statement of witnesses and exhibits tendered by the Complainant, has been carefully perused.

6. At this stage, the court is only required to go into the question as to whether *prima-facie* case has been made out or not for the purpose of taking cognizance and summoning of the Accused persons. Complainant has himself testified in the court in support of his averment pertaining to defamation and also brought the details of allegedly defamatory video-conference conducted by the Accused persons and subsequent newspaper reports on record. More importantly, CW2 Rajiv Aggarwal has deposed in favour of the Complainant's case. Hence, as such, at the outset, the allegations made by the Complainant supported by the testimony of CW2 point out towards the offence of defamation.

7. In regard to taking of cognizance, in the judgment titled as ***Shatrughna Prasad Sinha vs. Rajbhau Surajmal Rathi and others [(1996) 6 SCC 263]***, it was held by the Apex Court that:

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. 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 cognizance of the offence is taken by issuing the process etc.

8. Also, in the matter titled as **Sonu Gupta vs. Deepak Gupta & Ors. [(2015) 3 SCC 424]**, highlighting the aspects to be taken into consideration while taking cognizance, it was held by the Supreme Court as follows:

At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the Accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. It is also well settled that cognizance is taken of the offence and not the offender.

In view of the above, it is apparent that at the stage of taking cognizance court is not required to go into the details of probative value of evidence brought on record by the Complainant nor get into the question of defence which might be taken by the Accused; rather it is sufficient to proceed further if *prima-facie* the case stands made out.

9. In the case at hand, proposed Accused persons have allegedly held a press conference and attributed corruption in the Municipal Corporation of Delhi upon Bhartiya Janata Party Councilors. Even though Complainant has not been specifically named in the statements made by the Accused persons, as the averments have been made pertaining to an identifiable and

specific class of persons i.e. Bhartiya Janata Party Councilors, Complainant is very well covered within the ambit of section 199 Cr.P.C. as the *person aggrieved by the offence* as he is himself a councilor of the Bhartiya Janata Party. Also, from the testimony of CW2, the claim of Complainant regarding the offence of defamation committed against him gets reinforced.

10. In view of the discussion held above, having considered the details of allegations made in the complaint, the statement of the complainant and CW2 on solemn affirmation as well as materials on which the Complainant placed reliance, this court takes Cognizance of the offence under section 499/500 IPC.

Accused Durgesh Pathak and Accused Vikas Goel be summoned on the next date of hearing.

Matter be put for appearance of the Accused persons/further proceedings on 23.01.2023 at 02:30 PM.

**(Vidhi Gupta Anand)
ACMM-01/RADC/New Delhi
19.01.2023**