

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD
DATED THIS THE 28TH DAY OF FEBRUARY, 2011
BEFORE
THE HON'BLE MR. JUSTICE V.JAGANNATHAN

CRL.P.NO.7880/2010

BETWEEN:

1. SRI. A. C. GOPAL,
AGE 52 YEARS, OCC: PRINTER PUBLISHER
OF SAMYUKTA KARNATAKA NEWS PAPER,
AT. KOPPIKAR ROAD, HUBLI
2. SRI.HUNASAVADI RAJAN,
AGE 61 YEARS, OCC: EDITOR, SAMYUKTA
KARNATAKA, AT. SAMYUKTA KARNATAKA,
NO. 2, RESIDENCY ROAD, BANGALORE

... PETITIONERS

(BY SRI. S. B. KERIYAVAR, ADVOCATE)

AND:

1. SRI.PANDURANG BHIMARAO LAXMESHVAR,
AGE 64 YEARS, OCC: RETIRED ASSISTANT
EXECUTIVE ENGINEER, HDMC, HUBLI
R/O. OPP DIST. COURT COMPLEX,
P.B.ROAD, DHARWAD.
2. THE STATE OF KARNATAKA,
REPTD. BY PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
CIRCUIT BENCH, DHARWAD.

... RESPONDENTS

(BY SRI. C. N. HARLAPUR, ADVOCATE FOR R-1.
SRI.VINAYAK KULKARNI, HCGP FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO QUASH THE PROCEEDINGS AGAINST THE PETITIONER PENDING ON THE FILE OF THE LEARNED JMFC-II COURT, HUBLI, IN C.C.NO.1319/2010.

THIS PETITION COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri.S.B.Keriyavar, learned advocate appearing for the petitioners and Sri.C.N.Harlapur, learned advocate appearing for the respondent No.1 and Sri. Vinayak Kulkarni, HCGP appearing for the respondent No.2.

2. The petitioners are aggrieved by the cognizance taken and summons issued to them by the trial Court in respect of the offence punishable under Section 500 of IPC and they have sought for quashing of the proceedings initiated against them in C.C.No.1319/2010.

3. The brief facts are that the petitioners being printers, publishers and editors of Samyukta Karnataka, contend that the publication taken out by them in a Samyukta Karnataka newspaper dated 16.08.2009 under the heading "Sale of Plot and ₹15,00,000/- deceived" was pursuant to the information received from the police through



Internet and the petitioners published the news item stating that whatever was published was as per the complaint lodged with the Gokul Road Police Station.

4. Aggrieved by the aforesaid publication the 1st respondent herein issued a legal notice on the petitioner seeking apology and as there was no response, he filed a private complaint under Section 200 of Cr.P.C. alleging the offence under Section 500 of the Cr.P.C. The learned Magistrate of the trial Court took cognizance and after recording sworn statement of the complainant directed the issuance of summons to the petitioners.

5. The learned counsel Sri.S.B.Keriyavar, appearing for the petitioner argued that whatever that was published in the newspaper dated 16.08.2009 was the information that was furnished to the said newspaper through Internet by the police Commissioner, Hubli-Dharwad and therefore, when the publications are made in good faith, on ^{the} basis of the Police Commissioner's Internet information sent to all newspapers, the petitioner cannot be held to have committed alleged offence under Section 500 of IPC.

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6. Further, submission made by the petitioners counsel is that in response to the legal notice issued to it, the petitioners also sent a reply to the 1st respondent herein, wherein the petitioners stated that Samyukta Karnataka is willing to publish any clarification relating the impugned news item, if clarification is received from the client and as no such clarification was issued to the 1st respondent, the question of petitioner committing alleged offence does not arise. The above submissions are supported by relying the decision of the Apex Court in the case of *Jawaharlal Darda and others Vs. Manoharrao Ganpatrao Kapsikar and another* reported in *AIR 1998 SC 2117*. In the case of *The Editor, Deccan Herald Vs. Prof.M.S.Ramaraju* reported in 2005 (2) *KCCR 1295*. Order passed in *Criminal Petition Nos.4412 C/w. 5040/2005 dated 29th January, 2009* by this Court as well as the Apex Court in the case of *Bajnath Jha V/s. Sita Ram* reported in 2008 *LawSuit (SC) 1946*, and based on the aforesaid decisions, the learned counsel for the petitioners sought quashing of the proceedings.



7. On the other hand, the submissions made by the 1st respondent's counsel Sri. C.N.Harlapur is that the publication taken out by the petitioner was defamatory in character because 1st respondent has never stated that ₹15,00,000/- was paid to the complainant, in the private complaint lodged by 1st respondent Ningangouda Police Patil. Therefore, it is submitted that what transpired between present complainant that is 1st respondent and Ningangouda Police Patil was in respect of agreement of sale to buy all three plots and in the private complaint lodged by Ningangouda Police Patil, it is stated that the 1st respondent herein had sold the plot-8 to his own wife. This fact was not mentioned or in the agreement entered into by the 1st respondent with the above said Ningangouda Police Patil. Therefore in the private complaint lodged by Ningangouda Police Patil against the 1st respondent herein it is not mentioned that the 1st respondent herein has received ₹15,00,000/-. The publication that is brought out by the present petitioner therefore is not true and correct statement or the true statement of affairs. Under the said circumstances the impugned order of the trial Court does not call for any interference. The publication gives

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an indication that of ₹15,00,000/- was paid to the 1st respondent, but actually the true fact is only agreement has been entered into between 1st respondent and Ningangouda Police Patil, as such the offence under Section 500 of IPC is attracted and therefore no interference is called for by this Court against the order of the trial Court.

8. Having heard both sides and after going through all the material placed it is clear that the petitioner herein brought out the publication in question, based on the communication issued to newspaper by the police, ^{through} ~~thus~~ the Internet information that was sent to all newspapers, which is on page No.10 to this petition. Apart from this the publication itself mentions that the information stated and news item was based on the complaint lodged by the complainant Ningangouda Police Patil with the Gokul Road Police Station.

9. Apart from this the petitioners herein in response to the legal notice issued to them also have stated in reply thus:

*"However, the Samyukta Karnataka
has open mind to publish any matter of*

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clarification relating to the impugned news item, if received from your client”.

10. It is also not in dispute that the 1st respondent herein did not offer any information by way of clarification so as to enable the petitioners to publish some clarification in respect of the news items that was published by the petitioner on 16.08.2009. That apart, the learned counsel for the petitioner has also placed for my perusal, a letter addressed to the Joint Secretary, Lok Shikshana Trust (Samyukta Karntaka), by the Police Commissioner wherein it has been stated that whatever information that was published was based on the complaint lodged by Ningangouda Police Patil with the Gokul Road Police Station in Crime No.86/2009. The said communication further says that the information was circulated by the Commissioner of Police through Internet to all the news papers for publication.

11. Whether such publication attracts under Section 500 of IPC is the point that arises for consideration.

12. The Apex Court in the Case of *Jawaharlal Darda and others Vs. Manoharrao Ganpatrao Kapsikar and another*


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reported in *AIR 1998 SC 2117* has held that accurate and true report of the proceedings published by the accused in its news paper in good faith could not be said to have been intended to harm reputation of complainant and as such offence of defamation was not made out. In the case of *The Editor, Deccan Herald Vs. Prof.M.S.Ramaraju* reported in 2005 (2) *KCCR 1295*, this Court has held that in the absence of the allegation having been made in the news paper it cannot be said that publication of the said news items brings case within ambit of Section 499/501 of IPC in the same case this Court also held that where the publication is made in good faith and in public interest and it would not attract offence under Section 499 of IPC.

13. In so far as Section 482 of Cr.P.C. is concerned the Apex Court in the case reported in 2008 *LawSuit (SC) 1946* in the case of *Bajinath Jha V/s. Sita Ram*, has held that if any offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess when the complaint was lodged and whether any



offence is made out even if the allegations are accepted in toto. Applying aforesaid principles of law to the case on hand it is not in dispute that the publication taken out by the petitioner in the newspaper was pursuant to the Internet communication sent by the Police Commissioner to all the newspapers for publication.

14. Therefore, when the petitioners have also stated in the news item, that it is based on the police report, the question of the petitioner committing alleged offence under Section 500 of IPC does not arise and what is published being in good faith and that too based on information sent by internet, the question of the petitioner committing any offence much less offence under Section 499/500 of IPC read with Section 34 of IPC does not arise. Moreover, the petitioners also stated that they would publish the clarification, if, the 1st respondent gives any clarification. But the 1st respondent remained silent, even after publication of news item. All these factors, therefore give rise to the inference that the necessary ingredients of Section 500 of IPC have not been made out by the 1st respondent.



15. For the above reasons, in ^{any}~~any~~ view the trial Court committed an error in taking cognizance and issuing summons to the petitioner and the said view taken is also contrary to the aforesaid law laid down by the Apex Court and this Court and is the contrary to material placed on record. For the above reasons the petition is allowed and the impugned proceedings initiated against the petitioner in this C.C.No.1319/2010, cognizance taken and issuing summons are all quashed.

Sd/-
JUDGE

Vnp*