

District : Patna

IN THE COURT OF ADDITIONAL SESSION JUDGE VI, PATNA

Present-Shri Sita Ram Pandey

Dated : Patna the 28th May 2002

Criminal Appeal No. 44 of 2000

Anil Kumar.....Appellant

Versus

1. Saryu Roy
2. The State of Bihar.....Respondents.

CRIMINAL APPEAL NO. 45 of 2000

Versus

1. I, Saryu Rai
2. The State of Bihar.....Respondent

Harishankar Dwivedi.....Appellant

Advocate for the appellants : 1. Sri Gajendra Kumar Jha

2. Sri Krishnadeo Mishra

Advocate for the respondents : Sri Shakti Kiran

JUDGEMENT

1. Both the above named criminal appeals have been filled respectively by Anil Kumar and Harishankar Dwivedi against the same impugned judgement and order dated

1.2.2000 passed in complaint case No. 1340(C) 96 Tr. 135/2000 by Shri Ravindra Pawari, then Judicial Magistrate 1st class Patna whereby both the appellants have been convicted and sentenced to pay a fine of Rs. 5000/- each for the offence under section 500 I.P.C. and as such both the appeals are taken up together for disposal by this order.

2. The facts of the case in short is that one Saryu Rai a prominent political worker and leader of BJP Bihar unit filed complaint case no. 1340(C) 96 alleging defamatory publication of news item in news paper Indian nation and its Hindi version Aryavarta on 19.10.96. It is stated by the complainant that he is a social and political worker and also holding post of Secretary, BJP Bihar unit and he got good reputation and privilege amongst public and relation as well political worker of BJP. It is stated that the complainant is M.Sc. in Physics from Patna University and he was very active in 1974 J.P. movement. He left government job as well as teaching job to devote full time in social and political work. Further it is claimed that the complainant have taken active initiative in highlighting farmer's issues, grievance at state and National level and also he highlighted fodder scam and other scames and he was also petitioner in the writ application C.W.J.C. no. 1617/96 filed in the Hon'ble High Court, Patna seeking a CBI enquiry in fodder scam. Further it is stated that by publishing the news item in Indian Nation and Aryavarta newspaper the accused appellants have lowered down the prestige, image and reputation of the complainant amongst public, friend, relation and also amongst the parties men of BJP regarding the published defamatory news item in newspaper the complainant was filed. The news item published in Indian Nation on 19.10.96 was under the heading "Saryu relished scamster hospitably" and in the Aryavarta of same day in the heading "PASHUPALAN MAPHIYA KE SAHYOG SE SARYU ROY KI BRIKSHAROPAN PARIYOJNA". The facts of both the news paper are the same. It is stated that both the news item were from Ranchi sent by the accused appellant Anil Kumar and following allegation have been made against the complainant in the said news item. (a) In Gumla District a multi-crore plantation project spread in thousand acres has been put up by the complainant with the support of Animal Husbandory officials (b) The animal

Husbandary scamsters have invested heavily in the project. (c) One Deepak Prakash nephew of Dr. K.M. Prasad has collaborated with the complainant in the said project and Suryamani Singh is one of the partners in the said project. (d) Dhruv Bhagat the arrested BJP MLA disclosed the link of Shri Govindacharya and the complainant with Dr. K.M. Prasad through Deepak Prakash, his nephew. (e) CBI is likely to file a chargesheet against the BJP leaders including the complainant for their link with the scamsters.

3. It is claimed by the claimant that all the above statements and remarks published in both the news papers are palpably false, concocted, mischievous and without any foundation. It is stated that seven persons including the complainant started a plantation venture in Gumla district in 1992 with on leased land of 20 acres belonging to one B.K. Singh of Village-Karoundi, P.S.-Gumla, District-Gumal. A small nursery in 2.5 acre of land has also been established in the same village and Shri B.K. Singh is one of the promoters of the company. There were seven promoters of the company including the complainant who contributed Rs. 3000/- only and thereafter an amount of Rs. 2500/- was contributed. It is stated that neither Deepak Prakash nor anyone working in Animal Husbandary department has contributed a single paisa in the said project. It is stated that Dhruv Bhagat MLA and Deepak Prakash have publicly contradicted as having made any statement referred in the news item. Moreover, the complainant had resigned from the project in the year 1994 and his resignation was accepted and since thereafter he had no concern with the alleged plantation project. It is alleged that the news item published without any foundation has lowered down the image, prestige of the complainant and with malafide intention the accused-appellants got published the defamatory news item against the complainant.
4. On the basis of the complaint cognizance of the offence under section 500 IPC was taken against both the accused appellant and they were put on trial. During trial from the side of the complainant a together six witnesses have been examined. No any witness or evidence has been aduced from the side of the defence. The learned magistrate after going through the evidences available on the record has found both

the accused-appellants guilty for the offence under section 500 IPC and has passed the impugned sentence to pay a fine of Rs. 5000/- each and in default to undergo SI for one month and against that order and judgement the present appeal has been filed.

5. Now in the present criminal appeal the only point for consideration is whether the conviction of the accused appellant and sentence of fine imposed are legally justified or not from the evidences and materials available on the record.
6. C.W.-4 Saryu Rai is the complainant himself. He has stated that news item published in Indian Nation and Aryavarta newspaper on 19.10.96 is totally false and baseless and the same has lowered down the prestige, image and reputation of the complainant amongst the public, social workers, party men and the friends. The complainant has stated that he sent legal notice to the accused-appellants regarding defamatory publications in news item but no reply was sent and even no contradiction was published by the accused appellants to contradict the defamatory published news-items. The news item published in the Indian Nation and Aryavarta has respectively been marked as Ext. 1 and Ext. 1/2. The complainant has stated that only purpose of publication in news item is to tarnish and lower down the image of the complainant. The complainant has stated that a plantation project was started in the year 1993 over 20 acres of land belonging to one B.K. Singh and in that project he got a share of Rs. 3000/- only and he was also one of the Directors of the project but he sold his share and he resigned from the plantation project on 15.12.94 and his resignation was accepted and the company registrar was informed. The complainant has stated that he got no any connection and nexus with any fodder scmasters. He stated that the entire allegation published in news item are totally false and baseless and have been made to tarnish the image of the complainant. The complainant has been cross examined at length by the side of the defence but publication in news item by the accused appellant as alleged by the complainant has not been challenged and denied. PW-6 B.K. Singh has supported that he had leased his 20 acre of land of the village and over the land lichi and sagwan tree were planted. He also stated that he is the Chairman of the plantation project and one Smt. Madhu Singh is the Director. He stated that the complainant Saryu Rai had resigned from the plantation project on 15.12.94 and his resignation was accepted. The relevant document has been marked

as Ext. 4. He also stated that the Registrar, companies was informed regarding resignation of the complainant Saryu Rai vide form no. 52 of the company act and the same has been marked as Ext. 7. P.W.-6 further stated that Deepak Prakash or any other person of the Animal Husbandary Department has no connection with the plantation project and no any money was invested by any person of the Animal Husbandary Department. He further stated that Suryamani Singh also got no connection with said plant project. P.W.-1 Anil Sharma, P.W.-2 Ram Lakhani Rai and P.W.-3 Sunil Kumar Singh have stated that after going through the news item published in Indian Nation and Aryavarta newspaper on 19.10.96 they formed bad opinion against the complainant Saryu Rai and prestige, image and reputation of the complainant has been lowered down amongst the public, social worker and relation. On publication of the news item as alleged by the complainant has not been denied by the defence. No any evidence either oral or documentary have been adduced by the side of the accused-appellant to show that after taking all the due care regarding genuineness of the news item and source they published the alleged news item in their paper. Now the question is whether the alleged published news item by the accused-appellant in the newspaper Indian Nation and Aryavarta are defamatory or not. The substance of the news-item published in alleged news papers are the same.

In the news items published in Indian Nation on 19.10.96 one of the petitioner in the multi crore fodder scam himself is reported to have enjoyed the hospitality of the Animal Husbandary officials in putting up a multi crore tree plantation project in the Jharkhand region. Though the petitioner belongs to North Bihar and is one of the prominent leaders of BJP in the state, he could succeed in roping in one of the close relative of a prime accused in the fodder scam in having the tree plantation project launched. Further it has been published that according to the reliable sources, the General Secretary of Bihar unit of BJP Mr. Saryu Rai, is one of the owners of the said project spread over thousand of acares land in Gumla district in the South Bihar region. It is Mr. Rai who has been working with the leader of opposition in Bihar Assembly. Mr. Sushil Modi in exposing the AHD officials and suppliers. Besides, the two have been providing evidences to the court and the CBI in the fodder scam and have been quite helpful in exposing the matters related to the fodder scam. Further it has been published that according to report Mr. Saryu Rai has played key role in plantation project which has spread over thousand acre of land at Gumla in

collaboration with one Mr. Deepak Prakash the nephew of the prime accused in the fodder scam, Dr. K.M. Prasad. Recently Mr. Prakash is the BJP Secretary of this region and has been very much active in Vananchal Samiti also. Just few days back his name was also linked with a senior party leader Mr. Govindacharya as disclosed by arrested MLA Mr. Dhruv Bhagat. It has also been published that another prominent BJP leader of South Bihar region Mr. Suryamani Singh is also one of the partners in that plantation scheme. It was he who could rope in Mr. Deepak Prakash to execute Mr. Saryu Rai's proposal for the tree plantation in Gumla district. There was need for a local man for Saryu Rai to implement this scheme in the tribal region. Mr. Singh has unsuccessfully contested on BJP ticket from Palamu Lok Sabha constituency last time.

From going through the published news item it is clear that news items are defamatory as allegation and aspersion has been made against the character of the complainant Saryu Rai. During the course of hearing argument it has not been denied by the side of the appellant that news item as alleged by the complainant is not a defamatory. It is for the defence to show that in good faith and after required verification and scrutiny the news items were published. But no any evidence oral or documentary has been adduced and produced by the side of the accused-appellants to show their innocence. The learned magistrate has observed that the alleged publication of news item does not fall within the exception of section 499 of IPC. The exception 9 of section 499 IPC states that imputation made in good faith by person for protection of his or other's interest 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 interest of the person making it, or of any other person or for the public good. From going through the evidence, adduced by the side of the complainant it is clear that there was no plantation project as alleged over thousand of acres. The plantation project was only over 20 acre of land and this is clear from the evidence of the complainant himself and the evidence of P.W.-6 the owner of the land as well as the Chairman of the plantation project. Further it is clear that the complainant has already withdrawn his hand by selling his share in the year 1994 from the said plantation project and this fact has been proved by the evidence of P.W.-6 and the documents produced. Hence at the time of publication of news item the complainant had no any concern with the alleged plantation project. No evidence has been led by the side of the defence to

show that the complainant has got connection and nexus with the plantation project and he has invested any amount at the time of publication of news item. Further no evidence has been led to show nexus of the complainant with the fodder scamasters. Hence from going through the evidence adduced by the side of the complainant it is clear that the news items published by the appellants in their news papers making certain allegations against the complainant are false, baseless and defamatory in nature. Hence it is for the accused-appellants to show that in good faith they got published the news item. The learned lawyer of the appellants submitted that in several other papers of the National level also the news has been published but against them action has not been taken by the complainant. But no document has been exhibited by the side of the accused appellant to show that any newspaper also got published the same news and on that basis the appellant got published the news item in their newspaper. There is no evidence available to show that after enquiry and required verification the accused-appellants got published the news item in their newspapers. Further no any material has been brought by the defence to show that after service of legal notice by the complainant the accused-appellant got published contradiction in the newspaper contradicting the alleged published news item making allegation against them. No doubt it was pointed out that one news was published after service of legal notice but the learned lawyer of the respondent submitted that it was the only statement of the complainant and no contradiction was published by the side of the accused-appellants. The learned lawyer of the appellants also pointed out that the publication of the newspaper is governed by Press Council of India Act which monitors the activities of newspaper including the clarification, contradiction of the publication, defamatory publication to maintain journalistic atmosphere and freedom of the press. In the examination under section 313 Cr.pc. The accused-appellants have admitted publication of the news item as alleged by the complainant. They have not stated that they made enquiry, verification regarding the tree plantation and genuineness of the news item before publication of the same in newspaper. From going through the evidence available on the record, evidence adduced from the side of the complainant it is clear that the news item published making allegation against the complainant having nexus and relation with fodder scamsters is totally false and without any basis. The appellant Anil Kumar is the news reporter where as the appellant Harishankar Dwivedi is the Editor, Publisher and Managing Director of the newspaper. From the

evidence it is also clear that by publishing the news item which are totally false and defamatory in nature without any contradiction published by the appellants after due service of legal notice has certainly lowered down the image, reputation of the complainant amongst his friends, relation, party workers and public. The source of news item received by the accused-appellant have not been disclosed. There is nothing on the record to show that in good faith and for public good or for private good news were published. The alleged published news does not come within the exception 9 of section 499 I.P.C. Hence I think that from going through the evidences, the offence under section 500 I.P.C. has been proved against both the accused-appellant beyond scope of any reasonable doubts. The learned magistrate has discussed and considered all the points raised by the side of the defence. The judgement of the learned lower court appears to be well discussed. I find no any illegality being committed by the learned magistrate in convicting the accused-appellants for the offence under section 500 I.P.C.

8. In the result the conviction of the accused-appellants for the offence under section 500 I.P.C. is hereby upheld. The learned magistrate has already taken a lenient view in awarding the sentence of fine only. Accordingly the conviction of the accused-appellants sentence of fine imposed by the learned magistrate is hereby upheld. Since I find no merit in the present criminal appeals and as such both the criminal appeals are dismissed accordingly.

Dictated and Corrected by me

Sd/-

Sita Ram Pandey

28-5-2001

6th Addl. Sessions Judge, Patna

Sd/-

Sita Ram Pandey

28-5-2002

6th Addl. Sessions Judge, Patna

District & corrected by me.