

District : Patna

In the Court of Judicial Magistrate, First Class at Patna

Present-Ravindra Patwari, J.M., 1st class, Patna

the dated 1st Feb., 2000

Ref. : Complaint case No. 1340(1)/96

Trial No. 135/2011

Saryu Roy.....Complainant

Vrs

1. M/s. The News Papers and Publishers Ltd.
through Sri Hari Shankar Dwivedi
2. Sri Hari Shankar Dwivedi aged about 76 years
3. Anil Kumar, aged about 40 years accsed persons under section 500 of the Indian Penal code.

For the complinant - Shri Anil Kr. Sinha along with Miss Shakti Kiran, Adv.

For the Defence - Shri Gajendra Kr. Jha, Adv.

JUDGEMENT

1. Aforesaid accused persons have been facing trial for the offence Punishable Under Section 500 of the Indian Penal Code, in short hereinafter called as "the code". They have pleaded not guilty to the charge and have claimed to be tried.
2. Factual matrices of the prosecution case as contained in the complaint pition can be stated in brief like this :- Mr. Saryu Roy, a social and political activist and presently

the General Secretary of the Bhartiya Janata Party, Bihar State has filed this case. The subject matter of the present complaint is the news-items published in the "Indian Nation" on 19th Oct., 1996 under the heading "Saryu Relished scamsters Hospitality" and in the "Aryavart" of same date under the heading "Pashupalan Mafion ke sahyog se Saryu Roy ki Vriksharopan Pariyojna" (पशुपालन माफियाओं के सहयोग से सरयू राय की वृक्षारोपण परियोजना) It is said that both the news-items were from Ranchi date line and following allegations have been made against the complainant in the said news-items.

- (i) In Gumla District a multicore plantation project spread over thousand acres of land has been put up by the complainant with the support of Animal Husbandry officials.
- (ii) The Animal Husbandry scamsters have invested heavily in the project.
- (iii) One Deepak Prakash, the 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.
- (iv) Dhruv Bhagat, the arrested BJP MLA disclosed the link of Shri Govindacharya and the complainant with the Dr. K.M. Prasad through Deepak Prakash, his nephew.
- (v) C.B.I. is likely to file chargesheet against BJP leaders including the complainant for their link with the fodder scamsters.

According to complainant all the above statements and remarks published in news-items are blatantly false, malafide, concocted and without any foundation. It is said that alleged newsitems are grossly defamatory factually incorrect, mischievously false and they are intended to destroy the reputation of complainant. In this context complainant has to say that in 1992 seven persons including complainant started a plantation venture in Gumla District on a leased land of 20 acres belonging to one B.K. Singh of Village-Karoundi, P.S.-Gumla, Dist.-Gumla. There were altogether seven promoters of the plantation company-

including the complainant. Each promoter contributed Rs. 3000/- only and thereafter a small amount of Rs. 2,500, Rs. 1,875, Rs. 1,000 and Rs. 500 each from friends, relatives and acquaintees of promoters was raised on voluntary basis subject to a share in the profit. It has been submitted that neither Deepak Prakash nor any one working in the Animal Husbandary Deptt. have contributed even a single penny in the said venture. It has been further stated that Suryamani Singh is not at all a partner in the said venture, nor complainant has had any acquaintace with Animal Husbandary scamsters at any point of time.

As regards complainant it is said that he is M.Sc. in Physics from Patna University. He decided to involve himself in social and public activities and also took part in 1974 J.P. movement. He left his Govt. job and subsequently he exelled himself in journalism and over the years he developed himself as the most informed person in the matter of Finance, Budgeting, Irrigation, Agriculture and Environment etc. in the state of Bihar. It is said that in these fields complainant contributed a large number of well researched articles. He also served as member 2nd Bihar State Irrigation Commission and Chairman of its sub-committee No.-1, Secretary of the Resource and Environment Management Policy Institure, Patna, the Editor of the Krishi Bihar, Convenor of the J.P. Vichar Manch and in several other social and voluntary organisations. It has been further stated that cimplainant coming from a farmer background has also taken active initiative in highlighting the farmers' issues and he started crusade against supply of spurious fertilisers, substand seeds and faice pesticides to farmers by state co-operative institutions in early eighties and successfully forced Biscomaun to pay compensation to the farmers of Bhojpur District. It has been further submitted that now complainant was on the forefront of the movement against rampant corruption in the state of Bihar. It is said that complainant single handedly exposed the Animal Husbandary Scam to a considerable extent and he was one of the prominent petitioners in the writ application vide C.W.J.C. No. 1617/06 filed in Hon'ble High Court, Patna seeking a C.B.I. enquiry. It is said that due to untiring efforts of complainant such a massive loot of public money by the scamsters patronised by bureaucrats and politicians would have come to light. It is said that because of his dedication and commitment complainant today has become a prominent symbol in the Quest for probity in public life in the state of Bihar and thus he was widely appreciated, admired and respected by large

number of his friends, well wishers, supporters and party men. It is said that the untiring crusade of complainant led to the arrest of large number of scamsters and their patrons and naturally they started to conspire to defame the complainant through their associates in order to deter him from continuing. It is submitted that alleged news-items have been reported from Ranchi which has been one of the main centres of Animal Husbandary scam and so it is Quite probable that some vested interests closed to scamsters have had influence behind news-items.

Further case of complainant is that he read the said two news-items at Patna on 10.10.96 and his other friends and well wishers who read it too, were deeply hurt and immediately conveyed to complainant their anguish. It has been submitted that on 10.10.96 complainant sent a legal notice through his lawyer Shri Sujeet Kr. Sinha to accused persons lodging his protest and request for publication of contradiction with apology failing which criminal action would be taken. It is said that despite receipt of notice in the office of the Editor, the Indian Nation and the Aryavarta no contradiction published. According to complainant aforesaid imputations published in news-items have been made, edited, printed and published intending to harm the reputation of the complainant and they have lowered down the reputation of complainant in the eyes of political circle, family, relations and public in general. This complaint was filed in the court of C.J.M., Patna on 26.11.96 and subsequently it was transferred to this court for favour of inquiry and disposal. Complainant was examined on oath and thereafter inquiry u/s 202 cr.pc. accused persons were summoned to appear in court to stand trial.

3. Accused persons have been examined under sec. 313 cr.pc. Mr. Harishankar Dwivedi has admitted that alleged news-items were published in the Indian Nation and the Aryavarta in usual course of business and he had read them. He has further stated said news were not published to harm the reputation of complainant. He has far their pleaded that it is the duty of the news editor to edit the news items to be published and the 'Editor' of a news paper only gives general difetions. Other Accused Mr. Anil Kumar has stated that he was the correspondent of the Indian Nation and the Aryavarta and he was the author/writer of said news-items published in the daily edition of 19th

Oct. 1996. He has further stated that news items were not published to defame the complainant. He has further pleaded that he has got no animus with the complainant and he had received the news from sources. In this way I see that defence stand appears to be one of complete denial of false implication.

4. The point to be considered now is whether prosecution has been able to prove its case beyond all probable and reasonable manners of doubt.

FINDINGS

5. Complainant has examined as many as six witnesses to support his case P.Ws. 1, 2 and 3 are Anil Sharma, Ram Lakhan Ram and Sunil Kr. Singh respectively. P.W.-4 Shri Saryu Roy is the complainant himself. P.W.-5 Ajay Kr. Yadav is a formal witness. He has proved the carbon copy of the legal notice sent to Accused as Exb.-2. He has also proved the service reports of legal notice sent to the office of the Indian Nation and the Aryavarta as Exb. 3 & 3/1 and 3/2 & 3/3 respectively. P.W.-6 is one Brij Kishore Singh presently the Chairman of alleged Plantation Project in the name of M/s Gramya Plantation Ltd. he has proved one letter through which the resignation of complainant from plantation company was accepted as Exb.-4. He has also proved the signature of the Managing Director on Form No.-32 as Exb.-5 and one money receipt as Exb.-6. Alleged news items published in the Aryavarta and the Indian Nation have been marked as Exb.-1 and 1/1 respectively.
6. I have seen from above that news-items published in the daily edition of the Aryavarta and of the Indian Nation dated 19.10.96 are not in dispute. It is not in dispute that Mr. Hari Shankar Dwivedi was the Managing Editor of both the news papers. It is also not in dispute that Hari Shankar Dwivedi was the printer & publisher of the Indian Nation and the Aryavarta. As regards accused Anil Kumar it is admitted that he was the Ranchi correspondent of the Aryavarta and the Indian Nation and it was he who authored the news-items which are the subject matter of this case. This accused himself admitted in his statement u/s 313 cr.pc. that he had received the news from sources and this news published in the newspapers as alleged in this case.

7. Now, first I would like to discuss and examine the newsitems 'in Question' whether they are per se defamatory. In the Indian Nation, the news published with the heading- Saryu relished scamsters hospitality and the heading of the news published in the Aryavarta was : पशुपालन माफियाओं के सहयोग से सरयू राय की वृक्षारोपण परियोजना । As the headings show, the word 'Saryu' in English news and the 'Saryu Roy' in Hindi News have appeared for the complainant. To my mind this is now an admitted fact because nothing contrary has been pleaded either in the cross testimonies of P.Ws. or in the statement u/s 313 cr.pc. of the accused persons. The heading given for the news-items on its face in my view express an imputation in the form of an expression of suspicion against the complainant contents of both the news-items as published in Hindi and English daily are more or less the same and they subscribe the same fact. After bare perusal of the news-items published in the Indian Nation, it appears to me that following things have been reported in it :-

- (i) The first paragraph of the news reads as follows :-Ranchi, Oct. 18 : Curiously enough one of the petitioners 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 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 relatives of a Prime Accused in the fodder scam in having the tree plantation project launched.
- (ii) In the second paragraph it has been stated that Mr. Saryu Roy (complainant) is one of the owners of said plantation project spread over thousands of acres of land in Gumla District in the South Bihar region.
- (iii) In the third paragraph of the news-item it has been submitted that Mr. Saryu Rai has played a key role in the said plantation venture in collaboration with one Deepak Prakash, the nephew of one of the prime accused in the fodder scam namely Dr. K.M. Prasad.
- (iv) In the fourth paragraph it is said that one another prominent leader of BJP in

South Bihar namely Suryamani Singh in one of the partners in the said plantation scheme and it was Suryamani Singh who could rope in Deepak Prakash to execute Mr. Saryu Rai's proposal for the tree plantation in Gumla District.

- (v) In the fifth para of the news-item it has been stated that one arrested MLA Mr. Dhruv Bhagat in fodder scam case has disclosed several surprising points before the CBI which goes on to prove the link of these leaders of BJP with fodder scamsters.
- (vi) In the sixth paragraph of the news-item published on the Indian Nation daily, it has been expressed that former Chief Minister Mr. Laloo Pd. was mainly interested to prove the link of Saryu Rai with the AHD officials because it was Mr. Rai who was instrumental in spreading the reports about the deep nexus between Mr. Prasad and the AHD scamsters.
- (vii) In paragraphs 7 and 8 of the news-item, nothing has been stated against the complainant.

After careful reading of the news-item as published in the newspaper, one can say easily that certain imputation have been levelled against the complainant. The essence of the news is that complainant Mr. Saryu Rai being one of the prominent leaders of state BJP, on the one hand has been working to expose the Animal Husbandary Department officials and suppliers and has been providing evidence to the courts and the CBI in fodder scam and have been quite helpful both to the CBI and the court in exposing the multi crore fodder scam scandal, while on the other hand he has been enjoying the hospitality of Animal Husbandary officials in putting up a multi crore plantation venture on thousands of acres of land in Gumla District. From this news it appears to me that an aspersion has been casted about the complainant that he is not a man of probity, rather he is of dual character. Thus to my mind news-items as published in the Indian Nation and the Aryavarta dated 19.10.96 appear to be per se defamatory in nature.

8. It has been urged on behalf of complainant that alleged news items as published in the English and the Hindi daily, are factual reportings about a plantation venture said to be started by complainant in collaboration with one of the close relatives of a prime accused of the fodder scam case. According to complainant this reporting is blatantly false, malafide and mischievous lie without any foundation whatsoever and they were published intended to destroy the reputation of complainant. On the other side learned defence awyer argued that alleged news items were not published aiming to harm the reputation of complainant and alleged news items containing the defamatory statement fall within the exception 9 of section 490 of the code.

At this threshold first I want to examine the evidences adduced in the case. It is obvious that no evidence has been adduced on behalf of defence. PW-4 is the complainant himself. He stated in his chief that he read the news items published in the Indian Nation and the Aryavarta on 19.10.86 and after reading it, he felt hurt and offended. He further deposed that many people asked him about the news published raising their fingers of suspicion on his probity and this also caused obsiruction in his social and political activities. In para-6 of his chief he has stated what is the essence of news items. In para-9 of his chief he stated as मुझे ऐसा लगता है कि पशुपालन माफियाओं के सहयोग से यह समाचार प्रकाशित हुआ ताकि मैं जो अभियान चला रहा था, उसकी विश्वसनीयता पर संदेह हो जाए। समाचार का एकमात्र उद्देश्य मेरी छवि खराब करने का था। He further stated that in 1993 a plantation project was started in Gumla District spread over 20 acres of land of one B.K. Singh. He further deposed that he had got a shares of Rs. 3000/- in this project and he was one of its Directors. This witness further deposed that in 1994 he resigned from this project and on 15.12.94 his resignation was accepted. He thereafter ceased to have got any concern with the said plantation project. He emphatically deruied that he had got ever any relationship with any AHD officials. He further deposed that Suryamani Singh and Deepak Prakash have had never any concern with the said plantation Project nor said project has been put up on thousands of acres of land. I carefully examined the cross-tetimony of this witness and then I Find that virtually this witness has not been cross-examined at all as to said plantation project nor anything has been asked to this witness regarding his relationship with

scamsters. In the cross-examination of this witness, defence has asked him as to publication of news in a newspaper and who is responsible for publication of such a news P.W.-6 is Mr. B.K. Singh on his land said plantation venture was started and presently he is the chairman of said Gramya Plantation Ltd. He has stated that said plantation company spreads over 20 acres of land and earlier complainant was associated with this company. This witness has proved the letter of the company through which resignation of complainant was accepted on 15.12.94 and it was also informed to Registrar companies on Form No.-32. This witness further stated that neither Deepak Prakash nor any AHD official has invested any penny in this plantation project. He further stated that Suryamani Singh was not at all the partner of said plantation project After scrutiny of cross testimony of this witness I find that he has not been dislodged at all. P.Ws-1,283 are the party men and sympathisers of complainant. These witnesses stated that they had read the news items published in the Aryavarta and the Indian Nation. The news appeared to them surprising and it caused hate feeling against Saryu Rai. They have further deposed that after the publication of news items, the image and reputation of complainant has been lowered down in the estimation of others. In this way I see that sufficient evidence has been adduced on behalf of prosecution to prove its assertions. Whether alleged publication of new items is a true reporting. To prove it no evidence has been adduced by defence. In the news items it has been state that their correspondent namely Anil Kumar (Accused) received the news from reliable sources. Who were the reliable sources has not been disclosed, nor defence has disclosed about the factual materials which became the basis for news items. In order to prove truthfulness of the facts and contents of the news items virtually nothing has been brought on the record.

Let me to consider the defence assertion that alleged publication of news items falls within the Ninth exception of sec. 400 of the code reads as follows-Imputation made in good faith by person for protection of his or other's interest- It 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 this provision, there appears two ingredients of this exception :-

- (i) That the imputation must be made in good faith.
- (ii) That the imputation must be for protection of the interest of the person making it or of any other person or for the public good.

As it would appear from the language and spirit of this provision that this exception relates to private communications which a person makes, in good faith for the protection of his own interest or of any other person or for the public good. Present case relates to certain imputations published in a newspaper against the complainant. To my mind this communication of imputations can't be regarded as private communication. During course of argument learned lawyer of complainant referred the authority reported in 1971 cri.L.J.1168 which deals with Exception-9 of sec.-499 of the code. Their Lordships of Hon'ble Supreme Court in para-7 of the judgement held as follows :-

"The ingredients of the other exception are first that the imputation must be made in good faith; secondly, the imputation must be for protection of the interest of the person making it or any other person or for the public good. Good faith is a question of fact. So is protection of the interest of the person making it. Public good is also a good question of fact. This court in Harbhajan Singh vrs state of Punjab (AIR 1966 SC 97) in dealing with the ninth exception to sec.-499 of the Indian Penal Code said that it would have to be found out whether a person acted with due care and attention".

There Lordships further observed in the same para of the judgement like this-

"The person alleging good faith has to establish as a fact that he made enquiry before he made the imputation and he has to give reasons and facts to indicate that he acted with due care and attention and was satisfied that the imputation was true".

Here defence has brought nothing on the record to show that an enquiry was

made before the publication of imputations in the newspaper. Accused Anil Kumar who has authored the news items published in the daily magazine has stated in his statement u/s 313 cr.pc. that he received said news from some sources. Here he did not state whether he had made any enquiry to satisfy himself that the imputations were true. No such pleasing has been taken while making cross examination of the witness. I have discussed above that no materials and facts have been brought before me to show the correctness of imputations that Saryu Rai, the complainant has been enjoying the hospitality of fodder scamsters in putting up a multi crores plantation venture spread over a thousands of acres of land. P.W.-4 has admitted that earlier he was associated with a plantation project situated in Gumla District in Dec. 1994. In my view this fact is well established from the testimonies of P.W.-4 and P.W.-6 coupled with Exb.-4, 5 and 6. Thus its clear that from much before the publication of news items on 19.10.96 complainant was not associated with any plantation venture situated in Gumla District. Under these circumstances I am of only conclusion that ninth exception of sec. 499 of the code is of no help to defence.

9. It is the prosecution version that complainant on 19.10.96 read the news papers containing imputations against him and there after sent a legal notice to accused lodging his protest and request for publication of contradiction with apology to be published. It has been further submitted that notices were duly received in the office of the Editor of the Indian Nation and the Aryavarta. But complainant did not receive any reply nor any contradiction with appology was published. Subsequently this complaint was filed in the court. On the other side learned defence lawyer has vehemently assailed this prosecution version. He submitted that on 21st Oct. 1996 in the daily edition of the 'Aryavarta' a contradiction has been published with the heading- "वृक्षारोपण कार्यक्रम में पशुपालन माफिया का सहयोग नहीं" | Learned lawyer further submitted that this publication of contradiction clearly goes to show that alleged news items were not published intended to harm or lower down the reputation of complainant in the estimation of others. But learned lawyer of complainant hotly disputed in this regard. He contended that said publication in the daily "Aryavarta" of 21st Oct. 1996

is not at all a contradiction to be published by the newspaper itself, rather it is the publication of a statement of complainant given by him in a press conference.

The paper cutting of the news published in the daily Aryavarta of 21st Oct. 1996 has been filed on behalf of defence. After reading it I find that it is of Patna date line dated 20 Oct. 1996 and in it a statement of complainant has been published given by him before a press conference. Here on complainant has stated all those things which have been stated in the complain petition. This news cannot be termed as "contradiction" of news items published on 19th Oct. 1996, There an neither any source has been disclosed from where accused Anil Kumar received the impugned news items nor any appology has been tendered. Thus I see that virtually no complaine of legal notice sent by complainant to the Accused has been made.

10. Learned defence lawyer has further urged that Accused Mr. Harishankar Dwivedi was the Managing Editor of the Indian Nation and the Aryavarta and his work was supervisory in nature. He was not at all concerned with the work of news department. Learned defence further submitted that it is the news editor who is directly responsible for the news content of all the editions of a newspaper. Thus it has been submitted that Mr. Harishankar Dwivedee has been wrongly implicated in this case. It has been further argued that in this case "M/s. The Newspapers and Publishers Ltd." has also been made an acused. According to learned defence counsel legally it is improper to do so.

It transpires to me that here on Mr. Harishankar Dwivedee has been arrayed as accused in three capacities i.e. as the Managing Editor of the Indian nation, the Managing Editor of the Aryavarta and as the publisher and printer of the Indian Nation and the Aryavarta. Now the media including the press has great power. It influences the minds of people at large. So, it is necessary and must that persons responsible for publishing anything in newspapers should take due care and attention before publishing which tends to harm the reputation of a person. No doubt, the work of the Managing Editor is supervisory in nature. But he is also bound to take good care before publishing a libellous statement Accused Mr. Harishankar Dwivedee in his

statement u/s 313 crpc. has stated that impugned news items published in due course of business and after their publication he had read it. No plea has been taken on his behalf that such news items published in his absence and without his knowledge. It has also not been disclosed by defence that actually who was the news editor who was directly responsible for the news contents published in the news paper. Whether after publication of alleged news items, Mr. Harishankar Dwivedee made any inquiry to find out the correctness of the news published. If the news was factually correct, then why not any reply of the legal notice was given to complainant and if it were incorrect why not any contradiction was published in this regard when complainant lodged protest before the accused that news itmes are factually incorrect and libellous, nowonus lies upon the accused to prove them as correct and not intended to harm the reputation of complainant. But I find that defence has totally failed to do so. Obviously M/s The News papers and Publishers Ltd. (Accused No.-1) is a juristic person and the offence of defarmation implies prior intention and knowledge or mensrea. For such an offence it appears to me improper to implead a juridical person as an Accused. A juristic person is a corporate body or an institution which is run by private individuals. It a private individent commits an intentional wrong, it is he who would be liable for that worgn, not the institution in which he works.

I have discussed above all aspects of the facts and circumstances of the case and in result. I am of the view that prosecution has been quite successful in proving its case beyond all reasonable doubt.

Hence with this view, I hold the accused Harishankar Dwivedee and Anil Kumar guilty for the offence punishable under see 500 of the Indian Penal Code. They are accordingly convicted and they are taken into judicial custody.

Corrected by :

Sd/-

R. Patwari

1-2-2000

JM First Class

Sd/-

Ravindra Patwari

1-2-2000

Judicial Magistrate

First Class, Patna

Heard on the point of sentence learned defence lawyer submitted that Accused Mr. Harishankar Dwivedee is an old man and remains always sick. This is the first allegation levilled against Accused persons in their journalistic career. So, a lenient view may be taken against them.

There is nothing on the record to prove their previous conviction. It is a case of defamation as regards publication of news items in daily news papers. Now a days media including the press has great power impressing the minds of the people at large. But it is also the duty of press to give factually correct news to the people. The persons responsible for the publication of newspaper Must take good care and attention before publishing anything which casts aspersion and imputation. Keeping in mind all these things including the facts and circumstances of the case I direct and sentence each of the Accused to pay a fine of Rs. 5000/- and in default of its payment he is sentenced to undergo SI of one month.

Sd/-

Ravindra Patwari

1-2-2000

Judicial Magistrate

First Class, Patna