

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 451 OF 2009
(Arising out of S.L.P.(Criminal) No.1382 of 2008)

Capt. S.D. Kathuria (Retd.) ... *Appellant (s)*

Versus

Thiru N. Ravi & Ors. ... *Respondent (s)*

WITH

CRIMINAL APPEAL NO. 452 OF 2009
(Arising out of S.L.P.(Criminal) No.1383 of 2008)

Capt. S.D. Kathuria (Retd.) ... *Appellant (s)*

Versus

Vikram Philips & Anr. ... *Respondent (s)*

ORDER

Leave granted.

With the consent of learned counsel for the parties, the appeals are taken up for final disposal at this stage itself.

The appeals are directed against two judgments and orders dated 10th August, 2007 and 16th August, 2007 passed by the High Court of Delhi in Crl. M.C. No.3003 of 2004 and Crl. M.C. No.1639 of 2007 respectively. By the impugned orders, a learned single Judge, in

exercise of jurisdiction under Section 482 of the Code of Criminal Procedure (for short 'the Code'), has quashed the order of the Trial Court summoning the petitioners before the High Court, (Respondents No.1 to 3 in Criminal Appeal No. 451 of 2009 and Respondent No.1 in Criminal Appeal No. 452 of 2009) to face trial for offence under Section 499 read with Sections 107/34 of the Indian Penal Code ('IPC' for short). Consequently, the complaint against the said petitioners has also been quashed.

Since both the appeals arise out of the same complaint, these are being disposed of by this common order.

In order to appreciate the controversy, a few material facts may be noted:

A news item titled "Crime and Harassment" relating to alleged harassment of one Ms. Loveleen in her matrimonial home at the hands of her father-in-law and husband was published on 19th January, 1993 in the daily Hindu newspaper. Ms. Loveleen was married to the son of the appellant herein, namely, Rakesh Kathuria (since deceased), on 10th January, 1992. Alleging that a defamatory statement had been made by the father of Ms. Loveleen, namely, N.D. Chawla and the same had been published by the newspaper without verification, a legal notice was issued by the appellant and his son Rakesh Kathuria to the editor, publisher, reporter, the newspaper, N.D. Chawla and Ms. Loveleen asking them to explain their position with regard to the said article.

Having failed to receive any response, the appellants and his son filed a criminal complaint against the editor, the publisher, the reporter, the newspaper, N.D. Chawla and Ms. Loveleen, accused Nos.1 to 6 respectively under Sections 499 and 500, IPC. However, during the pendency of the said complaint, the son of the appellant committed suicide on 2nd March, 1995. After the death of Rakesh Kathuria, Ms. Loveleen got remarried. Subsequently, at the request of the appellant, proceedings against Loveleen (accused No.6) were dropped. Vide order dated 27th August, 2002, the Magistrate took cognizance of the offence and directed issue of summons to the aforementioned five accused). The editor, the publisher, the newspaper and the reporter filed two petitions under Section 482 of the Code for quashing of the complaint against them. As noted earlier, by the impugned orders, the High Court has quashed the summoning orders as well as the complaints against the accused Nos. 1 to 4. For the sake of ready reference, the relevant portion of the impugned order is extracted below:

“22. Having chosen to drop proceedings against Loveleen and her father complainants cannot be permitted to indirectly achieve what they cannot achieve directly.

23. Loveleen and her father have been freed of all bondage pertaining to, arising out of and connected with the matrimonial bond between Loveleen and complainant No.2. In my opinion, they being the principal tort feasers, complaint cannot be allowed to continue against the printer and the publisher or for that matter editor of the newspaper who at best would be guilty of abetting the commission of the offence under Section 499 IPC. My reason for so holding is that there are no averments in the complaint that the petitioners published the offending news item with an intent to defame the complainants. Charge against the petitioners is, as per para 14 of the complainant, that they

did not verify the truth of the allegations leveled by accused Nos.5 and 6 before publishing the news item, it is further relevant to note that the complaint nor the summoning order has proceeded on the basis that qua the petitioners case is made out under Section 499 IPC read with Section 107 IPC or read with Section 34 IPC. There is no allegation of conspiracy, i.e., Section 120B IPC is not attracted.”

Aggrieved, the sole complainant is before us in these appeals.

We have heard learned counsel for the parties.

Learned counsel for the appellant has strenuously urged that having regard to the nature of the imputations against the respondents, the learned Judge was not justified in quashing the complaint at the threshold and to hold that the defamatory article was protected by exception 9 to Section 499 IPC. Learned counsel has submitted that one of the factors which has heavily weighed with the Court in quashing the complaint against accused Nos.1 to 4 is the dropping of proceedings by the petitioner against Loveleen (accused No.6) and her father N.D. Chawla (accused No.5). Learned counsel asserts that as a matter of fact proceedings were dropped only against accused No.6 and not against accused No.5, at whose instance the news item was published and, therefore, on account of this factual error, which goes to the root of the matter, the order of the High Court stands vitiated.

Mr. S.S. Gandhi, learned senior counsel appearing on behalf of the respondents (accused Nos. 1 to 4) very fairly states that as per the

order sheet of the Trial Court, proceedings against accused No.5 were not dropped.

We are of the opinion that in view of the aforementioned admitted factual position, the order passed by the High Court cannot be sustained. It is manifest from the afore-extracted operative portion of the impugned order that the learned Judge was of the view that since proceedings against the principal tort teasers, namely, accused No.5 and 6 had been dropped, the whole genesis of the complaint vanished and thus, complaint against accused No.1 to 9 for offence under Section 499/500, IPC could not continue. We feel that the aforementioned inadvertent factual error about dropping of proceedings against accused No.5, who is alleged to have got the news item published, had influenced the Court to a great extent, resulting in miscarriage of justice. We are, therefore, of the opinion that this aspect of the matter needs to be re-examined by the High Court. For the view we have taken, it is unnecessary to examine the submissions made by learned counsel for the appellant on the merits of the case.

Consequently, the appeals are allowed; the impugned orders are set aside and both matters are remitted back to the High Court for fresh consideration in accordance with law.

Both the appeals stand disposed of in the above terms.

.....J.

[D.K. JAIN]

.....J.
[R.M. LODHA]

New Delhi,
March 6, 2009.