

MANU/KA/3441/2020

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Criminal Revision Petition Nos. 152 of 2014 and 1358 of 2010

Decided On: 01.10.2020

Sushma Rani **Vs.** H.N. Nagaraja Rao

Hon'ble Judges/Coram:

Dr. H.B. Prabhakara Sastry, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Ashish Krupakar and Ashok Patil, Advocates

For Respondents/Defendant: P.V. Kalpana, Amicus Curiae and Ashish Krupakar, Advocate

Case Note:

A) INDIAN PENAL CODE, 1860 - SECTION 499-Defamation-Essentials of-

HELD,

An act to become a 'defamation', there must be

(i) an imputation concerning any person;

(ii) such an imputation may be by words, either spoken or written or even by signs or by visible representations;

(iii) such an imputation must be intending to harm the other person or knowing or having reason to believe that it would harm the reputation of other person. Thus, such an imputation must be made or published and its effect must harm the reputation of the other person against whom such imputations are made. [13]

B) INDIAN PENAL CODE, 1860-SECTION 499-Defamation-Exceptions to defamation-

HELD,

The definition of defamation itself gives ten Exceptions and any act though fulfills the essentials of the definition of 'defamation', still, if falls under any one or more of the Exceptions, then, the same cannot be termed as 'defamation' under Section 499 of IPC. (Para 13)

FURTHER HELD,

In order to be defamatory, a publication must tend to lower the complainant in the opinion of men whose standard of opinion, the Court can properly recognise or tend to induce them to entertain an ill-opinion of him. However,

the complainant need not show a tendency of imputation to prejudice him in the eye of every one in the community or all of his associates, but it is sufficient to establish that the publication tends to lower him in the estimation of a substantial, respectable group, even though they are of a totally different community or of the complainant's associates. [13]

C) INDIAN PENAL CODE, 1860-SECTION 499-Defamation-"Whether allegations made in the statement of objections are defamatory"?

HELD,

In the present case, the accused herself has, in unequivocal terms stated that, it is at her instance the statement of objection was filed in the Family Court, as per Ex. P-4 and she has given her evidence in the said case as per Ex. P-1. Apart from filing her pleading which is alleged to have contained some defamatory words according to the complainant, she has also stated about the contents of her said statement to his uncle, aunty and a friend.- Therefore, it is clear that apart from filing the statements as per Ex. P-4, in the form of statement of objections, in the matrimonial case, she has also revealed the contents of the same to the relatives and a friend of the complainant, which clearly establishes that there was publication as required under Section 499 of IPC of the alleged defamatory statement by the accused. [16]

FURTHER HELD,

(a) In the present case, to bring the statements made by the accused in Ex. P-4 statement of objections which are contested to be defamatory as the one made with good faith and thus falling within the Ninth Exception to Section 499 of IPC, she has to show that she had made those statements with due care and attention. However, her own statement made at more than one place in her cross-examination as DW-1 that, she has stated that what she has stated in her statement of objections were the facts and they were the incidents occurred between herself and her husband i.e., the complainant. She has reiterated that they were the truth, as such, they were fact, in her further cross-examination also. [20]

(b) Admittedly, except making those statements in her statement of objections at Ex. P-4 and reiterating it in Ex. P-1, she has not even attempted to show that they were the imputation of truth or that they were made in good faith. Therefore, it can be safely held that the complainant has proved beyond reasonable doubt that the accused has committed an offence of defamation punishable under Section 499 of IPC, which is punishable under Section 500 of IPC. [20]

D) CRIMINAL PROCEDURE CODE, 1973-SECTION 397-Revision-Revision Petition filed by the Petitioner/husband against the respondent/wife for enhancement sentence-Offence punishable under Section 499 of IPC-

HELD,

The punishment for defamation prescribed under Section 500 of IPC is a

Simple Imprisonment for a term which may extend to two years or with fine or with both.-The Trial Court has sentenced the accused to undergo Simple Imprisonment for one month and to pay a fine of ' 5,000/-. The revision petitioner in Criminal Revision Petition No. 1358/2010 has prayed for enhancement of the said sentence to its maximum.-It is the sentencing policy that the sentence ordered should be neither nominal nor exorbitant. It must be proportionate to the gravity of the proven guilt. In assessing the said proportionality, the facts and circumstances of the case and any other circumstances which are peculiar to the case before the Court are all required to be considered. [22] and [23]

FURTHER HELD,

Admittedly in the present case, the accused was a young woman of 27 years of age, having a minor daughter aged about 2 and 1/2 years as at the time of filing of the petition in the Family Court, and now the said daughter might be a grown up girl. According to the Learned Counsel for the accused, the accused being the mother, is still required to take care of the said girl and ensure her settlement in life. Further, the alleged aggrieved person was the husband of the accused and also the father of their minor daughter.-In such special circumstances of the case, Court is of the view that sending the accused to serve imprisonment, however small period it may be, that itself would drastically affect her future as well as that of her daughter. On the other hand since Section 499 of the Indian Penal Code gives discretion for imposing only fine also, quantum of fine imposed by the Trial Court can be enhanced.-The fine amount of ' 5,000/- imposed by the Trial Court and confirmed by the Learned Session Judge's Court, is modified and enhanced to ' 15,000/- with a default sentence of Simple Imprisonment for one month in case the accused fails to pay the fine amount within sixty days from today. [23] and [24]

ORDER

Dr. H.B. Prabhakara Sastry, J.

1. The revision petitioner in Criminal Revision Petition No. 1358/2010 is the husband of the respondent therein which respondent is the revision petitioner in Criminal Revision Petition No. 152/2014. The revision petitioner in Criminal Revision petition No. 1358/2010 is the sole respondent in Criminal Revision Petition No. 152/2014.

The petitioner husband-Sri. Nagaraja Rao had filed a criminal case in C.C. No. 11445/2006 against the accused (his wife)-Smt. Sushma Rani in the Court of the VI Additional Chief Metropolitan Magistrate, Bangalore City (hereinafter for brevity referred to as the "Trial Court") alleging the offence punishable under Sections 500, 191 and 193 of the Indian Penal Code, 1860 (hereinafter for brevity referred to as "I.P.C.") against the accused.

The said criminal case, after trial, ended in conviction of the accused therein for the offence punishable under Section 500 of the IPC and the accused was sentenced to undergo Simple Imprisonment for a period of one month and to pay a fine of '5,000/- by the judgment and order on sentence of the Trial Court dated 25-10-2010.

Challenging the said judgment of conviction and order on sentence passed by the Trial

Court, the accused therein (Smt. Sushma Rani-the wife) preferred a Criminal Appeal in Criminal Appeal No. 815/2010 in the Court of the Additional Sessions Judge, Fast Track Court-XIV, CCC, Bangalore City, (hereinafter for brevity referred to as "Session Judge's Court") which appeal, after contest, is dismissed by the judgment dated 15-02-2012. Against the said judgment of confirmation of conviction passed by the learned Sessions Judge's Court, the accused has preferred Criminal Revision Petition No. 152/2014, whereas, seeking enhancement of sentence, ordered by the Trial Court, the complainant (husband) has filed Criminal Revision petition No. 1358/2010 before this Court.

2. For the sake of convenience, the parties would be henceforth referred to with the ranks they were holding in the Trial Court.

3. Both these Criminal Revision Petitions have been treated as connected matters, as such, taken up together for their hearing and disposal.

4. The revision petitioner in Criminal Revision Petition No. 152/2014 who is the respondent in the connected Revision Petition is being represented by her counsel. The respondent in Criminal Revision Petition No. 152/2014, though was originally being represented by a counsel of his choice, but due to the continuous absence of the said learned counsel for the respondent, this Court, by a detailed order dated 03-09-2020, appointed learned counsel Smt. P.V. Kalpana, as Amicus Curiae for the respondent in the said revision petition. However, the very same complainant as a revision petitioner in Criminal Revision Petition No. 1358/2010 has continued his representation through his learned counsel.

5. The Trial Court and Session Judge's Court's records were called for and the same are placed before this Court.

6. Heard the arguments from both side. Perused the materials placed before this Court including the Trial Court and Session Judge's Court's records.

7. After hearing both side, the points that arise for my consideration in these revision petitions are:

[i] Whether the complainant has proved beyond reasonable doubt that the accused has committed an offence punishable under Section 500 of the Indian Penal Code?

[ii] Whether the sentence ordered by the Trial Court against the accused in C.C.NMo.11445/2006 on 25-10-2010 deserved to be enhanced?

[iii] Whether the judgments and order on sentence impugned under these revision petitions suffers with any illegality, impropriety, warranting interference at the hands of this Court?

8. The summary of the case of the complainant in the Trial Court was that, the complainant had instituted a matrimonial case against his wife in the Family Court at Bengaluru, seeking Restitution of Conjugal Rights in M.C. No. 959/2001. In that case, the accused (wife) appeared and filed her statement of objections to the main petition, wherein she had made certain defamatory allegations accusing the complainant that, he was consuming liquor and was assaulting her in the night hours. It was also accused against him that he used to insist her to dance naked and in the presence of his friends. It was also accused of him that he was acting as a pimp for his friends. The Family Court, by its judgment dated 11-04-2005 passed in M.C. No. 959/2001, allowed the

petition and ordered for restitution of conjugal rights. It is thereafter the complainant (husband) has filed C.C. No. 11445/2006 in the Trial Court alleging that the statements made by the accused in her statement of objections in M.C. No. 959/2001 and her evidence led in the said case has brought down his reputation and has resulted into his defamation.

9. In the Trial Court, the complainant examined himself as PW-1 and got marked four documents at Ex. P-1 to Ex. P-4. The accused got herself examined as DW-1, but no documents were marked as Exhibits from her side.

10. From the evidence of PW-1 and DW-1 led in the Trial Court, the undisputed facts remain that, the complainant was the husband of the accused who had instituted a matrimonial case against her in M.C. No. 959/2001 for the relief of restitution of conjugal rights. In the said matrimonial proceeding, the accused has filed her statement of objections as per Ex. P-4 and has given her evidence as per Ex. P-1. It is also not in dispute that Ex. P-2 is the certified copy of the common judgment passed by the Trial Court in M.C. No. 959/2001 and in G & WC No. 36/2002, which Guardian and Ward's case was also between the same complainant and the accused. It is also an admitted fact that in the said common judgment dated 11-04-2005, M.C. No. 959/2001 filed under Section 9 of the Hindu Marriage Act, 1955, was allowed, granting the relief of restitution of conjugal rights in favour of the complainant and his G & WC No. 36/2002 was also partly allowed, granting visiting rights to the complainant to visit their minor daughter. Ex. P-3 is the Decree pertaining to the said common judgment in Ex. P-1.

11. The complainant as PW-1 in his examination-in-chief, apart from marking the documents from Exs. P-1 to P-4 has stated that, the reputation of his family has been affected by the statements made by the accused. He also stated that, due to the insult they have suffered, they cannot move in the society by keeping their head high.

He was subjected to a detailed cross-examination from the accused' side, wherein he stated that the accused herself has published the contents of her statement of objection to the public i.e. to his relatives. Though he stated that those information have not been published in any daily newspapers, but he again stated that the accused has stated the information contained in her statement of objections to his friend Venkatesh and also to his uncle and aunty.

In his further cross-examination, he stated that he has shown the said statement of objections to his uncle, aunty and friends. He also stated that in the matrimonial case, the Court opined that the accused failed to prove the contents of her statement of objections. The appeal preferred by the accused against the judgment of the Family Court in the High Court also came to be dismissed. He denied a suggestion that the accused has not made any statement, defaming his reputation.

12. The accused got herself examined as DW-1, who in her examination-in-chief stated that, she has mentioned the incidents occurred between herself and the complainant in her statement of objections. Accordingly, she has also filed her affidavit in the case. However, she stated that she has not disclosed the contents of the statement of objections to the relatives and friends of the complainant, but she stated that her parents knew those details. She again reiterated that what she has narrated were only the incidents taken place between herself and the complainant.

In her cross-examination, she admitted the institution of a petition for restitution of conjugal rights by her husband and the same coming to be allowed in his favour. She has also admitted that she has preferred an appeal against the same. She admitted the

document at Ex. P-4 as her statement of objection filed in the said Matrimonial Case. She also admitted the document at Ex. P-1 as the certified copy of her oral evidence in the very same matrimonial case. However, she denied that those two documents contain abusive words against the complainant. But she stated that she has mentioned what was the fact. Though she denied that she had stated in her statement that the accused was a pimp, broker, but admitted as true that she has stated that the complainant had illicit relationship with other ladies and further she has stated that he was bringing other male persons. She also admitted a suggestion as true that the Family Court in its judgment has observed that she (accused) could not prove the statements made by her in her statement of objections.

13. Section 499 of the Indian Penal Code, 1860, defines as to what is 'defamation', which reads as below:-

Section 499. Defamation-Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.-It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.-It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.-An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.-No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception.-Imputation of truth which public good requires to be made or published.-It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.-Public conduct of public servants.-It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.-Conduct of any person touching any public question.-It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.-Publication of reports of proceedings of Courts.-It is not defamation to publish substantially true report of the proceedings of a Court of

Justice, or of the result of any such proceedings.

Explanation.-A justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.-Merits of case decided in Court or conduct of witnesses and others concerned.-It is not defamation to express in good faith any opinion whatsoever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.-Merits of public performance.-It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.-A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.-Censure passed in good faith by person having lawful authority over another.-It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.-Accusation preferred in good faith to authorised person.-It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.-Imputation made in good faith by person for protection of his or other's interests.-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 interests of the person making it, or of any other person, or for the public good.

Tenth Exception.-Caution intended for good of person to whom conveyed or for public good.-It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

A reading of the said Section goes to show that, in order that, an act to become a 'defamation', there must be (i) an imputation concerning any person; (ii) such an imputation may be by words, either spoken or written or even by signs or by visible representations; (iii) such an imputation must be intending to harm the other person or knowing or having reason to believe that it would harm the reputation of other person. Thus, such an imputation must be made or published and its effect must harm the reputation of the other person against whom such imputations are made.

However, the said definition itself gives ten Exceptions and any act though fulfills the essentials of the definition of 'defamation', still, if falls under any one or more of the Exceptions, then, the same cannot be termed as 'defamation' under Section 499 of IPC.

In order to be defamatory, a publication must tend to lower the complainant in the opinion of men whose standard of opinion, the Court can properly recognise or tend to induce them to entertain an ill-opinion of him. However, the complainant need not show a tendency of imputation to prejudice him in the eye of everyone in the community or all of his associates, but it is sufficient to establish that the publication tends to lower him in the estimation of a substantial, respectable group, even though they are of a totally different community or of the complainant's associates.

14. Learned counsel for the accused submitting that the statements made by the accused in the matrimonial case as per Ex. P-4 and Ex. P-1 do not amount to publication, has relied upon a judgment of the High Court of Madras in the case of J. Gnana Kumar Vs. Joy Kanmani reported in MANU/TN/9759/2007 : LAWS (MAD)-2007-11-513, wherein the respondent wife had instituted a private complaint against her husband for the alleged offence punishable under Section 500 of IPC. The Madras High Court was pleased to observe that, one of the basic legal requirements of Section 499 of IPC is that, the imputation should be either made directly to the knowledge of third parties, or the same should be published to the knowledge of the third parties. However, in the case before it, even as per the allegations made in the complaint, it observed that, the imputations cannot be considered as published either directly or indirectly since they were pleadings filed before the Court of Law which are not public documents to which anybody can have free access. The Madras High Court, however, opined in the same case that, though the pleadings are handled by the Court staff and copy is furnished to the respondent therein, which can be made public even by the respondent, but those things would not amount to publication by the accused.

Learned counsel for the accused also relied upon a judgment by a co-ordinate bench of this Court in the case of S. Nagaraj Vs. K. Nanda Kumar reported in MANU/KA/2952/2014 : LAWS (KAR)-2014-10-20, wherein this Court was pleased to observe that, the complainant alleging defamation is required to establish that the defamatory matter was published or that it was communicated to some person other than the person about whom it is addressed. It was further observed that, mere communication of the defamatory matter to the person defamed is not 'publication' and that the 'publication' should be made to others with an intention to defame the concerned person-publication to person defamed may amount to an insult and not 'defamation'.

Learned counsel for the accused also relied upon the judgment of another co-ordinate bench of this Court in the case of Chirashree Das Gupta Vs. Amitabh Das S/o. Late Punyanand Das reported in LAWS (KAR)-2018-8-304, wherein this Court was pleased to observe that making a defamatory matter known after it has been written to some person other than the person for whom it is written is a 'publication' in its legal sense. A defamatory matter must, therefore, be communicated to some person other than the person concerning whom it is written. Communicating a defamatory matter to the person concerned only cannot be said to be a publication.

15. Learned Amicus Curiae for the respondent/complainant in Criminal Revision Petition No. 152/2014, in her argument stating that the pleadings filed in a Court and the deposition given in a Court of Law are not privileged one and further stating that a pleading filed in the Court also amounts to publication, has relied upon few judgments

in her support as follows.

In the case of Smt. Madhuri Mukund Chitnis Vs. Mukund Martand Chitnis and another reported in MANU/MH/0120/1990 : 1990 CRL. L.J. 2084, the Bombay High Court was pleased to observe that, the imputations made in a proceeding which is filed in a Court is clearly a publication. It further observed that even a publication to an authority over the person against whom the imputations are made must be held to be sufficient publication which falls within the purview of the said Section 499 of IPC.

In the case of M.K. Prabhakaran and another Vs. T.E. Gangadharan and another reported in MANU/KE/0074/2006 : 2006 CRI. L.J. 1872, the Kerala High Court, in a matter where it is alleged that defamatory statements against complainant were made in a written statement filed before the Court held that, once a statement has been filed in a Court of Law, that statement can be taken as published. If such a statement amounts to per se defamatory, then it is the duty of the accused to establish that, they are justified in making such a statement under any of the exceptions to Section 499 of IPC.

In the case of Sanjay Mishra Vs. Government of NCT of Delhi & another, the Delhi High Court in paragraphs 11 and 12 of its judgment was pleased to observe as below:-

"11. In Sandyal V. Bhaba Sundari Debi MANU/WB/0241/1910 : 7 Ind. Cas. 803 : 15 C.W.N. 995 : 14 C.L.J. 31 the learned Judges, following the case of Augada Ram Shaha V. Nemai Chand Shaha MANU/WB/0132/1896 : 23 C.867: 12 Ind. Dec.(n.s.)576, held that defamatory statements made in the written statement of a party in a judicial proceedings are not absolutely privileged in this country, and that a qualified privilege in this regard cannot be claimed in respect of such statements, unless they fall within the Exceptions to Section 499 of the Indian Penal Code. Undisputedly, the case of the petitioner was not in any of these Exceptions.

12. For criminal purposes "publication" has a wider meaning than it has in civil law, since it includes a communication to the person defamed alone. The prosecution for defamation in criminal cases can be brought although the only publication is to the person defamed as it is very likely to provoke a breach between the persons involved...."

In the case of Thangavelu Chettiar Vs. Ponnammal reported in MANU/TN/0132/1966 : AIR 1966 Mad 363, the Madras High Court was pleased to observe that, there can be no doubt that the defamation contained in the plaint was published by the plaint being filed in the Court.

16. In the instant case, the accused herself has, in unequivocal terms stated that, it is at her instance the statement of objection was filed in the Family Court, as per Ex. P-4 and she has given her evidence in the said case as per Ex. P-1. Apart from filing her pleading which is alleged to have contained some defamatory words according to the complainant, she has also stated about the contents of her said statement to his uncle, aunty and a friend. Though the accused as DW-1, in her evidence, has stated that she has not stated about the contents of her statement before anybody, but the evidence of PW-1 that she has revealed the contents of her statement to his relatives and a friend has not been denied in his cross-examination, rather the said statement was elicited by the accused herself in the cross-examination of PW-1. Therefore, it is clear that apart from filing the statements as per Ex. P-4, in the form of statement of objections, in the matrimonial case, she has also revealed the contents of the same to the relatives and a friend of the complainant, which clearly establishes that there was publication as

required under Section 499 of IPC of the alleged defamatory statement by the accused.

17. The next question would be, whether the alleged statements in Ex. P-4-statement of objections are defamatory.

Learned counsel for the accused did not contest on the said aspect.

A reading of Ex. P-4 would go to show that, the said accused, as the then wife of the complainant, has in her said statement of objections, made certain statements in Kannada language, the translation of the same in English reads as below:-

"complainant does not know the name of his daughter. The said fact clearly proves as to what was the extent of relationship the complainant had with the first respondent and the girl child. It shows clearly that he has another relationship."

"....the complainant being an addict of liquor was torturing the first respondent in the night asking her to dance naked since there would be no other person in the room and when she was not doing so, he was torturing her physically and mentally".

"The complainant developing the attitude of behaving at his own whims and fancies, was binging some persons who were unknown to her and insisting her to have physical relationship with them and to make money."

"since the first respondent refused to establish the illicit relationship with third persons and sell her character to third parties and earn money, the complainant assaulted her on several occasions and also attempted to kill their daughter by throttling her neck."

18. The above reproduction of the contents of the statements of the accused, suffice it to say, would per se reveal that the said statements are defamatory in nature unless they are shown to be falling within any one of the Exceptions to Section 499 of IPC.

19. Learned counsel for the accused in his argument submitted that, the statements made by the accused if appear to be per se defamatory, still, they fall under Exception to Section 499 of IPC, as they have been made by the accused in good faith.

In his support, he relied upon the judgment of the Division Bench of this Court in the case of Bhimanagouda Mallangouda Vs. Malleshappa Basappa reported in LAWS (KAR)-1979-8-4, where the complainant has alleged that, accused No. 1 had defamed him by using the expression to the effect that he was a rowdy type of man and was an ex-convict at Ex. P-1(A) which is an affidavit filed by the accused No. 1 in support of an interlocutory application in an original suit. The accused had admitted having filed the affidavit and also one more similar document as per Ex. P-2. However, he had explained that the expressions were made in good faith and in their own interest. The Magistrate held that the ingredients of Ninth Exception to Section 499 of IPC were not established by the accused, as such, the accused were held guilty of the offence of defamation. The learned Sessions Judge held contrary to the same. In an appeal filed by the complainant, the Division Bench observed that, under Section 52 of the IPC, 'nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. Analysing the facts before it, the Court observed that, the plaint at Ex. P-2 was prepared by the concerned lawyer in a language which was not the mother tongue of the accused. Though it can be presumed that based upon the instruction, the

lawyer has transliterated the words communicated to him by the accused, still, the accused had taken a legal advice of the lawyer. With this, the Court held that, consulting an experienced lawyer before use of such expressions is sufficient compliance of the ingredients of Section 52 of IPC. However, it observed, certain latches as to the lawyer not being made as an accused or of he not being examined as a prosecution witness and certain similar omissions on the part of the complainant. With this, it opined that the materials before it is sufficient to provide preponderance of reasonable probability in favour of the accused, as such, it dismissed the appeal filed by the complainant.

20. In the instant case, to bring the statements made by the accused in Ex. P-4 which are contested to be defamatory as the one made with good faith and thus falling within the Ninth Exception to Section 499 of IPC, she has to show that she had made those statements with due care and attention. However, her own statement made at more than one place in her cross-examination as DW-1 that, she has stated that what she has stated in her statement of objections were the facts and they were the incidents occurred between herself and her husband i.e. the complainant. She has reiterated that they were the truth, as such, they were fact, in her further cross-examination also. Therefore, though the learned counsel for the accused contends that, she made the same in good faith, but according to accused, they were truth. If they are truth and falling under First Exception to Section 499 of IPC, then it is for her to prove that they were the facts.

Admittedly, except making those statements in her statement of objections at Ex. P-4 and reiterating it in Ex. P-1, she has not even attempted to show that they were the imputation of truth or that they were made in good faith. Therefore it can be safely held that the complainant has proved beyond reasonable doubt that the accused has committed an offence of defamation punishable under Section 499 of IPC, which is punishable under Section 500 of IPC.

21. Since both the Trial Court as well the Fast Track Court have arrived at the same finding, holding the accused guilty of the offence punishable under Section 500 of IPC, I do not find any reason to interfere in their impugned judgments.

22. The second aspect is about the quantum of sentence ordered by the Trial Court for the proven guilt of the accused, which is punishable under Section 500 of IPC.

The punishment for defamation prescribed under Section 500 of IPC is a Simple Imprisonment for a term which may extend to two years or with fine or with both.

The Trial Court has sentenced the accused to undergo Simple Imprisonment for one month and to pay a fine of '5,000/-. The revision petitioner in Criminal Revision Petition No. 1358/2010 has prayed for enhancement of the said sentence to its maximum.

The learned counsel for the revision petitioner in Criminal Revision Petition No. 1358/2010, in his argument submitted that, the facts and circumstances warrants ordering the maximum punishment to the accused who has recklessly and intentionally made defamatory statements which have harmed the reputation of the petitioner.

Per contra, learned counsel for the accused in his argument submitted that in case the Court comes to the conclusion that the accused is guilty of the alleged offence, then, considering the facts and circumstances of the case and also of the fact that, then the accused was the wife of the complainant and that she has got a minor daughter to be taken care of and also considering her reputation in the society, the sentence of

imprisonment be set aside.

23. It is the sentencing policy that the sentence ordered should be neither nominal nor exorbitant. It must be proportionate to the gravity of the proven guilt. In assessing the said proportionality, the facts and circumstances of the case and any other circumstances which are peculiar to the case before the Court are all required to be considered.

Admittedly in the instant case, the accused was a young woman of 27 years of age, having a minor daughter aged about 2 and ½ years as at the time of filing of the petition in the Family Court, and now the said daughter might be a grown up girl. According to the learned counsel for the accused, the accused being the mother, is still required to take care of the said girl and ensure her settlement in life. Further, the alleged aggrieved person was the husband of the accused and also the father of their minor daughter.

In such special circumstances of the case, I am of the view that sending the accused to serve imprisonment, however small period it may be, that itself would drastically affect her future as well as that of her daughter. On the other hand since Section 499 of the Indian Penal Code gives discretion for imposing only fine also, quantum of fine imposed by the Trial Court can be enhanced.

24. Accordingly, I proceed to pass the following:

ORDER

[i] The Criminal Revision Petition No. 152/2014 is allowed in part;

The judgment of conviction passed by the Court of the VI Additional Chief Metropolitan Magistrate, Bangalore City, dated 25-10-2010 in C.C. No. 11445/2006, convicting the accused-Smt. Sushma Rani and holding her guilty of the offence punishable under Section 500 of the Indian Penal Code, 1860, which is confirmed by the Court of the Additional Sessions Judge, Fast Track Court-XIV, CCC, Bangalore City, in Criminal Appeal No. 815/2010 in its judgment dated 15-02-2012, is confirmed.

However, the sentence of imprisonment ordered by the Court of the VI Additional Chief Metropolitan Magistrate, Bangalore City, ordering the accused-Smt. Sushma Rani to undergo Simple Imprisonment for one month, which was further confirmed by the Court of the Additional Sessions Judge, Fast Track Court-XIV, CCC, Bangalore City, is set aside;

However, the fine amount of '5,000/- imposed by the Trial Court and confirmed by the learned Session Judge's Court, is modified and enhanced to '15,000/- with a default sentence of Simple Imprisonment for one month in case the accused fails to pay the fine amount within sixty days from today.

[ii] The Criminal Revision Petition No. 1358/2010 is dismissed.

The Court acknowledges the services rendered by Smt. P.V. Kalpana, learned Amicus Curiae for the respondent in Criminal Revision Petition No. 152/2014. While acknowledging the assistance rendered by her in this case, the Court recommends to consider the remuneration payable to her to an amount not less

than a sum of '5,000/-.

Registry to transmit a copy of this order along with Trial Court and Session Judge's Court records to the concerned Courts without delay.

The accused is entitled to a free copy of this order immediately.

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