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Abuse of Defamation Laws in India: An Overview

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Abstract

The word defamation means 'aspersion' or 'denigration' or 'publication'. The offence of 'defamation' is stated to be made against a 'person' or 'persons' harming his or their reputation. The intention to cause harm is the most essential ingredient of an offence of defamation attracting penal action under section 499 of Indian Penal Code. There can be no offence of defamation unless the alleged defamatory statement is made public or published. Actual words of insult must be mentioned in the complaint so that the court may ascertain whether the words used amounted to insult or not. Recent spurt in defamation cases are the classic examples of abuse of process of law. The political workers of followers are launching prosecutions against big political leaders or religious stalwarts for their alleged defamatory statement made before the press. Recently, religious leader and **Yoga Guru** Baba Ramdev has been prosecuted for his alleged defamatory remark stating that "Rajiv Gandhi is honeymooning with dalits". A shipping professional was booked by Goa Police for posting remarks against BJP leader Narendra Modi. In relation to offences under section 499 to 502, I.P.C occurring in chapter XXI only an 'aggrieved person' can file a complaint before a Magistrate. When the alleged imputation has been made against a caste or class or such larger group of persons, then such a "collection or persons" or a member of such unidentified or indeterminate class, cannot pose as an 'aggrieved person' within section 199, Cr.P.C. So, such types of frivolous prosecution based on generalized statements are unsustainable in law.

Keywords: Defamation. Law, Abuse.

1. Introduction

The large scale abuse of defamation laws particularly by the workers and leaders of political parties is a matter of serious concern now-a-days. A large number of cases are being filed on the basis of statements made in the press by political leaders. Such complainant claims to be a 'person aggrieved' offended by the statement given by a political or social leader against their so-called leader or mentor. Such statement is being taken up as a ground for prosecuting the political or religious leaders. Recently, a number of cases have been filed against *Baba Ramdev*, a religious leader, for giving statement against Rajiv Gandhi with the reference to the dalits. Recently, Goa police has booked a young shipping professional for allegedly posting of comments against BJP leader, Mr. Narendra Modi on facebook. A senior congress leader, Digvijay Singh was prosecuted in similar way at several places in India for the alleged defamatory remarks against *Rashtriya Swamsevak Sangh* as well leaders of *Bhartiya Janata Party*.

2. Defamation: Meaning

The word 'Defamation' means 'Abuse', 'Aspersion', 'Denigration', 'Disparagement', 'Publication' etc. Ordinarily, the offence of defamation is stated to be made against a "person" or "persons" harming his/their reputation. The ingredients of defamation are-(i) making or Publishing any imputation concerning any person, (ii) such imputation must have been made with the intention to harm with knowledge or having reason to believe that it will harm the reputation of the person concerned [1]. Therefore, the intention to cause harm is the most essential "sine qua non" of an offence of defamation under section 499 of Indian Penal Code. The word "makes" connotes to make "public" or make known to "person in general". So, the section 499 of IPC brings under the criminal law, the person who makes the defamatory imputation. So, there can be no offence of defamation unless the defamatory statement is made or published by the accused. The word "makes" or "publishes" must be

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implementing or supplementing to each other^[2]. Where the complaint did not mention the words used for supposed to be used by the accused, the Court, would not be in position to decide whether the words used amounted to insult^[3].

Now, a debate has been started at every public forum that whether defamation should be decriminalized or not. The issue has been assumed significance by the recent incidents when *Aam Admi* Party leader Mr. Arvind Kejriwal was sent to jail after he refused to furnish bail bond in a defamation case launched by *BJP* leader Mr. Nitin Gadkari. Coincidentally, the Law Commission of India has also taken cognizance on the matter and floated a consultation paper seeking opinions from the stake holders whether defamation should be decriminalized? Although, the press enjoys freedom of speech and expression under Article 19 (1) (a) of Indian Constitution, defamation is a ground of reasonable restriction under article 19(2). Currently, civil defamation is dealt with law of torts whereas criminal defamation is an offence under section 500/504, of Indian Penal Code.

3. Concept of “Person Aggrieved”

In the case of ‘defamation’, complainant must be an aggrieved person^[4]. A “*person aggrieved*” must be a man “*who has suffered a legal grievance, a man against whom a decision have been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something*”. The narrow concept of “*cause of action*” and “*person aggrieved*” and “*individual litigation*” is becoming obsolescent in some jurisdiction and therefore, an association can also main writ petition for raising the grievance of his members.[5] Although, Section 498, Cr. P.C. lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule permitting only an aggrieved person to move to a magistrate in cases of defamation. The provision of the section is mandatory and, therefore, if a magistrate takes cognizance on the offence of defamation on a complaint filed by a person who is not an aggrieved person, the trial and conviction of an accused would be void and illegal^[6].

In relation to offences covered by section 499 to 502, I.P.C occurring in chapter XXI, I.P.C, only an aggrieved person can file complaint before the magistrate. The exception engrafted under section 199 Cr. P.C is mandatory. When the alleged imputation has been made against a caste or class or such larger group of persons, then such a “collection of persons” or a member of such unidentified or indeterminate class cannot pose to be an aggrieved person within section 199 Cr. P.C^[7]. Person includes collection of person and therefore, prosecution of staffs of Uttar Pradesh Government cannot be subject to defamation and Explanation 2 of section 499, IPC covers such cases^[8]. Although, Mother Teresa is a living saint and if there are defamatory words or imputations against her, the respondent/follower has no *locus standi* to file a complaint^[9].

Where the defamatory words used in the article published in the newspaper stating “Incidentally district lawyers are invariably most corrupt persons” did not refer to the lawyers of any particular district or even of any particular state but of the whole country comprising numerous lawyers, the said imputation would not cause defamation within the meaning of section 499, IPC and therefore, any particular lawyer cannot be termed as an ‘aggrieved person’ within the meaning of 499 of the Code^[10]. As per law, the collection of

class of person must be a definite and determined body so that the imputation question can be said to relate to its individual members or components^[11]. So, it is highly arguable whether the remark of *Baba Ramdev* stating that “*Rajiv Gandhi is honeymooning with dalits*”, can attract offence of defamation because the so-called dalits are not identifiable or determinate body in the eye of law.

4. Publication: Meaning and Scope

A defamatory matter must be communicated to some person other than the person concerned whom it is written. Communicating defamatory matter to the person concerned cannot be said to be a publication. The point therefore, is whether the circumstance that mere writing of words, however, defamatory they may be to a person intended to be read by him and not to be read by third person it does not constitute an offence of defamation and does not make a man liable to pay damages in a civil action. It is, therefore, necessary to show that the writer intended to show his defamatory writing to be read by person or persons other than the addressee or at least he ought to have known that they were likely to be so read by a third person or persons. In absence of such proof, it cannot be held that the writer should be held for defamation simply because writing got publication^[12]. ‘*Defamation*’ as such consists in the publication of false and defamatory statement concerning another person without any lawful justification. It cannot be disputed that a communication to be defamed himself will not be a publication within the meaning of a defamatory law. The use of the words published in this section does not contemplate those communications which one is bound to make to others in the normal course of his legal duties. The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty^[13].

5. Civil Suit in Defamation

A civil suit may be filed against an act of defamation by the aggrieved person. The pendency of civil suit is no bar to the magistrate taking cognizance of the offence of defamation. The Hon’ble Madras High Court has ruled in ‘*Dr. J. Sudharshan-V.-R. Sankaran*’ that, criminal prosecution against plaintiff was maintainable and allegation in the plaint were *per se* defamatory and irrespective of pendency of civil suit^[14].

When the magistrate is of opinion that the offence of defamation has taken place, there is no bar to the magistrate taking cognizance of the offence against the person whose matter is already pending in the civil court because the two proceedings are separate and can go side by side^[15].

Accused alleged to have written false allegation in written statement in pending suit between the parties and circulating the same to common friends then it *prima facie* constitute defamation^[16].

6. Imputation: When Caused

Imputations in the offending article must be directed against a definite person. The offending article aiming at a particular community in general and thus no personal injury caused to the complainant, as such complaint is maintainable^[17]. Thus, the words of imputations must be against the person or persons whose identity could be established but not against a class as a whole^[18]. For instance, imputation to a Hindu that he is outcaste is defamatory but not covered by section 499

of IPC. A word or imputations against lawyers of the country as a class does not constitute an offence unless relates to some particular person or persons whose identity can be established ^[19].

7. Conclusion

It is, therefore, high time that the law relating to defamation must be properly defined to discourage the abuse of the law being made by persons with vested interests who are launching criminal prosecutions for alleged remarks against their social, religious, political leaders mainly for the sake of publicity and similar other political gains. The term 'aggrieved person' must also be categorically defined to include the victim or person defamed or his near 'relative' only.

8. End Notes

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