

COURT OF THE
ADDITIONAL SESSIONS JUDGE,
(COURT NO.4),
WEST TRIPURA, AGARTALA.

Case No. Criminal Revision No.2(1)2012.

Sri Sushil Chowdhury.....Accused-petitioner,
Vrs.
Prof.Arunoday Saha.....Complainant-respondent.

P R E S E N T.

Shri K.Chakraborti,
Additional Sessions Judge,
(Court No.4),
West Tripura, Agartala.

C O U N S E L S.

For the accused-petitioner	:- Mr.B.Choudhury, <u>Advocate</u> , Mr.R.Majumder, <u>Advocate</u> & Mr.S.Ghosh, <u>Advocate</u> .
For the Respondent	:- Mr.S.Chakraborty, <u>Advocate</u> , Mr.I.Banik, <u>Advocate</u> , Mr.P.Saha, <u>Advocate</u> & Smt.B.Debbarmma, <u>Advocate</u> .

Argument heard on :- 21/07/2012.
Judgment delivered on :- 27/07/2012.

J U D G M E N T.

This is a revision under Section 397 read with Section 399,Cr.P.C. preferred against the impugned order dated 14.11.2011 passed by Learned Judicial Magistrate First Class, Court No.5, Agartala, West Tripura in connection with Case No.CR.72 of 2009.

2. Facts of the respondent's case in CR.Case No.72 of 2009 in short is that the petitioner is an editor of a daily news paper namely, "Dainik Ganadoot". On 13th April, 2009 in the 1st and 8th page of the said newspaper one news item was published which contained defamatory statements labelling false allegations and disparaging the character of the petitioner. Being defamed by the said publication of news item by the respondent, the petitioner filed a case praying to take cognizance under Sections 500/501, IPC.

The petitioner on receipt of the summons appeared before the Court and filed a petition under Section 199, Cr.P.C. questioning the

maintainability of the case filed by the respondent. Learned Court below on hearing both the sides, rejected the petition vide order dated 14.11.2011.

Being aggrieved by and dissatisfied with the impugned order dated 14.11.2011 passed by the learned Court below, the accused-petitioner prefers this revision petition.

3. According to the learned counsel appearing for the petitioner, the respondent has nowhere stated in his complaint that he was aggrieved by the publication dated 13th April, 2009 and as such, the facts do not constitute any offence as defined under Section 499 of IPC. The Learned counsel appearing for the petitioner has submitted that the respondent in violation of Section 199(2), Cr.P.C. filed a complaint against the petitioner for getting redress under Section 500/501, IPC. Learned counsel has also submitted that the Section 9(1) of the Tripura University Act, 2006 speaks the President of India shall be the visitor of the University and complainant-respondent is a Vice-Chancellor of Tripura University and he was appointed as Vice-Chancellor by the visitor i.e. the President of India. Being such a position, the respondent has been defined as person occurring in Sub-Section 2 of Section 199, Cr.P.C. Such being the position, if such person i.e. the respondent in this case is aggrieved by the concerned publication or any other publication, he has no right to approach the door of the Court upon such complaint without the door of the public prosecutor. Learned counsel has further submitted that Rules 19 of CCS (Conduct) Rules, 1964 does not permit the respondent to approach the Court without taking any sanction or permission from the appropriate Government, if he is aggrieved by the publication. That apart, Learned counsel for the petitioner has relied upon a decision in the case of Ch. Ramoji Rao, Chairman, Ramoji Group of Companies and another Vrs. State of Andhra Pradesh reported in AIR 2006 SC 2384. He also relied upon another decision in the case of G. Narasimhan and others etc. Vrs. T.V. Chokkappa, reported in AIR 1972 SC 2609.

4. Refuting the argument advanced by the learned counsel for the petitioner, learned counsel appearing for the respondent has stated that the respondent personally is at liberty to approach the door of the Court since he has been aggrieved by the publication of the

accused-petitioner and the Section 199(1) and 199(6) of Cr.P.C. clearly speak that the respondent has rightly approached the door of the Court and the Court below rightly took the cognizance of the offence disclosed in the complaint petition. But the argument submitted on behalf of the petitioner holds no water. Learned counsel for the respondent has relied upon a decision in the case of Sant Lal Nagrath Vrs. Krishan Lal Suri and others reported in 1976 CRI.L.J. 215.

F I N D I N G S.

5. To ascertain the correctness, legality or propriety of the impugned order, I feel it necessary and expedient to scan the case record consequent upon the argument advanced by the parties to the proceeding before reaching the conclusion over the fate of the present revision petition.

Here, only moot point whether the Learned Court below acted correctly in taking cognizance on the facts constituted upon the complaint.

Since the case is at post cognizance stage without full dressed trial it will not be wise to determine whether the respondent is aggrieved by the imputation reported in the said publication. Therefore, the case laws referred by the petitioner's side do not affect the right of the complainant. In view of the argument launched by the petitioner's side it can unerringly be said that the respondent is the person as covered by Section 199 of Cr.P.C. It is true that if any such person is aggrieved he has no right directly to approach the door of the Court on such a complaint as because there is restriction under Rules 19 of CCS (Conduct) Rules, 1964.

What is the actual position of law exists today ? It is settled principle of law that the Section 199(6), Cr.P.C. makes it clear that Sub-Section 2 is in addition to and not in derogation of Sub-Section 1 and so, it is open to the aggrieved public servant to file an ordinary complaint before the Magistrate under Sub-Section 1, if he so desires, in respect of the defamatory statement whether spoken or written. Sub-Section 6 clearly indicates that whether in respect of his official or non official duties, the public servant's individual right to file complaint under section 199(1) remains entirely unaffected.

In the case of Sant Lal Nagrath(Supra) Hon'ble Delhi High Court held that,

“Section 199 applies to public servants who are victim of defamation and not the authors of defamation. So far as the victims of defamation are concerned. Section 199 enables the filing of a complaint by the public prosecutor instead of by the public servant who is defamed, but does not prohibit the public servant who is defamed from filing the complaint himself.”

In the instant case, it is true that the respondent being a public servant in his personal capacity filed a complaint for defamation. So, in view of the principle laid down in the aforesaid case law, the spirit of Section 199(1) and 199(6),Cr.P.C. does not create any bar to file complaint by such public servant if so aggrieved.

To conclude, generally, a public servant takes sanction under Rule 19 of CCS(Conduct) Rules,1964 so as to take recourse before the Court of law for vindicating the imputation published in the news paper. But it is his personal safeguard as required by the aforesaid Rules. The general law does not speak that the Court must enquire while taking cognizance as required by Section 199(1) and 199(6),Cr.P.C. on the complaint for defamation filed by the public servant whether such complainant being a public servant obtained sanction as required by the Rules 19,CCS (Conduct) Rules,1964. So, the Section 19,CCS(Conduct)Rules,1964 does not restrict the operation of the general provisions of Section 199(1) & 199(6),Cr.P.C.

In view of the above, the Learned Court below did not commit any wrong while taking cognizance on the complaint for defamation filed by the complainant,Vice Chancellor,Tripura University in his personal capacity.

O R D E R.

6. It is ordered that the petition filed by the accused-petitioner stands dismissed and the cognizance taken by the Court below and order dated 14.11.2011 stands good. Therefore, the Learned Court is directed to proceed with the case from the stage left by him,

for disposal in accordance with law.

7. Send down the L.C.Record along with a copy of this order to the Learned Judicial Magistrate First Class,Court No.5,,Agartala,West Tripura for information and necessary action.

8. The Criminal Revision is thus disposed of on contest.

A N N O U N C E D

(K.Chakraborti),
Addl.Sessions Judge,
Court No.4,
West Tripura,Agartala.

Typed to my dictation
and corrected by me.

(K.Chakraborti),
Addl.Sessions Judge,
Court no.4,
West Tripura,Agartala.