

18.01.2023

Sl. No. 06.

D/L.

Mithun.

Ct.No.42.

CRR/4680/2022

Abhishek Kapoor

Vs.

State of West Bengal & Anr.

Mr. Sandipan Ganguly, Sr.Adv.

Mr. Apalak Basu, Adv.

Mr. Zueb Cutterywala, Adv.

Mrs. Smita Mukherjee, Adv.

...for the petitioner.

The learned Advocate on record on behalf of the petitioner is granted leave to delete the name of the State of West Bengal as opposite party No.1 and renumber opposite party No.2 as the sole opposite party.

The petitioner is the Senior Executive Editor of a news Network.

The complainant, on the other hand, described himself as a reputed singer, lyricist and composer based in Kolkata, West Bengal. He served the Country as a Member of Parliament from Jadavpur Constituency, holding office from 2009 to 2014.

Suffice it to say that the complainant abused a reporter of the said news network of which the petitioner is the Executive Editor. The complainant claims that the reporter recorded such conversation and it was disseminated in the social media. It is the

allegation of the complainant that by way of such dissemination, he was defamed in public.

Therefore, the opposite party No.2 filed a Court complaint alleging offence against the Editor of Republic Bangla and one Bittu Roy Choudhury under Sections 499/500/34 of the Indian Penal Code.

The learned Additional Chief Judicial Magistrate, Alipore took cognizance of the offence and transferred the said case to the learned Judicial Magistrate at Alipore for examination of the complainant and witnesses and further process. The complainant alone was examined. His examination was recorded in the form of recording deposition (Form.M-2) which can only be used for recording evidence of a witness during trial. However, in the order sheet, the learned Magistrate stated that the complainant was examined on solemn affirmation.

It is submitted by Mr. Ganguly, learned Senior Counsel on behalf of the petitioner that the basic ingredient of offence of defamation is that a person should be defamed at the estimation of others. In the said complaint case, the complainant failed to produce any witness to corroborate his allegation that he was defamed in the estimation of others. Secondly, it is urged that as per averment made in the petition of complaint, the accused No.1/petitioner works for gain in Mumbai. However, the learned Magistrate did not take recourse of enquiry under Section 202 of the Code of Criminal Procedure. Thirdly, there was no television transmission of such recording and therefore, petitioner cannot be

held liable. Fourthly, the learned Magistrate prima facie acted with illegality by assuming territorial jurisdiction on the basis of television transmission of the said conversation though there was no transmission.

The instant revision be admitted.

Petitioner is directed to serve notice upon the private opposite party under registered speed post with acknowledgment due and file affidavit of service within three weeks from the date of this order.

In the meantime, further proceeding in connection with Case No.A.C.1286 of 2022 pending before the learned Judicial Magistrate, 9th Court at Alipore be stayed for a period of six weeks.

Petitioner is at liberty to mention the matter for early hearing after completion of service.

(Bibek Chaudhuri, J.)