

17/2008 against the summoning order inter alia on the following grounds :-

(a) Defamatory letter dated 17.05.2007 was in public interest and falls under the exceptions 1, 6,8 & 9 of Section 499 IPC.

(b) Respondent has not mentioned its name of employee who has received and discussed the defamatory letter.

(c) The court has no jurisdiction to try and entertain the complaint.

3. The said revision petition was dismissed by the learned Additional Sessions Judge vide its order dated 21.5.2008. The learned ASJ observed :

"5. I have given my careful consideration to the arguments advanced before me. In the letter dated 17.05.2007 it is mentioned that con-man of NIIT was able to purchase the concerned officers namely Sh P C Khandelwal, Sh. S. S. Rathore as well as Sh Manu Malik, Additional Commissioner of Income Tax, Central Circle, New Delhi. It is further alleged in the said letter that cases of large scale evasion of income tax by NIIT Ltd and its associate companies have been virtually killed and messed up by Sh P C Khandelwal, Assistant Commissioner of Income Tax. In my opinion, the language used by the appellant in the said letter is defamatory. To say that the respondent company is indulging in large scale of evasion of income tax in connivance with Assistant Commissioner of Income Tax or to say that con-man of the respondent company was able to purchase the Income Tax officers are certainly defamatory. A charge of corruption/bribery leveled by the petitioner against the respondent company, in my opinion, is defamatory. The case of the petitioner does not fall under the exceptions 1, 6, 8 and 9 of Section 499 IPC. From the perusal of material placed on record of trial court, prima facie a case under Section 500 IPC is made out.

6. The letter in question is not in dispute. CW 1 in her testimony has categorically stated that the said letter was dropped at the respondent's centre by the petitioner and was opened by the employee of the respondent company in the Reception Section as the envelop was not specifically marked to any one. The said letter was read over by number of employees of the respondent. Just by not mentioning the name of any employees who happened to read the said letter in the complaint as well as in the testimony of CW1 will not make the summoning order bad.

7. In the complaint as well as in the testimony of CW 1, it is stated that the said letter was dropped/dispatched by the petitioner at the respondent office which falls to the jurisdiction of Karkardooma Courts. Thus, the trial court has jurisdiction to try and entertain the complaint."

4. The petitioner by way of the present petition has once again challenged the summoning order dated 18.9.2007 passed by the Id. MM on the same grounds and facts as it was in its earlier revision petition, which was dismissed on merit by learned Additional Sessions Judge, Karkardooma.

5. According to the petitioner, the impugned order summoning the

petitioner to face prosecution in respect of the offences alleged against him by the first respondent is not sustainable and therefore is required to be quashed by this Court in exercise of powers vested in this Court under Section 482 Cr.P.C. and/or Article 227 of the Constitution of India because according to the petitioner the complaint does not make out any case against him.

6. On a query raised by the Court as to how the aforesaid petition is maintainable in view of the provisions contained under Section 397(3) Cr.P.c. which bars a second revision by a person who has already availed the remedy under Section 397 Cr.P.C. by filing a revision petition before the Court of Sessions under Section 482 Cr.P.C., the petitioner has relied upon the following judgments:-

1. *Kirshnan and Anr. Vs. Krishnaveni and Anr.*, (1997) 4 SCC 241
2. *Kailash Verma Vs. Punjab State Civil Supplied Corporation*, 2005(1)JCC 209
3. *Jitender Kumar Jain Vs. State of Delhi*, (1998) 8 SCC 770.

7. A perusal of the aforesaid judgments goes to show that after the right of revision is exercised by petitioner, a second revision on his behalf is barred under Section 397(3) Cr.P.C. The power vested in this Court under Section 482 Cr.P.C. can only be exercised where the impugned action is an action abusing the process of court or has caused miscarriage of justice.

8. In this regard, I may extract some observations made by the Apex Court in the case of *Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr.* (2005) 2 SCC 571 :

5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take

recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

9. This issue has also been discussed in the case of Krishnan & Anr. Vs. Krishnaveni and Anr. (1997) 4 SCC 241. Some of the observations made in this regard are reproduced hereinbelow for the sake of reference:

"6. Section 401 of the Code gives to every High Court power of revision. Sub-section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389 and 391 and on a Court of Sessions by Section 307. Apart from the express power under Section 397(1), the High Court has been invested with suo motu power under Section 401 to exercise revisional powers. In addition, Section 482 saves inherent powers of the High Court postulating that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine correctness, legality, or propriety of any finding, sentence or order, recorded or passed as also regularity of the proceedings of all inferior Criminal Courts.

7. It is seen that exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Session and the Magistrates are inferior Criminal Courts to the High Court and Courts of Judicial Magistrate are inferior Criminal Courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice.

8. to 9. xxx xxx xxx

10. Ordinarily, when revision has been barred by

Section 397(3) of the Code, a person - accused/ complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.”

10. Now coming to the facts of this case, I may observe that the petitioner herein undisputedly is an ex employee of the first respondent/complainant. He had some disputes that the first respondent in relation to some dues which he submits were outstanding and for which a settlement also took place between him and the complainant. Thus according to the complainant the petitioner had all the reasons to defame the complainant. In this regard, it may be appropriate to take note of the following paragraphs of the complaint:

“8 That the complainant company states that it has built the reputation and goodwill of the company throughout the country with huge efforts and diligence. It is submitted that a large amount of planning and expenditure was involved in gaining trust and confidence of lakhs of students and professionals in the industry.

9. That the Accused is an ex-employee of the Complainant Company. The accused was employed with the Complainant Company from 1995 till December, 2001 as Deputy General Manager and thereafter worked on retainer-ship basis w.e.f. 3rd December, 2001 till March, 2002. However, due to his inadequate and below par performance, the retainer-ship agreement was foreclosed by the Complainant Company in March, 2002. The accused left the Complainant Company with a revengeful mind and at the time of leaving the

organization he had also threaten it with dire consequences.

10. That at the time of leaving the organization he had further threatened that as he has all trade secrets of the Complainant Company as he was working as Deputy General Manager, he would ruin the entire company. Not only this he also instigated his fellow employees against the Complainant Company by making false representations, as a result of which, lot of hardworking employees also left the company.

11. That after leaving the Complainant Company, the accused started making illegal demands from the Complainant Company. The accused having been disgruntled on account of non-satisfaction of his totally illegal demands, continued to somehow harm and damage the Complainant Company and started fabricating and filing totally false, frivolous and defamatory complaints against the Complainant Company before various Government Organizations.

12. That based upon the said complainants the accused had also been trying to blackmail the Complainant Company and has been making illegal demands with threats that in case, the same are not gratified, he would further file false cases against the Complainant Company before various Government Authorities. The Accused had written certain e-mails/letters to the officers and directors of the Complainant Company.

13. That the accused to malign the reputation and goodwill of the complainant company had also filed various false and frivolous complaints against the Complainant, amongst others, before the Enforcement Directorate and the Department of Income Tax. Before the ED based on the Replies filed by the Complainant Company with evidence with regard thereto, all charges against the Complainant Company were dropped. Similarly most of the inquiries before the I.T. department were duly closed. Even after this, the Accused continued to pursue his false complaints against the complainant company to tarnish its reputation and to take undue and illegal advantage and also to harass it.

14. That on 16.08.2007, the complainant company received a letter dated 17.05.2007 addressed addressed by the accused to Sh. P.K. Mishra, Member (Investigation) Central Board of Direct Taxes, North Block, New Delhi

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made in the said letter by the Accused was read and discussed by a number of employees. Similar envelopes were also received at the other centres of the complainant company. Further, the accused has also sent the above said letter to the higher officials of the Government.

16. That the accused by making and publishing the above said derogatory and defamatory statement against the complainant company has tarnished its reputation and the company's reputation has been lowered not only in the eyes of the employees of the complainant company but also before the Government Officials and the general public. The complainant company has been defamed on account of the derogatory and defamatory statement made and published by the accused.

17. That the derogatory and defamatory statement made by the accused has harmed the reputation and goodwill of the complainant company. It is stated that the said imputation made by the accused were made intentionally and deliberately to harm and tarnish the reputation and goodwill of the complainant company which it is enjoying worldwide."

11. The aforesaid paragraphs establish that the complaint has been filed by the complainant in view of the following:

- (i) that the petitioner was an ex employee of the complainant
- (ii) that he was interested in defaming the complainant with a view to settle scores on account of certain disputes which were pending between him and the complainant-company inasmuch as he left the services of the company with a revengeful mind and while leaving the

company threatened it with dire consequences.

(iii) He admittedly wrote a letter dated 17.5.2007 addressed to P.K.Mishra which is something more than mere information. Some of the contents of the aforesaid letter which have been reproduced in the complaint are relevant, which are reproduced hereunder:

"...how cases of large scale evasion of Income-Tax by NIIT Ltd. and its associates, companies have been virtually killed and messed up by Sh. P.C. Khandelwal's Assistant Commissioner of Income-Tax....."

".....Shri S.S.Rathore, Commissioner of Income-Tax, Central Circle-III, and Ms.M.H. Kherawala, Chairperson of CBDT about Sh. P.C. Khandelwal apparent bias in favor of NIIT....."

".....the Con-man of NIIT was able to purchase the concerned officers, namely, Sh. P.C. Khandelwal, Sh. Sri S.S.Rathore as well as Sri Manu Malik, Additional Commissioner of Income Tax, Central Circle, New Delhi....."

"....As the orders passed by the Assistant Commissioner of Income-Tax, Central Circle-II, New Delhi are not only prejudicial to revenue, inasmuch as these are erroneous, non-speaking and unsustainable in the eyes of law but have been made out on the instructions of Sri S.S. Rathore, Commissioner and Sri Manu Malik, Additional Commissioner of Income-Tax....."

12. According to the first respondent, the letter in question was dropped by the petitioner at the complainant's centre and was opened by an employee of the complainant company in reception and thereafter the said letter was also read by a number of employees of the complainant company. This fact is borne out from the affidavit of one Deepika Singh, the authorized representative, filed with the complaint, where the deponent repeated all the allegations made in the complaint including the circulation of the letter in question. At this stage the allegations will have to be taken as it is.

13. It is on the basis of the aforesaid material available on record, the learned Magistrate issued the summoning order dated 18.9.2007 and a perusal thereof goes to show that it is a speaking order and is based upon the material which has been brought on record by the complainant.

14. The petitioner in his written submission has submitted that he is an informer of the Government of India and had furnished authentic

information supported by the documentary evidence to the Directorate of Income Tax regarding the tax evasion of over 100 crores by respondent group of companies on the basis of which searches, etc. were conducted and incriminating documents were recovered. He was also paid an interim reward of Rs.50,000/- by the Governor. It is submitted that the letter dated 17.5.2007 was a confidential document and a copy thereof has been taken out by the complainant illegally. He also submits that question of dropping of the said letter in the Karkardooma Courts does not arise because it was not meant for public consumption. It has also been submitted that the allegation made in the letter dated 17.5.2007 contained true facts and that the information had been given by him in good faith and therefore, he was protected under exceptions 1, 6, 8 & 9 of Section 499 IPC. These exceptions added to Section 499 IPC reads as under:

“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, of defame that person.

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.

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..

Eight Exception - Accusation preferred in good faith to authorized 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.”

15. A bare perusal of the letter dated 17.5.2007 goes to show that

the aforesaid contention of the petitioner who argued the matter himself and was not interested in seeking appointment of a senior counsel though he made a grievance of the appearance of senior counsel from the side of the first respondent has no legs to stand. Some of the paragraphs of the aforesaid letter are reproduced hereunder:

"1. I am constrained to bring to your kind notice, how cases of large scale evasion of Income Tax by NIIT Limited and its associate companies have been virtually killed and messed up by Shri. P.C. Khandelwal's, Assistant Commissioner of Income Tax, Central Circle-2, New Delhi.

2. It is shocking to note that such an astounding development should have occurred despite the Informer sounding a note of caution to Shri S S Rathore, Commissioner of Income Tax, Central -III and Ms. M.H. Kherawala, Chairperson of CBDT about Shri P.C. Khandelwal's apparent bias in favour of NIIT vide his letters dated 14th March 2006 and 25th March, 2006 respectively, followed by a letter dated 6th May, 2006 addressed to CVC."

16. The averments made in the aforesaid letter shows that the petitioner had even challenged various actions taken by the adjudicating authorities and the department and have also suggested certain steps to be taken which does not come within the realm of supplying information and therefore, it does not lie in the mouth of the petitioner to say that the letter in question was merely an information furnished by the petitioner as an informer and was given in good faith.

17. This is a matter of record that the petitioner was an ex employee. He had certain disputes with the first respondent. He left the services of the first respondent in a revengeful mood and has taken this action basically to settle the scores. The issue of circulation of the aforesaid letter and causing of defamation has been very categorically stated by the complainant in his complaint which has been supported by the affidavit of Ms. Deepika who appeared as CW -1 in this case before the order of summoning was issued.

18. Some of the judgments which have been referred to by the respondents deserve notice that are judgments reported in *(2001) 8 SCC 522*, *(2002) 3 SCC 89*, *(2005) 1 SCC 122* and *2008 VII AD (Delhi)*

461, which also lays down the proposition as discussed in paragraphs 8 and 9 above.

19. Since nothing has been brought to my notice that filing of complaint against the petitioner is either an abuse of process of law or has resulted in miscarriage of justice, the filing of present petition which is in the nature of second revision petition after having lost the battle in the court of sessions is an abuse of the process of Court and therefore deserves to be dismissed as there is no reason to invoke the jurisdiction of this Court under Section 482 Cr.P.C.

20. Accordingly the petition is dismissed. The TCR be sent back forthwith. Parties to appear before the concerned Metropolitan Magistrate on 9.4.2009.

MOOL CHAND GARG, J.

FEBRUARY 10, 2009
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