

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 280/2009**

Decided on 29.09.2010

IN THE MATTER OF :

SARDAR GURDIAL

..... Petitioner

Through: Mr. Ashutosh Gupta, Advocate

versus

DR.SANDEEP SHARMA

..... Respondent

Through: Mr. Manish Makhija, Advocate

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present revision petition is filed by the petitioner under Section 397 read with Section 401 of Cr.P.C. praying *inter alia* for quashing of the order dated 31.1.2009 passed by the learned District Judge-cum-ASJ in Crl.Appeal.No.6/08, upholding the order dated 1.12.2006 passed by the learned Metropolitan Magistrate, who had dismissed the complaint filed by the petitioner against the respondent for allegedly committing an offence punishable under Section 500 IPC.

2. The main grievance of the counsel for the petitioner against the impugned order is that the courts below erred in dismissing the complaint of the petitioner by going into the merits of the case, whereas at the stage of

pre-summoning, the evidence and statements made by the petitioner have to be accepted as true and correct. In support of the said submission, he draws the attention of this Court to the complaint filed by the petitioner against the respondent under Sections 190 & 199 Cr.P.C. praying *inter alia* for trying and punishing him for the offence under Section 500 IPC, the statement on oath made by the petitioner before the learned Metropolitan Magistrate recorded on 14.3.2005, and the order of the learned Metropolitan Magistrate, passed on 1.12.2006.

3. In short, facts of the case are that Smt. Jaswant Kaur, the mother of the petitioner filed a criminal complaint against the respondent and others under Section 133 Cr.P.C. before the learned Sub-Divisional Magistrate, Delhi Cantt. The basis of the said complaint was the fact that the respondent, who is the next door neighbour of the petitioner, was running an X-ray clinic from his premises. Vide order dated 5.9.2002, notice was issued to the respondent in the aforesaid complaint calling upon him to file a reply thereto. In response to the notice, the respondent submitted a reply dated 13.9.2002 to the court of the learned SDM. In para 1 of the said reply, the respondent stated as below:

“Para No.1: The complainant is in the habit of harassing my family and me on the grounds of false, frivolous, baseless and malicious complaints. The reality is that her notorious son Shri Gurdiyal Singh s/o Shri Pyara Singh mostly signs the complaint in her name and sends them to various authorities to harass us. He is the main culprit.”

4. Pertinently, the complaint filed by Smt. Jaswant Kaur was finally dismissed by the learned SDM vide order dated 31.8.2004.

5. As per the petitioner, he had been merely acting as an attorney of his mother, Smt.Jaswant Kaur and had nothing to do with the complaint, except to represent her in the said proceedings and hence he was unable to protect himself from the aforesaid defamatory remarks made by the respondent against him. He further averred that by publishing the aforesaid remarks by way of reply submitted by the respondent before the learned SDM, the respondent has defamed the petitioner for which he was liable to be punished under Section 500 IPC.

6. On receiving the aforesaid complaint, the learned Metropolitan Magistrate recorded the statement of the petitioner on oath (CW-1). The orderly from the court of the ASJ, Patiala House Courts, New Delhi(CW-2) was summoned with the judicial file of the court of SDM Kapashera, New Delhi, vide Case No.65/SDM/2002 under Section 133 Cr.P.C., which was filed by Smt. Jaswant Kaur, mother of the petitioner against the respondent. After perusing the aforesaid records and the testimony of the CW-1 & CW-2, the learned Metropolitan Magistrate arrived at a conclusion that the contents of the reply(Ex.CW-2/A) filed by the respondent in the proceedings initiated by the mother of the petitioner, were not made with the intention of causing any harm to his reputation and further, that the petitioner has not examined any person, apart from himself to show such imputations as made by the respondent in his reply(Ex.CW-2/A) had really defamed him. As a result, no grounds were found to summon the respondent in the complaint case and the same was dismissed.

7. Aggrieved by the aforesaid dismissal order, the petitioner filed an appeal before the learned ASJ. After hearing the petitioner and perusing the records, the learned ASJ rejected the appeal on the ground that the

reply filed by the respondent before the learned SDM, Vasant Vihar, was *bona fide* and was filed to explain his position in the complaint filed by the mother of the petitioner and further, that there was no element of *mens rea* to lower the reputation of the petitioner.

8. This Court has heard the counsels for the parties and perused the documents placed on the record, as also the judgments dated 1.12.2006 passed by the learned Metropolitan Magistrate and the order dated 31.1.2009 passed by the learned ASJ.

9. The submission of the counsel for the petitioner that at the pre-summoning stage, the learned Metropolitan Magistrate has no option, but to accept the evidence and the statements made by the petitioner as true and correct, has to be examined in the light of the provisions contained in Chapter XV of the Cr.P.C., which deals with 'Complaints to Magistrates'. Section 200 Cr.P.C. postulates examination of the complainant and requires a Magistrate to take cognizance of the offence on complaint, to examine the complainant on oath and the witnesses present, if any, and reduce into writing the substance of such an examination to be signed by the complainant and the witnesses. Section 203 Cr.P.C. deals with dismissal of complaint and stipulates that if, after considering the statements on oath of the complainant and the witnesses and the result of the inquiry or investigation under Section 202, the Magistrate is of the opinion that there is insufficient ground for proceeding, he shall dismiss the complaint, with reasons to be recorded for doing so.

10. The very fact that Section 203 of the Cr.P.C. requires the Magistrate to examine the statements made by the complainant and the witnesses, as also the result of the inquiry or investigation and only after

considering the same, if the he/she is of the opinion that there are not enough grounds to proceed on the basis of the complaint, he has the option to dismiss the same by passing a reasoned order shows that discretion vests with the trial court to take a decision either ways, i.e., to proceed to register the case, or to dismiss the complaint. Hence, the contention of the counsel for the petitioner that at the pre-summoning stage, the Magistrate has no option, but to accept the statements made by the complainant and the witnesses as the gospel truth and proceed to register the complaint, is contrary to the provision itself. Rather, the option is available with the Magistrate to apply his mind to arrive at a conclusion as to whether the testimony of the complainant and the witnesses or the result of the inquiry or investigation reveal sufficient ground for proceeding in the complaint, and if not, to dismiss the same.

11. In the instant case, the order passed by the both the learned Metropolitan Magistrate as also the learned ASJ are reasoned orders. The fact that the respondent filed a reply in the criminal complaint lodged by the petitioner, as a power of attorney holder of his mother, whereupon a notice was issued by the learned SDM to him, calling upon him to file a reply, shows that the respondent was under an obligation to take a stand, putting forth his defence in the matter. Section 499 IPC postulates that in case there are accusations made in good faith in the said defence as set out in the Exception clauses to the said Section, then, defamation would not be made out. In the present case, the Eighth Exception is applicable to the facts in hand, which is as below :

"Eighth 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.”

12. Reliance has rightly been placed by the counsel for the respondent on the judgment of this Court in the case of S.P.Satsangi Vs. Krishna Kumar Satsangi reported as **142(2007) DLT 192** wherein the petitioner therein sought quashing of the summoning orders passed by the learned Metropolitan Magistrate in a complaint filed by the respondent(wife of the petitioner therein) under Sections 499 & 500 IPC alleging that in the divorce petition preferred by the petitioner, in order to prove cruelty, he had filed on the record, a tape recorded conversation which contained some utterances on his part which the complainant felt offended by on account of the imputations contained therein, to bring down her image and reputation. The learned Single Judge allowed the petition of the husband by holding that the annexure filed by the petitioner on the record of the divorce petition was with the Court of law, which had the authority on the subject matter in dispute and hence it could not be said that the intention was to defame the complainant. While holding so, the court observed that apart from filing Annexure-A on the judicial record, there was nothing in the complaint made by the respondent therein that the petitioner had circulated tape-recorded version to any other person, relations, friends etc.

13. In the case of Dr.P.Sharma Vs. P.S.Popli and another reported as **2002 I AD (DELHI) 569**, a criminal complaint filed by the respondent therein against the petitioner was dismissed by the Magistrate. The respondent preferred a revision petition before the learned ASJ who allowed the same and the accused persons were ordered to be summoned and put on trial. Against the order passed by the learned ASJ, the petitioner came

up in revision to the High Court, which was dismissed. Aggrieved by the said dismissal order, the petitioner preferred a SLP in the Supreme Court wherein he pleaded that the complaint filed by the respondent was false, mischievous and intended to blackmail him. The SLP was allowed by the Supreme Court and the complaint and the order of summoning were quashed. In the second round of litigation, the respondent filed a complaint against the petitioner under Section 500 IPC alleging that the imputations made by him in the SLP were intended to harm his reputation. The petitioner was summoned for offence punishable under Section 500 IPC in the complaint. Upon appearing, he sought recalling of the summoning order by filing an application, which was dismissed. Aggrieved by the said dismissal order, the petitioner filed a revision petition before the High Court, which was allowed and the complaint and the proceedings thereon were quashed, as the court concluded that copy of the complaint and any other connected documents were filed with the SLP before the Supreme Court with the intention of getting the complaint quashed and the imputation preferred in good faith by the petitioner to get the summoning order quashed, could not be said with the intention or knowledge to cause harm to the reputation of the complainant. It was further observed that accusation were made before the Supreme Court which has authority over the subject matter in dispute.

14. Same is the position even in the present case. The reply filed by the respondent in the proceedings initiated by the mother of the petitioner under Section 133 Cr.P.C. was filed in the Court of law, which had the authority over the subject matter in dispute. The said reply was filed in good faith to get the complaint dismissed. It is not the case of the

petitioner that apart from filing the said reply on the record, the same was also circulated to any person, relations or friends so as to treat it as a publication.

15. The position in the case of Sunil Sareen Vs. Govt. of NCT of Delhi & Anr. reported as **83 (2000) DLT 380** relied upon by the counsel for the petitioner is not different. In the said decision, the court held that the scope of inquiry under Section 202 Cr.P.C. is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint and that a full dress trial in the case only takes place after process is issued under Section 204 Cr.P.C. In the aforesaid case, reliance was placed on the decision of the Supreme Court in the case of Mohinder Singh Vs. Gulwant Singh & Ors. reported as **JT 1992 (1) SC 542**, and it was noticed that during the course of enquiry conducted under Section 202 of the Code, the enquiry officer had to satisfy himself on the evidence adduced by the prosecution, whether prima facie case had been made out so as to put the proposed accused on a regular trial and that no detailed enquiry was called for during the course of such an enquiry. Undoubtedly, an enquiry under Section 202 Cr.P.C. is extremely restricted, but the option is still with the trial court to determine from the material placed on the record as to whether the process under Section 204 Cr.P.C. should be issued or whether the complaint should be dismissed under Section 203 Cr.P.C. on the ground that there is insufficient material to proceed further against the accused.

16. In the present case, after examining the evidence on the record, the learned Metropolitan Magistrate rejected the complaint of the petitioner for cogent and valid reasons. The aforesaid order dated 1.12.2006 was duly considered by the learned ASJ in appeal, before upholding the same by

the impugned order dated 31.1.2009. The said decisions have been arrived at on the basis of a *prima facie* finding. As noted above, it is not obligatory on the part of the learned Metropolitan Magistrate to accept the testimony of the complainant as the gospel truth, and issue summons to the accused without applying his mind to the complaint. This Court does not find any illegality, arbitrariness or miscarriage of justice in the present case so as to entertain the present petition. The same is therefore dismissed as being devoid of merits, while leaving parties to bear their own costs.

SEPTEMBER 29, 2010
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(HIMA KOHLI)
JUDGE