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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. No.3327/2000**

% Judgment delivered on: 01st March, 2012

VIJAY SARAOGI & ORS. Petitioners
Through : Mr.Mohit Mathur and Mr.Shishir
Mathur, Advs.

versus

STATE & ANR. Respondents
Through : Mr.Naveen Sharma, APP for State

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide order dated 17.08.2011 it is recorded as under:-

“1. Learned counsel for respondent No.2 submits that she has not received any instructions from respondent No.2 since long time. She had issued a notice to respondent No.2 informing him that in case no instructions are received, she would be withdrawing from the brief as also intimating the next date of hearing i.e. 17th August, 2011. Order dated 31st May, 2011 shows that statement to this effect was made on that date but since notice was not placed on record, the matter was adjourned for today. Photocopy of notice and postal receipt have been placed on record.

2. Since respondent No.2 has stopped giving instructions to the counsel, she is discharged from the brief. Date of hearing has already been

informed by the counsel through the notice.

3. *Accordingly, I do not deem it fit to issue the court notice to respondent No.2.*

4. *Respondent No.2 is proceeded ex-parte.”*

2. Mr.Mohit Mathur, learned counsel for petitioners has submitted that Shri Rajender Kumar, authorised representative of respondent No.2 has expired on 13.02.2010. To this effect, he has produced original death certificate; which is taken on record.

3. It is further submitted that respondent No.2 filed Criminal Revision Petition No.247/2000 whereby the order dated 30.03.1998 has been challenged and said petition has already been dismissed for non-prosecution vide order dated 03.06.2011. Till date, same has not been challenged and attained the finality.

4. He further informed this Court that the factum of death of authorised representative of respondent No.2 was intimated to the Court by learned counsel appearing on his behalf. This court on 26.05.2010 directed that the heirs of respondent No.2/complainant may take instructions as to whether they wish to pursue the case any further.

5. Learned counsel for the petitioner appearing in Crl. Revision Petition, referred above, informed the Court that no instructions have been received and withdrawn from the petition, therefore, aforesaid petition was dismissed for non-prosecution vide order dated 03.06.2010.

6. In the matter at hand also, similar information was given by learned counsel for respondent No.2 about the death and same has been recorded vide order dated 26.05.2010. Thereafter, at request, Court directed the heirs of the respondent No.2/complainant to take instructions as to whether they wish to pursue the case any further. Situation remains the same in the instant petition also. However, left with no other option, on 17.08.2011 an order was passed.

7. The legal issue raised by learned counsel for petitioners is that on the complaint being filed by respondent No.2, summoning order was issued only against accused No.1/petitioner herein vide order dated 23.05.2008 by learned Trial Court under Section 500 Indian Penal Code, 1860.

8. Respondent No.2/complainant being aggrieved by the aforesaid summoning order, filed Criminal Revision Petition before learned Sessions Court and same has been allowed vide order dated 25.09.1998 and other accused persons were summoned.

9. Learned counsel for petitioners submits that no notice was issued by learned Additional Sessions Judge, Delhi to respondent/petitioner herein before passing the order dated 25.09.1998, which is in contravention to the provisions contained in Section 401 (2) Cr. P.C. which reads as under:-

“401. High Court's powers of revision.

(1) xx xxx

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

10. He further submitted that while passing the adverse order against the petitioners, learned Revisional Court was duty bound to issue notice; whereas learned Court failed to do so.

11. Even on merit, learned counsel for petitioners has relied upon the provisions contained in Section 499 Indian Penal Code, 1860, which with explanation Nos.8 & 9 reads as under:-

“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, to defame that person.

Eighth Exception.—Accusation preferred in good faith to authorised 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.

Illustration

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z’s master; if A in good faith complains of the conduct of Z, and child, to Z’s father—A is within this exception.

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.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception."

12. Therefore, learned counsel for petitioner has submitted that even the complaint was not maintainable in the facts and circumstances of the case.

13. The petitioner filed the complaint against respondent No.2 way back on 06.10.1993 wherein under Section 156(3) Cr. P.C., learned Magistrate directed the police to lodge the FIR. During investigation, the office premises of respondent No.2 was searched. As a counter blast, respondent No.2 filed a complaint under Section 500 Indian Penal Code, 1860 against petitioner contending therein that because of the search, he has been exposed; by this way, committed defamation against him.

14. Learned counsel for petitioners further submitted that as per explanation 8 & 9 to Section 499 Indian Penal Code, 1860, are saving provision against him. Therefore, firstly, the complaint was not maintainable against him. Moreso, the complaint was time barred as under Section 500 Indian Penal Code, 1860, there is a limitation period of one year from the date of alleged defamation.

15. To support the limitation aspect, learned counsel has relied upon **Krishna Pillai v. T.A.Rajendran & Anr 1990 (Supp) SCC 121** wherein it was held that taking cognizance of offence after expiry of one from the commission of offence barred.

16. As far as Section 401(2) Cr. P.C. is concerned, learned counsel for petitioners relied upon **P.Sundarrajan & Ors v. R. Vidhya Sekar (2004)13 SCC 472** wherein it has been observed as under:-

“5.In our opinion, this order of the High Court is ex facie unsustainable in law by not giving an opportunity to the appellant herein to defend his case that the learned Judge violated all principles of natural justice as also the requirement of law hearing a party before passing an adverse order.”

17. Further relied upon **Raghu Raj Singh Rousha v. Shivam Sundram Promoters Pvt Ltd & Anr (2009) 2 SCC 363.**

18. For the reasons mentioned above, impugned order dated 23.05.1998 passed by learned Trial Court and order dated 25.09.1998 passed by learned Additional Sessions Judge, Delhi in Complaint Case No.246/1/1994 titled as ‘M/s. Kishorilal Janki Dass v. Vijay Saraogi’

and proceedings emanating thereto are hereby set aside. Petitioners stand discharged from all charges. Bail bonds stand cancelled and sureties are discharged.

19. Accordingly, CrI.M.C.No.3327/2000 is allowed and stands disposed of.

20. *Dasti.*

SURESH KAIT, J

MARCH 01, 2012

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