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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 12th NOVEMBER, 2013

+ CRL.M.C. 581/2013 and Crl. M.A. 1887/2013 (for stay)

ARUNDHATI SAPRU Petitioner
Through: Ms. Nisha Narayanan, Advocate with
petitioner in person.

versus

YASH MEHRA Respondent
Through: Mr. Probhjit Johar and Mr. Ashish
Aggarwal, Advocates with respondent
in person.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of proceedings in Complaint Case No. 69/1 titled as Yash Mehra v. Arundhati Sapru under Section 200 of Cr.P.C. for offence under Section 500 of the Indian Penal Code, 1860 (for short 'IPC') pending in the Court of learned Metropolitan Magistrate, New Delhi.

2. The brief facts leading to the filing of the present petition are that the respondent herein filed a complaint under Section 200 Cr.P.C. for offence under Section 500 IPC alleging *inter alia* that accused and complainant got married on 12th July, 2011 according to Hindu rites and customs and several cases are pending between them in different Courts. Prior to the marriage with accused, the accused was married to Ms. Divya Mehra who expired on 11th June, 2000 and after her demise complainant got married to the accused. During subsistence of first marriage of the complainant with Ms. Divya Mehra, both of them adopted a son, namely, Pranav. Earlier divorce case pending between the complainant and accused was being heard by the Court of Sh. T.S. Kashyap, learned Additional District Judge wherein accused filed an application under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance which was dismissed vide order dated 31st July, 2006. After the marriage of the accused with the complainant, accused has been making false allegations against Divya Mehra that she has physical affinities and relationship with people other than complainant. The aforesaid false allegations, regarding Divya Mehra having physical affinities, were made by the accused in front of various relatives and

friends followed by an e-mail dated 30th July, 2010 containing remarks to various persons including Hon'ble Supreme Court of India, National Commission for Women, Mr. V. Moily (former Law Minister of India), various Ministers, Mr. Ashwani Kumar, U.S. Ambassador/ACS Chief and Mr. Satish Tamta and Mr. Mrigank Dutta. The contents of the remarks made by the accused in the said e-mail dated 30th July, 2010 were reproduced as follows:

“Further T.S. Kashyap dismissal of the 2005 HMA, 24 application in the lower court was timed with Kaul's impending upholding of the mutual consent divorce in the high court in 2006. At that time I was aware that it was dragged out on purpose and that it was also because of his personal hatred for me due to his physical affinities with Yash Mehra's first wife and adopted son.”

3. It was alleged that the first wife of the complainant Ms. Divya Mehra was a business woman and was known well in her circle, respectable lady of the society, was carrying good reputation amongst her relatives and in the society. The complainant had very good relations with his first wife and was emotionally, sentimentally and psychologically attached to her. The aforesaid remarks made by the accused against late Ms. Divya Mehra are false, baseless and highly defamatory, inasmuch as, she has no physical affinity with anybody

except the complainant. The aforesaid allegations and remarks have been made by the accused with the intention to defame Ms. Divya Mehra and the complainant as well as to hurt the feelings of complainant as he was quite attached to his first wife and held her in very high esteem. Because of the defamatory and derogatory remarks made by the accused, complainant as well as late Ms. Divya Mehra, have suffered in their reputation and both of them have been lowered in the estimation of their relatives, friends and general public. A legal notice dated 1st October, 2011 was sent to the accused calling upon her to pay a sum of Rs.30,00,000/- as damages and unconditional apology for defaming late Ms. Divya Mehra and complainant and severely hurting the feelings of the complainant. The respondent/complainant examined himself in pre-summoning evidence and reiterated the averments made in the complaint. He also proved e-mail Ex-CW1/A sent to various authorities mentioned in the complaint. He further deposed that because of defamatory and derogatory remarks made by the accused he and his deceased wife Ms. Divya Mehra have suffered in their reputation and both have been lowered in estimation of their

relatives, friends and general public because a few of his relatives and friends started believing the allegations made by the accused.

4. Vide impugned order dated 27th August, 2012 learned Metropolitan Magistrate observed that from the testimony of the complainant and the material on record, *prima facie* a case under Section 500 IPC is disclosed against the accused and accordingly she was ordered to be summoned.

5. This order has been assailed by the petitioner by filing this petition primarily on the ground that for the offence of defamation to be made out, it has to be shown that the alleged remarks had lowered the reputation of the petitioner in the eyes of the relatives/public. The petitioner has not examined anybody, except himself, in the pre-summoning evidence, as such, he has failed to *prima facie* make out any case under Section 500 IPC. Reliance was placed on Explanation 4 of Section 499 IPC. Reliance was also placed on *M/s Pepsi Foods v. Special Judicial Magistrates* in order to show that summoning in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The impugned order is bad in law and therefore needs to be set aside.

6. I have heard Ms. Nisha Narayanan, learned counsel appearing for the petitioner and Mr. Probhjit Johar, learned counsel appearing for the respondent and have perused the record.

7. Learned counsel for the petitioner submitted that except for examining himself, complainant has not examined anybody else in order to prove that his reputation or that of his deceased wife has been lowered in the eyes of anybody. That being so, no offence under Section 500 IP is made out, and complaint is liable to be quashed. Reliance was placed on ***Prof. Imtiaz Ahmad v. Durdana Zamir*** in I.A. No.10367/2007 in CS(OS) No. 569/2006.

8. *Per contra*, it was submitted by learned counsel for the respondent that the allegations made by the petitioner are *per se* defamatory in nature. The same has been published and circulated to various authorities by e-mail and it clearly lowers the reputation of the deceased wife in front of the public at large and simultaneously hurting the sentiments of the respondent/complainant thus making out a case of defamation. Examining of friends or relatives was not a condition precedent for issue of summoning order qua the petitioner. The offence of defamation committed by the petitioner is writ large and

whether the petitioner is entitled to the benefit as envisaged in Exceptions 8 and 9 of Section 499 would be a matter of trial and cannot be agitated upon in the present quashing petition. At the stage of pre-summoning evidence only a prima facie case is to be made out by the respondent/complainant which has been done by the respondent that is why learned Trial Court has summoned the petitioner as an accused. The impugned order does not suffer from any infirmity which calls for interference. Reliance was placed on *M.A. Rumugam v. Kittu @ Krishnamoorthy and others* (2009) 1 SCC 101; *M.K. Prabhakaran and anr. v. T.E. Gangadharan and anr.* (2006) CrI. L.J. 1872, *Sanjay Mishra v. Govt. of NCT of Delhi* 2012 Laws (DLH)-3-201; *M.P. Singh Sahni v. State and ors.* in CrI. M.C. 3773/2003 and *Pat Sharpe V. Dwijendra Nath Bose* 1964(1) Cri. L.J. 367.

9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record.

10. The criminal law on defamation has been codified and is contained in section 499 to 502 of the Indian Penal Code. For an offence of defamation as defined under section 499 IPC, three essential

ingredients are required, to be fulfilled as laid down in the case of

Standard Chartered Bank v. Vinay Kumar Sood, 2010 CriL.J

1277:-

- i. Making or publishing any imputation concerning any person;*
- ii. Such imputation must have been made by words either spoken or intended to be read or by signs or by visible representations.*
- iii. The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned”.*

11. Thus, it is clear that the *mens rea* to cause harm is the most essential sine qua non for an offence under section 499 IPC. To constitute “defamation” under Section 499 of the IPC, there must be an imputation and such imputation must have been made with intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged. An offence

punishable under section 500 IPC requires blameworthy mind and is not a statutory offence requiring no mens rea.

12. A perusal of contents of the e-mail dated 30th July, 2010 show that the same are *per se* defamatory. It is not disputed by the petitioner that the e-mail dated 30th July, 2010 was not sent by her to various authorities which contained defamatory allegations not only against the respondent/complainant but also against his deceased wife. Further, the e-mail has been sent to various authorities including Hon'ble Supreme Court of India, National Commission for Women, Mr. V. Moily (former Law Minister of India), various Ministers, Mr. Ashwani Kumar, U.S. Ambassador/ACS Chief and others. Same is to be taken as published. In ***M.K. Prabhakaran*** (supra) the allegations made in the written statement filed in the Court of law; in ***M.A. Rumugam*** (supra) the allegations published in various newspapers containing defamatory allegations; in ***M.P. Singh Sahni*** (supra) derogatory and un-parliamentary language used in fax message sent by the accused installed at the residence of the tenant; in ***Sanjay Mishra*** (supra) the allegations made in the replication and additional submissions in the

divorce proceedings were held to be publication containing defamatory allegations and petition for quashing was dismissed.

13. The only plea taken by the petitioner is that except for examining himself, the complainant has not examined any other person to prove that in fact the reputation of the complainant and his wife has been actually lowered in the eyes of his relatives, friends and general public. It is suffice to say that only pre-summoning evidence has been led by the complainant and even at that juncture the complainant has deposed that the allegations made by the petitioner has actually lowered, not only his, but also his wife's reputation and estimation in the eyes of his relatives, friends and general public and also hurt his feelings. Moreover, the question as to whether or not the remarks actually lowered the reputation of the respondent or his wife in the eyes of his relatives and general public is a question of fact which can be decided only after trial of the case. The case cannot be thrown out at its threshold when there is enough evidence pointing out towards *prima facie* offence made by the petitioner. Similar issue was raised in ***M.N. Damani v. S.K. Sinha*** AIR 2001 SC 2037. In this case the petitioner had gone in appeal against the order of High Court quashing

the criminal complaint filed by the petitioner under Sections 500, 499 IPC. Allowing the appeal, the Apex Court opined that the High Court at preliminary stage cannot say that there was no reasonable prospect of conviction resulting in the case after trial. It was held that questions as to whether the imputations were made in good faith, in what circumstances, with what intention, etc. are to be examined on the basis of evidence in trial. It was further held that quashing of complaint at preliminary stage is not proper, when from the sworn statements and documents produced by the petitioner a *prima facie* case can be said to have been made out against the respondent. Similarly in *M.A. Rumugam* (supra) application for quashing complaint petition filed by the respondent against the appellant under Section 500 IPC was dismissed by the High Court. Matter went to Supreme Court and it was observed that the allegations made in the complaint make out a case for proceeding against the appellant under Section 500 IPC. It would be premature for the High Court to consider the material placed on record by the appellant so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police

authorities. Question as to whether a totally false complaint has been made as against the respondent or not as he was not even in India prior to the date of occurrence is required to be gone into by the learned Trial Judge. No inference was called for.

14. I have gone through the order passed in *Prof. Imtiaz Ahmad* (supra) relied upon by learned counsel for the petitioner. In that case defendant had filed a complaint before Crime Against Women Cell alleging that the plaintiff (in that case) along with others had considerable influence in her in-law's house and it was requested that there be no interference in her family affairs by the plaintiff and his wife. The plaintiff filed a suit for damages alleging that the allegations made in the complaint amounted to his defamation and he was entitled to damages. Defendant filed an application under Order VII Rule 11 CPC stating that the plaint does not disclose any cause of action and was liable to be dismissed. It was observed that the imputation were not defamatory in nature. Moreover, the defendant had a right to make complaints of her grievances to the authorities. Whenever a person makes a complaint against someone to the lawful authorities and in the complaint he makes imputations against the person complained of, it

cannot be considered that the person has publicized or publicly made defamatory averments against a person. If a prosecution is initiated against the person on the basis of such averments and the person is acquitted holding that the complaint was false, then only a cause of action arises against the complainant for launching a case for false prosecution or for damages on other grounds. Until and unless a competent Court holds that complaint was false, no cause of action arises. Approaching a competent authority and praying that the authority should come to the rescue of the complainant and prevent inference of the plaintiff in the family affairs of the defendant cannot amount to a defamatory imputation per se and even if it is published, it does not tend to show that the defendant had intended to lower the reputation of the plaintiff. Therefore, since the plaint did not disclosed any cause of action against the plaintiff as such the suit was dismissed.

15. The factual matrix of the present case is entirely different, inasmuch as, as stated above the petitioner neither challenged that the e-mail was sent by her to various authorities which contained defamatory allegations. Moreover, for criminal purposes “publication” has a wider meaning than it has in civil law, since it includes a

communication to the person defamed alone. The prosecution for defamation in criminal cases can be brought although the only publication is to the person defamed as it is very likely to provoke a breach between the persons involved. In the instant case the publication is not confined to the complainant but to the public at large. Secondly, it cannot be said that there was no publication of defamatory statement made by the petitioner.

16. Moreover, the powers of High Court under Section 482 Cr.P.C. are to be exercised sparingly and not as a matter of routine. Undoubtedly, the High Court possesses inherent powers under Section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised in following category of cases:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

17. This Court time and again has observed that the extraordinary power under Section 482, Cr.P.C. should be exercised sparingly and

with great care and caution. The court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice.

18. In *R.P. Kapur v. State of Punjab* 1960 Cri. L.J. 1239, Hon'ble Supreme Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

19. In another leading case *State of Haryana and Ors. v. Bhajan Lal* 1992 SCC (Cri) 426, Supreme Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by the Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by

way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, it was made clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of

which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. Again in *Janata Dal v. H. S. Chowdhary and Ors.* (1992) 4

SCC 305 Supreme Court observed in what circumstances the inherent powers should be exercised:

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.”

21. In the light of above judicial pronouncements and keeping in view the facts and circumstances of the case, I do not find any illegality or infirmity in the order of the learned Trial Court and the proceeding of criminal complaint against the petitioner.

The petition and the application being devoid of merit is hereby dismissed.

**SUNITA GUPTA
(JUDGE)**

NOVEMBER 12, 2013

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