

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

Reserved on: 15th October, 2014
% **Date of Decision: 15th December, 2014**

+ CRL. M.C. 86/2013

JAI PRAKASH SHARMA Petitioner
Through: Mr. Sunil K. Mittal, Advocate.

versus

STATE Respondent
Through: Mr. M.P. Singh, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of this petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), the petitioner Mr. Jai Prakash Sharma has assailed the order dated 06.11.2012 passed by learned Additional Sessions Judge-III (East), Karkardooma Courts, Delhi whereby revision petition filed by the petitioner was dismissed.

2. Succinctly stating the facts giving rise to the present petition are that the petitioner filed a complaint against Manoj Pant, SHO P.S. Preet Vihar, ASI Rajbir Singh, Constable Umed Singh and Constable Sorveer Singh for the offence under Sections 341/342/379/365/506/

323/463/469/471/34 IPC on the allegations, *inter alia*, that during the last parliamentary election period, brother of complainant namely Ramesh Pandit who was the councilor was making arrangements for organizing a meeting which was scheduled to take place on 04.05.2009 at Chandra Nagar Chowk, Delhi. Tables, chairs and pipes were being installed at the place of meeting. At about 11:00 a.m. Manoj Pant, SHO, P.S. Preet Vihar came and directed to remove the pipes and change the place of the meeting and further directed them to install tables, chairs and pipes covering a specific area in accordance with law. The said SHO gave these directions at least 3-4 times. Suddenly, around 3-4 p.m. the proposed accused persons along with some other police officials came at Chander Nagar chowk near Sai Mandir where the meeting was to take place and without any reason started lifting tables, chairs and started putting them in their vehicle. The brother of the petitioner namely Ramesh Pandit objected to the same, on hearing which Mr. Pant, started beating him. The complainant who was present at the spot raised an objection which resulted in him being also beaten by all the accused persons. The police officials took the complainant and his brother in a police gypsy and took them to the police station where they were taken to a room and were beaten again by the said four persons during the course of which a sum of Rs.20,000/- (Rupees Twenty thousand) was also snatched from the complainant/ petitioner.

3. On the said complaint, the concerned Metropolitan Magistrate, Karkardooma, Delhi called for the status report from the SHO, P.S. Preet Vihar who submitted a report dated 06.02.2010 to the learned

Metropolitan Magistrate.

4. The complainant went to common hall of Karkardooma Courts along with his colleagues. Since he was not having spectacles he requested Mr. Ashwani Bhatia, Advocate and Mr. Chaman Lal, Advocate to read the status report. In the status report the proposed accused had used a very derogatory and defamatory language for the complainant that “*Sh. Ramesh Pandit and his brother Jai Prakash Sharma are having seven criminal cases of riot, assault, obstructing and assaulting public servants etc. against their names. Sh. Jai Prakash Sharma is not a practicing lawyer, he is into property dealing business and not enjoying very fair reputation in the locality*”. Again in the last para of the report very undignified language was used. After hearing the same the petitioner felt very shocked and ashamed. The reputation of the petitioner has been lowered in the eyes of his colleagues.

5. Consequently, the petitioner/ complainant filed a criminal complaint under Section 200 of Cr.P.C. for the offences punishable under Sections 499/500 IPC against Inspector Manoj Pant (proposed accused) on the allegations, *inter alia*, that the imputations of the accused are totally scandalous, defamatory and *per se* derogatory and slanderous in nature and were made by the Mr. Pant with the intention of harming the reputation or knowing or having reason to believe that it will harm the reputation of the petitioner. Thereafter, the petitioner filed a criminal complaint, adduced pre-summoning evidence and examined himself on oath before the learned metropolitan magistrate

on 29.04.2010 as CW-1. In his statement the petitioner has made the statement in terms of the complaint.

6. Vide order dated 02.02.2012, learned Metropolitan Magistrate-06, Karkardooma Courts, Delhi dismissed the complaint by observing that the case is squarely covered by Section 197 of Cr.P.C. and Section 140 of Delhi Police Act (for short, 'DP Act') and cognizance of the alleged offence is, therefore, barred in the absence of sanction from the Central Government and also observed that there is no sufficient material on record for proceeding further against the accused for the alleged offences.

7. Aggrieved by the said order, the petitioner filed a criminal revision petition No.44/2012, which was dismissed by learned Additional Sessions Judge-03, Karkardooma Courts, Delhi vide order dated 06.11.2012 who found no irregularity in the order dated 02.02.2012 passed by the learned trial court.

8. Feeling aggrieved by the said order, the petitioner filed the present petition.

9. Learned counsel for the petitioner urged that the petitioner is a practicing lawyer and is a member of Residents Welfare Association, Gobindpura, Delhi. He also submitted that the petitioner filed a complaint against Inspector Manoj Pant, SHO, P.S. Preet Vihar, Delhi and other police officials namely ASI Rajbir Singh, Constable Umed Singh and Constable Sorveer Singh for the offence under Sections 341/342/379/365/506/323/463/469/471/34 IPC. Learned Metropolitan

Magistrate called status report from the concerned SHO, P.S. Preet Vihar, Delhi which was submitted on 6.2.2010. In the said status report the allegations made against the petitioner are scandalous, defamatory and *per se* derogatory and were made by Inspector Mr. Manoj Pant with the intention of harming the reputation or knowingly that it will harm the reputation of the petitioner. Learned counsel for the petitioner also pointed out that two cases mentioned against the petitioner were of 1978 and 1979 and the same were withdrawn long back in the year 1980 and 1983.

10. Another submission of learned counsel for the petitioner is that the status report is a public document and amounts to publication of the defamatory statement. Yet another submission of learned counsel for the petitioner is that protection under Section 197 of Cr.P.C. and Section 140 of DP Act is not applicable. He had relied upon judgment in '**Sanjay Mishra vs. Govt. of NCT of Delhi**', 2012 (2) JCC 188, to contend that the protection under Section 197 of Cr.P.C. and Section 140 of DP Act are not applicable.

11. As per status report filed on behalf of State, on 04.05.2009 a PCR call vide DD No.24B was received at P.S. Preet Vihar, Delhi. In the said information, it was informed that workers of Congress Party have blocked the way after putting a tent in front of BJP office at Krishna Nagar, Delhi. After receiving the PCR call ASI Rajbir Singh along with Constable Subhash reached at the post near Sai Baba Mandir and saw some workers of Congress Party digging at the main Chander Nagar road for raising a tent where an election meeting was to

be held and had covered about 2/3rd of the road. In the meanwhile, Inspector Manoj Pant, SHO P.S. Preet Vihar reached the spot and directed the removal of polls and chairs. In the meantime, the organizer of said meeting Mr. Ramesh Pandit also came at the spot with some supporters. Inspector Manoj Pant tried to convince him that they had blocked 2/3rd of road which is in violation of guidelines/orders issued by Election Commission of India and directed him to remove the same as it was obstructing the free movement of traffic. Mr. Ramesh Pandit claimed that he had permission to block the road but on being asked to produce the same, he could not produce any document and started misbehaving with the police officials. He was also informed that the request for organizing meeting regarding election has been cancelled. On this, he became furious and started abusing and misbehaving with the police officials. Mr. Ramesh Pandit and his brother Mr. Jai Prakash Sharma were detained under Section 65 of DP Act. A case bearing FIR No.237/2009 under Section 186/353 IPC was also registered against Mr. Ramesh Pandit on 04.05.2009.

12. Learned APP for the State submitted that Inspector Manoj Pant was working as SHO, P.S. Preet Vihar, Delhi and is entitled to the protection under Section 140 of DP Act and sanction under Section 197 of Cr.P.C. was required.

13. I have carefully considered the submissions made by learned counsel for the petitioner as well as learned APP for the State and have also gone through the material on record.

14. Before advertng to the facts of the present case, it would be

appropriate to consider the scope of interference in a petition under Section 482 Cr.P.C. The Hon'ble Supreme Court in '**Amit Kapoor vs. Ramesh Chander & Anr.**', (2012) 9 SCC 460, while dealing with the issue of interference at the stage of charge in a petition under Section 482 Cr.P.C. observed as under:-

“20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.”

15. Further the Hon'ble Supreme Court of India in '**Dhanalakshmi v. R. Prasanna Kumar**', (1990) Supp. SCC 686, observed as under: -

“Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where

the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.”

16. In view of the aforesaid judgment of the Hon’ble Supreme Court, it is evident that unless this Court feels that the inherent

jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

17. Learned trial court has dismissed the complaint on three grounds, firstly the complaint is barred by Section 197 of Cr.P.C. and Section 140 of DP Act. Secondly, there is no evidence on record to show that the reputation of the complainant was harmed due to the contents of the status report but, therefore, the offence under Section 499 and 500 of IPC are not made out. Thirdly, the contents of the status report were made in good faith and is covered by exception (viii) of Section 499 of IPC.

18. In the instant case the status report was filed on 06.02.2010 and the complaint was filed by the petitioner on 26.03.2010. In my considered view, the act of defamation does not come within the purview of official duty and, therefore, sanction under Section 197 of Cr.P.C. is not required.

19. The law regarding summoning is that at the stage of summoning, the Magistrate has to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as an accused from being called upon to face an unnecessary frivolous or meritless complaint. The Magistrate has to examine whether there is some material in support of the allegations made in the complaint. If the Magistrate is satisfied that there is sufficient ground to proceed against

the accused, the Magistrate is empowered to issue process.

20. However, learned trial court after consideration of oral and documentary evidence adduced by the petitioner/ complainant came to the conclusion that there is no prima facie case to show that the reputation of complainant was harmed due to the contents of the status report, the status report was filed pursuant to the orders of the learned Metropolitan Magistrate and the facts mentioned in the contents of status report are not defamatory or derogatory *per se*.

21. Moreover, the petitioner has not adduced any evidence in support of his allegation that the status report was filed with a view to harm the petitioner or that it had lowered the character and reputation of the petitioner. Mere bald statement of the petitioner is inapt. There is no ground to interfere with the concurrent finding of the Courts below.

22. In the light of the aforesaid discussion, the petition is without any merit, the same deserves to be dismissed and is hereby dismissed.

23. The trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

DECEMBER 15th, 2014
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