

CRM-A-738-MA-2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-738-MA-2015 (O & M)

Date of decision: 10.07.2015

Jaspal Singh

.... Applicant/Appellant(s)

Versus

Kailash Chand Jain

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. M.K.Saajan, Advocate,
for the applicant.

PARAMJEET SINGH, J. (ORAL)

CRM-14348-2015

Having heard learned counsel for the applicant and in view of grounds mentioned in the application, delay in filing the application for leave to appeal is condoned.

Application stands allowed.

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The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 01.04.2013 passed by learned Judicial Magistrate Ist Class, Chandigarh whereby complaint filed by the applicant under Section 499 read with Section 500 of the Indian Penal Code (in short, 'IPC') has been dismissed and the respondent has been acquitted of the charge framed against him.

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Brief facts of the case are to the effect that the applicant filed the complaint against the respondent-accused with the averments that he is Editor of Hindi Weekly News Paper namely Jagrukta from the year 1991 onwards. The complainant was involved in numerous activities of the society such as to help the downtrodden without any selfish motive. Thus, he was known personality in the area of Manimajra, Chandigarh and surrounding area. The complainant was elected as Senior Vice president of Socialist Party in the year 1996. The socialist party also tried to encash on the popularity of the complainant in the area and thus nominated his candidature in Parliamentary Election in the year 1996 from the seat of Chandigarh. It is further averred that during election campaign the complainant became popular even amongst the candidates also and was elected as president of union of independent candidates during the parliamentary election for the year 1996 at Chandigarh. It is further alleged that the complainant has been active member of Uttranchal Yuva Patarchar Parishad since the year 1994. The complainant has been further active member of Rashitrya Patarkar Sangh registered since the year 1997. The complainant has been senior Vice President of Progressive Journalist Society since the year 1997. The complainant has been President of Rashitrya Jagrukta Morcha from the year 1997. The complainant dedicated himself without any selfish motive to the people of the country and was having bright future politically as well as otherwise and was prominent whom the people

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were giving lot of love as well as heartily affection. After seeing the popularity in the eyes of general public, name of the complainant was recommended by accused no.1 for the post of President in writing for the area of Chandigarh Territorial Youth Congress (S) on 27.5.1997 and inducted the complainant to join Chandigarh Territorial Youth Congress. Under the inducement of accused No.1, the complainant joined the Chandigarh Territorial Youth Congress (S) and during the general election of the party was unanimously elected as President in the year 1997. The complainant was further actively taking part in various party and other welfare programmes and was having good reputation in the party, public, friends, relatives and society. Future of the complainant was bright as career of the complainant was blotless. Due to hard working nature, integrity, sincerity etc. of the complainant in the party he gained popularity in the Youth Congress (S) at all India level also. The complainant participated in India Youth Congress (S) elections and was elected General Secretary on 19.12.1997 in Special Session held in Chennai. Accused Nos.1 and 2 are also the active members of the Congress (S). Both of them became jealous of the popularity gained by the complainant within the Youth Congress (S) and outside the party also at such rapid speed. Both of the accused Nos.1 and 2 were worried about their fate and future in the party. Thus to defame the complainant in the general opinion of the public, society, party, friends, relatives etc. both of the accused Nos.1 and 2 hatched criminal conspiracy against the

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complainant. Accused Nos.1 and 2 with mutual consent of each other issued a false statement on 23.2.1998 in the Tribune & Dainik Tribune on the basis of which, one false defaming news item was published in both of the newspapers regarding false expulsion of the complainant from primary membership of the Congress (S) whereas the complainant was office bearer of the Youth Congress (S) and no such primary membership was ever applied or obtained by the complainant in Congress (S). The sole motive behind the issuance of such frivolous statements against the complainant was to defame the complainant in the eyes of general public as well as party members. On 17.03.1998, both accused Nos.1 and 2 with mutual consent of each other further got published one more false statement that the complainant was Black Mailer and due to anti-party activities the complainant was expelled from the Youth Congress (S) from the coveted post of President. Neither any black mailing activity nor any anti-party activity was stated in news item. The news was published in the Editorship and newspaper of accused No.3. Accused No.3 without any verification and clarification willfully published the defaming news in the paper with mutual consent of the other accused persons. Accused No.1 was President of Congress (S) and was not having any connection with the constitution and activities of the Chandigarh Territorial Youth Congress (S). Accused No.1 was further not competent enough to interfere into the activities of Youth Congress (S) or to expel the office bearer. But still all the accused

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persons with mutual consent of each other without issuing any expulsion letter got published the false news item. It is next averred that on 26.3.1998 one letter was issued to the complainant by Youth Congress (S) addressing the complainant as General Secretary of all India Youth Congress (S) and the complainant was invited to attend the party meeting at New Delhi with other prominent figures of the party as well as of country. The said news published in the said newspapers defamed the complainant in the eyes of general public and status of the complainant was adversely effected. Number of well wishers of the complainant and other persons including Naresh Kumar, Ashok Kumar, Rajinder Lal, Sanjay Kumar, Rajinder Sharma, Sunil Dutt etc. shunted out the complainant from their society. An adverse reaction came into the society of the complainant due to which the career of the complainant was also spoiled by the accused persons. The dignity of the complainant was further lowered in the general opinion of the public. Nobody likes the complainant now a days after coming to know about the published news items against the complainant rather the people have started hating him. Thereafter on 31.3.1998 the complainant got issued one legal notice to all the accused persons and asked them to republish the correct position in the newspaper so as to rebuild the adversely affected status of the complainant. But no such news item was published, as from the very beginning the accused were having malafide intention of humiliating and defaming the complainant. The complainant made a complaint to the

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police authorities but no action was taken against the accused. Therefore, the complaint was filed.

On the basis of preliminary evidence, the respondent was summoned to face trial for offence punishable under Section 499 read with Section 500 of IPC, vide order dated 17.02.2003 passed by the then learned Judicial Magistrate Ist Class, Chandigarh.

On finding a prima facie case, the respondent was charge-sheeted under Section 500 of IPC, to which he pleaded 'not guilty' and claimed trial.

In order to prove his case, the complainant examined himself as CW 4 besides examining Kiran Dhiman, Assistant as CW 1, Mahavir Jain as CW 2, Harjot Singh as CW 3, Roshal Lal as CW 5, Amarjit Singh as CW 6. Thereafter, statement of the respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondent of charge against him, vide impugned judgment dated 01.04.2013. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

“13. The accused in the present case have been

charged for offence u/s 500 IPC for publishing news item regarding the removal of complainant from the post of President of Chandigarh Youth Congress. It is the allegation of the complainant that the said news was false and he has been defamed by the accused persons. It would be pertinent to mention here that during the pendency of the case accused no.2 had expired and proceedings against him were dropped in view of the statement of the complainant recorded on 13.12.2002. Thereafter, accused had also suffered a statement to withdraw the complaint against accused no.1 Mohinder Sharma and complaint against him stands dismissed as withdrawn on 25.2.2012. Thus, the only accused present before the court is accused no.3 who is the Editor of the news paper Arth Parkash wherein the news item was published. It is not in dispute that the news item was published in the news paper of accused no.3. This fact has been proved by CW-2 Mahavir Jain. This fact has also not been denied by the appearing accused when his statement u/s 313 Cr.P.C. was recorded. He has merely contended that on the press note issued by accused no.1 news item was published and similar news items were published in other news papers. The said news item has been proved on the file as Ex.CW2/1. The gist of the news item is that Dr. Mohinder Sharma had clarified that he had removed the complainant due to his anti party activities and in a press note he has further raised allegations that the complainant had been black mailing other persons and in this regard many complaints have been received from the residents of Manimajra. As per the allegations of the complainant he

has never been removed from the party (Congress (S)). Counsel for the complainant has argued that the news item was false and has been published only to defame the complainant.

14. *Section 499 IPC provides that whoever by words either spoken or intended to be read, or by signs or by visible notifications, 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 case hereinafter excepted, to defame that person. The said section is followed by 10 exceptions.*

15. *Thus, mens-rea is one of the essentials of the offence u/s 499 IPC. It is necessary that the publication must be with an intention to harm or knowing or having reason to believe that such imputation will harm the reputation of such person. In the present case, the news item published in the news paper itself suggests that the same was published on the basis of the press statement issued by accused no.1 Dr. Mahinder Sharma. It has been vehemently argued by the counsel for the complainant during the course of arguments that no such press note has been proved by the accused no.3 and therefore, the said accused has published the news item on his own only in order to defame the complainant and the same was without any basis. However, in the complaint the complainant has specifically averred that both accused no.1 and 2 with mutual consent of each other further got published one more false statement that the complainant was black mailer and due to anti party*

activities the complainant was expelled from Youth Congress (S) and the said news item was published in the editorship and news paper of accused no.3. Thus, the complainant cannot go beyond what has been pleaded by him in the complaint. The aforesaid averments itself suggests that the news item was published at the instance of the accused no.1 and 2. Moreover, it is the case of the complainant that similar news items were published in other news papers on 23.2.1998 i.e. The Tribune and Dainik Tribune. Thus, firstly the fact that the press note has not been proved will not be of much help to the case of the complainant for the reasons that he had himself averred in his complaint that the news item was got published by accused no.1 and 2 and secondly that similar news items appeared in other news papers as well. Secondly, there is nothing on the file to prove that the said news item was published with an intention to harm the reputation of the complainant. The accused has also relied upon the contradiction published by him which has also been proved by CW-2 and the same is Ex.CW2/D/1. Had the accused published the news item with an ulterior motive or malafide intention, the said contradiction would have never been published. Moreover, no person has been examined who had read the news item and in whose eyes the reputation of the complainant has been lowered down. An attempt has been made by examining CW-6 Amarjit Singh. However, the name of this witness was neither mentioned in the list of witness nor his name was averred in the complaint or in the examination or cross examination of the complainant. It was for the very first

time that this witness was examined on 1.2.2012 without any summons issued to him and in his cross examination he has admitted that he received phone calls from complainant Jaspal Singh on 30.1.2012 who asked him to appear as a witness. The examination of the said witness was also objected by defence counsel and the objection was kept open. Thus, this witness seems to have been examined only to fill up the lacuna and as such his evidence is not trust worthy and cannot be relied upon.

16. As per the complaint, the principal Tort feaser were accused no.1 and 2. At best, role of accused no.3 would be of aiding and abetting. When the complainant against the Principal tort feaser had been dropped, the complaint could not be prosecuted against the present accused. In this regard, i would rely upon authority of the Delhi Hon'ble High Court titled as Thiru N. Ravi and others Versus SD Kathuria and others 2007 (4) JCC 2640.

17. In the above cited case also, a complaint u/s 499/500 IPC was filed by the complaint on the basis of a news item published in leading news paper wherein the said news item was published on the basis of information from the father of a girl in a case of matrimonial dispute. During the pendency of a complaint, a settlement took place between the complainant and the girl and her father and the complaint against them was withdrawn. However, the complaint only against the Editor and the news paper was continued. The said accused approached the Hon'ble Delhi High Court against the order of summoning. In the same, the Hon'ble Delhi High Court

in para no.23 of the said judgment was pleased to observe the following:

“Lovleen and her father have been freed of all bondage pertaining to, arising out of and connected with the matrimonial bond between Lovleen and complainant No.2. In my opinion, they being the principal tort feasers, complaint cannot be allowed to continue against the printer and the publisher or for that matter editor of the newspaper who at best would be guilty of abetting the commission of the offence under Section 499 IPC. My reason for so holding is that there are no averments in the complaint that the petitioners published the offending, news item with an intent to defame the complainants. Charge against the petitioners is, as per para 14 of the complainant that they did not verify the truth of the allegations leveled by accused nos.5 and 6 before publishing the news item...”

18 *The facts of the above noted case are similar to the facts of the present case and, therefore, the above said authority is fully applicable in the present case. The complainant though has relied upon affidavit Ex.PX duly sworn by accused no.1 to the effect that he had never released any statement against Jaspal Singh as published in the Arth Parkash on 17.3.1998 but the same is also of no help to the complainant for the reasons hereinafter. Firstly, the said affidavit has not been proved in the court by examining said accused and no right to cross examine him by the appearing accused was available. Secondly, the same was filed after 10 years from the date of filing of complaint which itself shows that the same is a concocted story after the complainant and accused no.1 had entered into a compromise and as discussed above the averments made in the complaint itself shows that the news items was published on the*

basis of the information received from accused no.1. Lastly, there is no explanation for the publication of similar news items in other leading news papers which were also published on the basis of statement of the accused no.1 and have been admitted by the complainant in the complaint. Moreover, merely because complainant does not want to pursue the complaint against accused no.1 cannot be allowed to argue beyond his pleadings against accused no.3. Thus the authorities cited above is fully applicable to the facts of the present case.

19. *Thus, in view of the evidence and circumstances of the present case and reasons explained supra, I am of the considered view that complaint has failed to establish the guilt of the accused beyond all reasonable shadows of doubt and therefore, the present complaint stands dismissed and the accused are acquitted of the charges framed against them. Bail bonds and surety bonds stands discharged. Bonds u/s 437-A Cr.P.C. furnished which are accepted and attested. File be consigned to the record-room.”*

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr.***

vs. State of Karnataka 2014(2) RCR (Criminal) 507 has held as under:

“10. Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227] highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, “the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a

presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.” The opinion of the Lord Russell has been followed over the years.

11. As early as in 1952, this Court in Surajpal Singh v. State; [AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, “the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

*12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in **Tulsiram Kanu v. State; [AIR 1954 SC 1]**, **Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637]**, **Atley v. State of U.P.; [AIR 1955 SC 807]**, **Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217]**, **Balbir Singh v. State of Punjab; [AIR 1957 SC 216]**, **M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200]**, **Noor Khan v. State of Rajasthan; [AIR 1964 SC 286]**, **Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450]**, **Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793]**, **Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424]**, **Khem Karan v. State of U.P.; [(1974) 4 SCC 603]**,*

Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] and Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415]. It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its

powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

10.07.2015
parveen kumar

(PARAMJEET SINGH)
JUDGE