

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

CRM-M-15141-2014 (O&M)

Date of Decision: January 08, 2015

Sanjay

.....Petitioner

Versus

Abhijit Misra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Harinder Singh Sandhu, Advocate for
Mr.Vikas Lochab, Advocate
for the petitioner.

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Naresh Kumar Sanghi, J.(Oral)

Mr.Harinder Singh Sandhu, Advocate, has put in appearance for the petitioner and submits that he is not acquainted with the facts and circumstances of the case. He further contends that arguing counsel is not feeling well.

It is apposite to mention that the present petition was filed on 31.03.2014 and came up for hearing before this Court on 05.05.2014. At that time the proxy counsel appeared for Mr.Vikas Lochab, Advocate, and prayed for an adjournment on the premise that arguing counsel was in personal difficulty, therefore, the matter was adjourned to 30.07.2014. On the adjourned date, i.e., 30.07.2014, no one appeared for the

petitioner, therefore, in the interest of justice, the case was adjourned to 15.10.2014. An adjournment slip was circulated by the counsel for the petitioner and, as such, the matter was again adjourned to 08.01.2015. Still the prayer has been made for adjournment, which is not justified. In spite of repeated request learned proxy counsel has not advanced the arguments.

I have gone through the material available on record.

Prayer in this petition is for quashing of the order, dated 13.07.2012 (Annexure P2) passed by learned Judicial Magistrate Ist Class, Sonipat, whereby the complaint under Sections 500 and 504 read with Section 34, IPC (Annexure P1) filed by the petitioner was dismissed. Further prayer is for quashing of judgment, dated 29.01.2014 (Annexure P4) passed by the learned Sessions Judge, Sonipat, whereby the revision petition (Annexure P3) filed by the petitioner challenging the order, dated 13.07.2012 was dismissed.

As per the case of the petitioner-complainant, an FIR No.386, dated 09.11.2008, for the offences punishable under Sections 307 and 498-A read with Section 34, IPC, was registered at Police Station, City, Gohana, against him and his family members. During investigation of the said case, it was found that

the ingredients of Section 307, IPC, were not attracted and, as such, the Investigating Agency filed the charge-sheet for prosecution of the petitioner and his co-accused for the offences punishable under Sections 406 and 498-A read with Section 34, IPC. In his complaint, the petitioner -complainant claimed that he was maintaining high reputation in the society. Respondent Nos.1 to 3 had got published a news in the newspaper "*Dainik Bhaskar*" in its edition, dated 17.12.2008. The heading of the news was "HATYARPIO KO GIRAFATAR KARNE KI MANG". The said news was totally false and baseless. Due to publication of the said news, the reputation of the petitioner-complainant was tarnished. The petitioner-complainant served a legal notice, dated 24.02.2009 asking the accused- respondents to pay damages of ₹10 lacs on account of loss of reputation but the respondents did not properly respond to the said notice. Hence, he was constrained to file the complaint.

In order to prove his allegations the petitioner -complainant appeared as CW1 and also examined Dheeraj Sharma as CW2, Ashok Kumar as CW3 and Krishan Lal as CW4 and closed his preliminary evidence. After hearing the learned counsel for the petitioner-complainant, the learned Judicial

Magistrate vide his order, dated 13.07.2012, Annexure P2, dismissed the complaint. The operative part of the order passed by learned Judicial Magistrate Ist Class, Sonipat, is as under:-

“6. In view of the above deposition and the documents placed on the file, it is well proved that the complainant and his family was involved in a case FIR No.386, dated 09.11.2008, under Sections 498-A, 307, 34, IPC, and this fact has been duly mentioned by the complainant in the complaint itself, but later on, Section 307, IPC, was deleted by the police while filing its challan. However, while lodging FIR, it is well established that the complainant and his family was implicated on account of their common intentions for demanding dowry and attempt to murder. The alleged news published in the newspaper is that Raj Kumar has made demand of arrest of accused persons. As such, at the time of juncture, the news published in the newspaper is no where amount to defamation to the complainant and his family members, rather in view of circumstances prevailing at that time, the news is to seek prompt action against the accused persons by the police, which had lodged the FIR. At the stage of issuing process against the accused, Court has although to see whether prima -facie case is made out or not and no detailed inquiry and scrutiny of evidence is required. Hence, the present

complaint prima facie appears to be launched in lieu of a revenge against the accused persons on account of their previous litigations. A perusal of Section 499 IPC defines defamation and following are the essential ingredients of the offence:-

- i) The making or publishing of an imputation concerning any person.
- ii) The means of such imputation are words, writings, signs or visible representations.
- iii) Such imputation must have been made with the intention of harming the reputation of person about whom the imputation is published.

A person's own opinion of himself is not reputation. It rather means the opinion of others about him. The good opinion one bears or the esteem in which one is held in the society is one's reputation. Thus, defamation is the publication of a statement which tends to lower a person in the estimation of other members of society generally.

The ten exceptions to Section 499 IPC state the instances in which an imputation, prima facie defamatory may be excused. As such, the complainant has not been able to show prima facie case against the accused persons and hence after considering the statements on oath of the complainant, witnesses examined in the court and the documents available on the file as well as perusal of Section 499 IPC, I am of considered view

that simply publication of a news item in news paper itself is not defamatory as there is nothing to show that same was published with intention to harm the reputation of the complainant. Hence, I am of the opinion that there is no sufficient ground for proceeding against accused under Sections 500, 504, 34, IPC, and present complaint stands dismissed.”

The petitioner dissatisfied with the order of dismissal of his complaint preferred the criminal revision petition before the Court of Session at Sonipat. The said revision was also dismissed. The operative part of the judgment, dated 29.01.2014, is as under:-

“9. Since, at the time of publication of the news item on 17.12.2008 the matter was still under investigation and there were specific allegations in the complaint that revisionist and his family members had forced the wife of the revisionist to consume some liquid laced with some material and as a result of that not only she felt giddiness but she was hospitalized. so, in view of these facts and circumstances, this Court is of the considered opinion that no offence under Section 500 of the Indian Penal Code is made out against the accused and there is no illegality and infirmity in the impugned order, dated 13.07.2012 handed down by the learned trial Court.

10. Resultantly, as a consequence of the aforesaid discussion, this Court is of the considered opinion that the present revision containing no merit deserves dismissal and is hereby ordered to be dismissed. The trial Court record along with a copy of the judgment be sent to the Court concerned. Revision file be consigned to the record.”

Admittedly, an FIR No.386, dated 09.11.2008, for the offences punishable under Sections 307 and 498-A read with Section 34, IPC, was registered against the petitioner-complainant and his family members at Police Station, City Gohana, at the behest of his wife Rajni. After thorough investigation, the Investigating Agency came to the conclusion that petitioner and his co-accused had committed the offences punishable under Sections 406 and 498-A read with Section 34, IPC, and as such, the charge-sheet was presented before the Area Judicial Magistrate. Concededly, the news item under the heading of “HATYAROPIO KO GIRAFATAR KARNE KI MANG” was published on 17.12.2008 in the newspaper ‘Sonipat Bhaskar’. There is no doubt that the petitioner and the witnesses produced by him in preliminary evidence did depose before the Court below that on account of publication of the said news item, the reputation of the petitioner-complainant had lowered in the

estimation of the general public, but the fact remains that the news item was based on factual aspects. At the time of publication of the said news, concededly the petitioner was facing the investigation for the offence punishable under Section 307, IPC. If some news item is published, which is on facts, in that eventuality the petitioner-complainant cannot allege that his reputation was lowered on account of publication of the said news. Both the Courts below have discussed the factual and legal aspects at length and came to unanimous conclusion that there was no substance in the complaint and, as such, the same was correctly dismissed. This Court is also of the considered opinion that no offence for summoning of the accused- respondents for the offences punishable under Sections 500 and 504 read with Section 34, IPC, is made out.

Dismissed.

January 08, 2015
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(NARESH KUMAR SANGHI)
JUDGE