

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-September 15th , 2015

CRM-M No.27119 of 2015

Pankaj Choudhary.

.....Petitioner.

Versus

The State of Haryana & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S.Cheema, Senior Advocate assisted by
Mr.Aditya Singh and Mr. A.S. Cheema, Advocates
for the Petitioner.

JASWANT SINGH, J.

This petition has been filed to seek quashing of Criminal Complaint (Annexure P-1) & summoning order (Annexure P-2), whereby accused have been summoned to face prosecution for the offences punishable under Section 499, 500 of Indian Penal Code. The accusation faced is for having committed an offence of defamation by making telecast in respect of a crime, projecting complainant as an accused, in their programme titled Crime Reporter, whereas FIR in question came to an end through cancellation report. The accused are the Zee News Channel, its MD and editor. The petition has been filed by Pankaj Chaudhary, who is assignment head of Zee News Channel.

Though the order of summoning is revisable order, however, the petition is filed on the ground of abuse of process of law, as the complaint

and its contents do not make out commission of any offence and no such ingredients are present. Therefore, necessity arises for this Court to examine the merits of this petition in the limited scope of Section 482 Cr.PC to test if this falls within the parameters which call for interference against complaint and summoning order.

Briefly facts are noted below:-

Dr. Rupinder Singh (complainant)-respondent no.2 runs a renowned and reputed hospital namely Waryam Hospital at Yamunanagar and himself being a doctor (Cancer Surgeon) also enjoys equally good and similarly popular reputation all over.

On 21.12.2007 a female doctor at the hospital namely Dr. Gargi Chawla, Dental Surgeon was found dead in her room, who had committed suicide. Her brother Arun Chawla suspected murder and gave a complaint to the police, whereupon FIR No.504 dated 22.12.2007 was registered under Section 302 of Indian Penal Code at Police Station City, Yamunanagar. The FIR was against unknown persons.

The accused-News Channel on 23.12.2007, 24.12.2007 and 28.12.2007 made a telecast on their channel through programme Crime Reporter, showing involvement of Dr. Rupinder Singh in the murder of Dr. Gargi Chawla. According to complainant there was nothing in this regard and the FIR in question (Annexure P-3), which was investigated thoroughly ended by way of cancellation report dated 4.8.2008. In this report (Annexure P-7) it was revealed by the police that Dr. Gargi Chawla had committed suicide and her room was bolted from inside.

The telecast made by the accused was watched by people world over and some of his relatives disclosed him about the telecast. Further, it is

pleaded by complainant that some other complaint was filed against him at Panchkula, which was also dismissed after enquiry under Section 202 Cr.PC. The revision against the dismissal also failed on 15.12.2010.

The complainant brought the complaint against accused to seek prosecution and punishment of accused persons for having injured his reputation. After completion of pre-summoning evidence the learned Magistrate vide order dated 3.6.2015 summoned the accused as a prima facie case is made out, which has been challenged in this petition along with complaint.

Learned Senior Counsel appearing for the petitioner has been heard.

Firstly, it is argued that the complaint is barred by time as it has been filed after a period of three years. The contention is misplaced as the FIR as well as complaint at Panchkula were decided finally in favour of complainant in the year 2008 and 2010 respectively, therefore, the present complaint could not have been filed, when alleged false accusation against the complainant was pending. Therefore, this complaint cannot be said to be barred by time.

Secondly, it is argued by learned Senior Counsel that the complainant himself never viewed or heard the telecast when it was aired, but was informed by two of his friends i.e. CW-1 & CW-2 about the telecast. It is submitted that in the absence of transcript of CD there is no legal evidence to support the complaint. This argument has been considered and is devoid of any merit, because to constitute an offence under Section 499 IPC, it is not necessary that the affected person must hear or watch the alleged telecast. It is the imputations which harm the reputation to be necessarily present to

constitute the offence. In the present case the alleged telecast is made just two days after the death of Dr. Gargi. By that time there is nothing to indicate that the petitioner was ever involved in the alleged murder. Rather on the contrary it is mentioned in the petition that the relatives of the deceased attributed accusations towards the complainant and this pleading in the petition is not substantiated. At the same time a defence has been set up to say that the News Channel is duty bound to report the happenings at various places in and around the country to the masses. There is sufficient material which prima facie suggests that the telecast projecting complainant as accused was without any material as the FIR at no stage indicated the complainant. Even the complaint filed at Panchkula against the complainant was found to be without substance. Therefore, it cannot be said that the complaint does not disclose the commission of alleged offence.

It is further contended that the CD in question was taken on record by way of an additional evidence under Section 311 Cr.PC. The pre-summoning evidence and invoking of Section 311 Cr.PC was between the complainant and the Court and the same cannot be agitated by the petitioner to set up the ground for quashing of complaint. Even otherwise, the CD belongs to the accused/News Channel and it can be safely inferred that the same was not readily available with the complainant and who was later on constrained to invoke Section 311 Cr.PC to bring the same on record.

Lastly, it is argued that the impleadment of the respondents is not proper and there is no role ascribed and resultantly no vicarious liability can be fastened. The complaint is directed against the News Channel as well as its managing director/CEO, Editor/Assignment Head and its local Reporter.

In support of his contentions learned Counsel for the petitioner

has placed reliance upon **(2008) 5 SCC 668** **Maksud Saiyed Vs. State of Gurjarat & Ors., (2008) 5 SCC 662** **S.K. Alagh Vs. State of U.P. & Ors. & (2014) 10 Supreme Court Cases 473** **Anvar P.V. Vs. P.K. Basheer & Ors.**

The Court at the stage of summoning has to satisfy itself as to whether a prima facie case is made out or not? A reading of the impugned order reveals that the learned Magistrate has taken into account the complaint and the evidence and has specifically recorded the satisfaction after perusal of Ex.C-2 that the accused had actually telecast the programme indicting the complainant as an accused. The issue of vicarious liability and involvement of accused persons is to be seen at the stage of framing of charges and therefore, at the stage of summoning separate assessment of each and every accused, in the light of the accusations and the nature of the offence is not appropriate. The citations relied upon by the learned Senior Counsel are not attracted in the case, as the same relate to the admissibility of the electronic evidence, whereas in the present case the petitioner has justified the telecast on the strength of information given by relatives of the deceased.

In the light of the above discussion it will not be safe to quash the complaint, which is at the initial stage and, therefore, the petition fails and is dismissed. However, the petitioner shall be at liberty to raise all these issues at any appropriate stage before the trial Court.

(JASWANT SINGH)
JUDGE

15th September, 2015
Vinay