

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Misc. Petition No.558 of 2016****order reserved on 01.08.2016****order delivered on 08.08.2016**

Vivek Agrawal S/o - Ishwar Chand Agrawal Aged About 40 Years R/o House No. 24, Banyan Tree Enclave, Khamardih Road, Shankar Nagar, Raipur Chhattisgarh

**---- Petitioner****Versus**

Suresh Kumar Goyal S/o - Late Ganga Bisen Goyal Aged About 54 Years R/o. - Village Shivnandanpur, Post And Police Station - Vishrampur, Tahsil & District - Surajpur Chhattisgarh.

**---- Respondent**


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| For petitioner | : | Shri DK Gwalre, Advocate. |
| For Respondent | : | Shri VK Pandey, Advocate. |

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**Hon'ble Shri Justice P. Sam Koshy****CAV ORDER**

1. The instant petition has been filed by the petitioner assailing the action on the part of Chief Judicial Magistrate, Surajpur (for short, CJM) in registering the private criminal complaint case against him in complaint case No.3871/1852/2015 vide order dated 31.12.2015. Vide the said order, the court below has after taking cognizance for commission of offence punishable under Section 500 IPC has ordered for issuance of process against the petitioner and other accused persons.
2. The facts in brief relevant for adjudication of this case are that, on 02.02.2012 a publication/notice was published in daily newspaper

Nav Bharat that property bearing Khasra No.271/37 (New Khasra No.271/40) measuring 0.052 hectare, situated at Shivnandanpur, owned by Smt. Anita Goyal, wife of the respondent-Suresh Kumar Goyal is under encumbrance as guarantee against the loan obtained by M/s B.L.S. Associates, Rewa (MP) and it is learnt that the said property is being tried to disposed of which would be against the law. According to complainant, her reputation in the society has been tarnished because of the said publication and that the entire allegation of the said publication were totally false and concocted with no substance whatsoever.

3. The complainant subsequently has filed a complaint case against the petitioner accusing him of having committed an offence punishable under Section 500 IPC. Subsequently, after statement of complainant Suresh Kumar Goyal and other witnesses were recorded, the court below treating the averment made in the course of recording of statement to be sufficient material, took cognizance in the matter for the offence under Section 500 IPC and also ordered for issuance of process against the petitioner. Assailing the said registration of complaint against the petitioner and other accused persons, the petitioner has filed this petition under Section 482 of CrPC.
4. According to counsel for the petitioner, the court below has failed to appreciate the requirement of law at the time of registration of complaint. At the first instance, the petitioner himself has been wrongly arrayed as one of the accused persons. According to him,

there is no iota of evidence to even remotely connect to show any role played by the petitioner in the alleged act of defamation as alleged in the complaint case. If the entire complaint and the statement recorded therein is taken in to consideration, the same is sufficient to establish the fact that there was no specific allegation against him. Even on technicalities, the complaint case could not have been registered for the reason that there is total bar of registration of such complaint as per Section 199 CrPC. It is further contended that even otherwise, the complaint case suffers from delay and laches to the extent that it is beyond the prescribed period of limitation. Thus, since the complaint itself has been filed beyond the limitation period of three years, the same ought to have been rejected at the threshold.

5. It is next contended that if the nature of complaint lodged by the complainant is taken on its face value, even then the ingredients required for making out a case of defamation is not available either in the complaint or is established from the statement of the complainant. The case of the complainant squarely falls within the 9<sup>th</sup> and 10<sup>th</sup> exception of Section 499 IPC, and therefore, case of defamation is not made out. Further, from the nature of allegation levelled in the complaint it does not reflect as to how his reputation has got tarnished. According to him, both the complaint as well as the statement recorded in the court does not deal with reputation of the complainant nor does it disclose in what manner the publication of the said news item by the petitioner has adversely affected the

reputation of the respondent. In the absence of any specific averment in respect of reputation of the respondent, there is definitely an error on the part of the learned Magistrate while taking cognizance of the offence against the petitioner. Thus, prayed for quashing of the entire proceedings and registration of offence under Section 500 IPC.

6. In support of his contention, reliance has been placed upon the judgments of Supreme Court in cases of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, reported in 1998(5)SCC-749 (para-28) and Dhariwal Tobacco Products Ltd. and Others Vs. State of Maharashtra & Another, reported in 2009(2)SCC-370 (para-6 & 7).
7. Per contra, learned counsel for the respondent opposing the petition submits that this petition itself is totally misconceived and deserves to be rejected for the reason that a perusal of the order of the magistrate itself clearly would show that there was sufficient material in the complaint and it was only after the complaint and statement of the complainant were duly considered by the Magistrate when it took cognizance of the offence under Section 500 IPC. It is next submitted that a plain perusal of the complaint itself would reveal that the same has been made at the behest of the wife of the respondent Suresh Kumar Goyal and that the notice is pertaining to the wife of the complainant and therefore, it cannot be said to be hit by the provisions of Section 199 CrPC as the complaint itself has been filed by the husband of the complainant. According to him, this

petition at this juncture is totally pre mature and is not entertainable for the reason that it is only the courts taking cognizance of the offence and that all the contentions which the petitioner intends to take in the present petition, he would get a chance to thrash it out after leading evidence in this regard.

8. So far as limitation part is concerned, counsel for the respondent submits that if we take into consideration the complaint being filed on 05.06.2014, it would clearly prove the case within the period of limitation prescribed under Section 468 of CrPC. Thus, for all the aforesaid reasons, counsel for the respondent prayed for rejection of the petition.
9. Having considered the rival contentions put forth by the either side what is primarily to be seen is the notice which was issued in the newspaper giving rise to the case of defamation for the respondent. All that was published in the said advertisement in the daily newspaper Nav Bharat on 02.02.2012 was that one Smt. Anita Goyal W/o Suresh Kumar Goyal has mortgaged the document pertaining to their property bearing Khasra No.271/37 (New Khasra No.271/40) measuring 0.052 hectare, situated at Shivnandanpur, in favour of one M/s B.L.S. Associates, Rewa (MP) for the purpose of obtaining bank guarantee as well as for C.C. Loan in the capacity of guarantor. It is also stated in the advertisement that the said property is being tried to be sold to some third person which is illegal as the said property is mortgaged property and has liability of loan against it. The advertisement also reflects a publication of a caution from

purchasing the said property failing which they would not be getting any right over the said property and the deal entered into in a property which already stood mortgaged would be *void ab-initio* .

10. In the light of said advertisement, if we look into the complaint what is to be seen is as to how the said advertisement has tarnished the image/reputation of the respondent.

11. A perusal of complaint which has been lodged by the complainant clearly envisages the fact that complainant has stated that his wife being lady was confronted by a lot, many villagers and persons known to them in respect of the advertisement which according to respondent definitely had tarnished the image of his wife particularly for the reason that his wife are well known person of the Bishrampur. It is further alleged that because of the said publication, the business of the complainant also has been adversely affected incurring huge loss as many of the other traders were hesitating to enter into business ties with the respondent further putting the complainant at loss and has also affected the image of the complainant and her family. Except for this statement, there has been no other averment made in the complaint.

12. The foremost requirement for constitution of defamation is that publication with imputation against any person with an intention to harm the reputation of such person and to defame that person is made out. Now in the instant case, if we revert back to the advertisement what is reflected is, it is more in the nature of caution made by one of the lawyer. This advertisement does not bear the

name of the petitioner nor does it anywhere reflect that it has been published at the behest of the petitioner and all other materials collected at the time of filing of complaint are all on assumption and presumption based which would not suffice for constituting an offence of defamation.

13. So far as role of the present petitioner is concerned, the only averment made in the complaint is that the person who has got the publication done has informed the counsel for the respondent-complainant by way of reply to notice intimating that he has done paper publication at the behest of the petitioner. Except for this, there is no other document whatsoever. Further, from the reading of advertisement, it also reflects that it was more in the nature of warning issued by one of the lawyer intimating that perhaps the property is mortgaged property and there is a loan liability on the said property, therefore, nobody should purchase the said piece of land as they have come to know that Smt. Anita Goyal was trying to get the said property sold to a third person.
14. What is further pertinent to mention that though advertisement has been published in the newspaper allegedly making imputation against Smt. Anita Goyal, but the defamation case has not been filed by her. Neither has the complainant (Suresh Kumar Goyal) been authorized on her behalf to file a complaint case. Further, at the time of registration of complaint also Smt. Anita Goyal has not been examined, but it was the statement of Suresh Kumar Goyal, the husband of Smt. Anita Goyal, whose statement was recorded for the

purpose of registration of the complaint.

15. The court below at the time of registration of complaint ought to have first appreciated the fact as to what is the evidence to show that the advertisement was published at the behest of petitioner. Further, the court below also should have weighted the materials brought at the time of registration of complaint to ascertain the veracity of the reply to the legal notice given by a lawyer namely Vijay Shankar Tiwari. The court below also ought to have looked into the aspect that if the petitioner is instrumental in defaming the respondent-complainant then the lawyer Vijay Shankar Tiwari would also be liable for defamation for publishing something without verification of its content in his name.

16. It would be trite at this juncture to refer to paragraph 28 of the landmark judgment of Supreme Court in case of Pepsi Foods Ltd. (Supra) wherein it has been held as under :

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may

even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

This aspect clearly is missing from the order of registration of complaint dated 31.12.2015.

17. True it is that impugned order could have also been challenged by the petitioner by filing a revision petition before the revisional court, but only because revision petition is maintainable by itself would not debar the High Court from entertaining this petition under Section 482 CrPC seeking for quashing of proceedings.
18. The said principle of law has already been settled by a series of decisions of Supreme Court one among them being Dhariwal Tobacco Products Ltd. (Supra) wherein the Supreme Court has very emphatically held that “it is difficult to conceive that jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed”.
19. So far as judgment of Supreme Court in case of Fiona Shrikhande Vs. State of Maharashtra and Another, reported in 2013(14) SCC-44 relied by the respondent is concerned, with all due respect, the facts and the ratio laid down in that case cannot be made applicable in the present case for the reason that the nature of the complaint and the allegations made therein were entirely different, and therefore, the same is distinguishable in the peculiar facts of the present case.
20. In the absence of complaint being filed by Smt. Anita Goyal and also in absence of any proper prima-facie proof of petitioner alone to

have got the advertisement published, this court is of the opinion that court below was not justified in registration of the said complaint case against the petitioner.

21. Thus, exercising the inherent powers conferred under Section 482 CrPC, this court orders for quashment of order dated 31.12.2015 passed by the CJM, Surajpur in complaint case No.3871/1852/2015. Consequently, the complaint case registered against the petitioner also stands dismissed.

22. The petition under Section 482 CrPC is allowed.

Sd/-  
(P. Sam Koshy)  
**Judge**