

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 922 of 2016****Reserved on 05.09.2016****Delivered on 19.9.2016**

- Chetandas Sahu S/o Tekchand Sahu Aged About 48 Years R/o Dwarka - 12, Anushakti Nagar, Mumbai (Maharashtra) Pin 400094

---- Petitioner**Versus**

1. Smt. Hemlata Sahu D/o D. L. Sahu Aged About 40 Years R/o Indira Nivas, Shiv Vihar Colony, Behind Shankar Hotel, Raipura, Mahadev Ghat Road, Raipur, Distt. Raipur Chhattisgarh P.I.N. 492010.
2. Manoj Kumar Sahu S/o D. L. Sahu Aged About 42 Years R/o Indira Nivas, Shiv Vihar Colony, Behind Shankar Hotel, Raipura, Mahadev Ghat Road, Raipur, Distt. Raipur Chhattisgarh P.I.N. 492010.

---- Respondents

For Petitioner	:	Ms. Fouzia Mirza, Advocate
For Respondents	:	None.

Hon'ble Shri Justice P. Sam Koshy**C.A.V. Order**

1. The present Cr.M.P. has been preferred under Section 378 (4) of the Cr.P.C. seeking leave to appeal against the Judgment dated 14.06.2016 passed by the Judicial Magistrate First Class, Raipur (C.G.) in Criminal Case No. 216/2016 whereby the J.M.F.C. has dismissed the case filed by the Petitioner complainant and acquitted the Respondents of the charges under Sections 500, 501 and 504 IPC.

2. The brief facts relevant for the adjudication of the case is that the present Petitioner-complainant was married to the Respondent No.1 and the marriage took place on 15.05.1997 under the Hindu rights and customs. That from the wedlock between the Petitioner and the Respondent No.1 there were two children born, eldest being daughter aged about 16-17 years and second being son aged about 11-12 years.
3. After some time of the marriage the relationship between the two got strained and Petitioner is alleged to have subjected his wife to cruelty, torture, harassment and ill-treatment. Initially a report was lodged at Raipur in August, 2009 as regards the ill-treatment and torture which the Respondent No.1 herein was being given by the Petitioner. However, subsequently on a conciliation proceeding that took place between the parties they reached to a settlement out of Court and by virtue of said settlement the matter was closed on 04.10.2009 and the Petitioner and Respondent No.1 started living together.
4. However, later on the ill-treatment and harassment again started and it is alleged that the Petitioner again started physically assaulting Respondent No.1 wife and a fresh F.I.R. in this regard was lodged at Police Station, Sector-6 Bhilai Nagar and the same was registered for the offence under Sections 294, 323 and 506 IPC. The said case is pending consideration before the concerned Magistrate at District Durg. That later on since the ill-treatment was persisting the Respondent No.1, wife lodged another complaint as Crime number

22/11 against the Petitioner for the offence under Section 498A IPC and the said case has subsequently been put to trial and which is pending consideration before the Court below i.e. the Judicial Magistrate, First Class, Raipur. Thus, it proves that there are two major cases against the Petitioner pending before the Courts at Durg as well as at Raipur; firstly for the offence under Sections 294, 323 and 506 IPC and secondly for the offence under Section 498A IPC.

5. After these complaints were lodged by Respondent No.1, the Petitioner on 17.01.2015 filed a complaint case under Section 200 CrPC for prosecuting Respondents for the offence under Sections 500, 501, 504, 469, 471 read with 120B IPC at the Court of Chief Metropolitan Magistrate, Kurla (Mumbai). The matter was later transferred to the Court of Chief Judicial Magistrate, Raipur. In the complaint it was alleged that Respondent No.1 has made false and fabricated allegation against the Petitioner so far as the F.I.R. lodged at Mahila Thana, Raipur who thereafter registered an offence under Section 498A IPC and also the offence registered at Sector-6, Bhilai Nagar Police Station who have registered Crime No. 299/2011 for the offence under Sections 294, 323 and 506 IPC. It is further alleged that Respondent No.1 has deliberately to bring disrespect to the status and stature of the Petitioner has vide her letter dated 12.10.2012 has made all sorts of false, fabricated and untrue allegation. That the letter dated 12.10.2012 has been issued with a clear intention of defaming the name, position and status of the Petitioner who works as a senior level officer at the institution where

he is working. The matter was registered as Criminal case No 216/2016 and the Trial Court later on framed the charges against the Respondents under Sections 500, 501 and 504 IPC. The Respondent No.1 is the wife of the Petitioner and Respondent No. 2 is brother of the Respondent No. 1 in other words brother-in-law of the Petitioner. The case of the complainant in the instant case is that firstly Respondent-wife has issued a letter dated 12.10.2012 to the Project Director of the institution where the Petitioner is working as senior level executive. It was informed vide the letter 12.10.2012 made by the Respondent to the Project Director of the establishment that the Petitioner in an earlier occasion in the year 2009 had ruthlessly manhandled the Respondent-wife causing injuries and an FIR in this regard was also lodged wherein the Police authorities have framed offence under Section 294, 323 and 506 IPC and the matter was put to trial which is still pending consideration before the Judicial Magistrate, First Class, Durg. According to him in the said letter there is a false and fabricated allegation and in the complaint lodged against the Petitioner by Respondent No.1. it is also alleged that all the averments are totally baseless and without any substance. Likewise, it is also the contention of the Petitioner-husband that in between, the Respondents have also tried to obtain certain information under the Right to Information Act from the employer of the Petitioner wherein also certain serious imputation as well as insinuation have been made and by virtue of the issuance of these two letters i.e. firstly the letter dated 12.10.2012 to the project

Director and secondly the information being sought under the Right to Information Act are made with deliberate intention to defame the Petitioner particularly in the eyes of the employer and the other staff in the office where the Petitioner was serving. It is alleged that because of these, the status, stature, position and prestige enjoyed by the Petitioner in the institution where he was working has been defamed and also his reputation has been badly affected. It is for these reasons the complaint has been filed for initiating a criminal proceeding against the Respondents for offence under Sections 500, 501 and 504 IPC.

6. According to the Counsel for the Petitioner it is a case which would not fall within the exception that has been carved out under definition of defamation as defined under Section 499 IPC and not even the 8th and 9th exception to Section 499 IPC where accusation made in good faith. It was also the case of the Petitioner that in the present case the 'doctrine of innuendo' would be applicable and nature of insinuation made by the Respondent-wife against the Petitioner would definitely fall within the definition of defamation resulting in an offence under Sections 500, 501 and 504 IPC which the Court below has not properly appreciated and as a result the complaint case as well as revision petition both got rejected.
7. Learned Counsel for the Petitioner relied upon the decision of the Supreme Court in cases of **Chaman Lal v. State of Punjab**¹, **M.N. Damani v. S.K. Sinha and Others**² and **M.A.Rumugam vs Kittu @**

¹ AIR 1970 SC 1372

² AIR 2001 SC 2037

Krishnamoorthy³ in support of her contention.

8. According to the Petitioner as a result of the correspondence made by the Respondent-wife to the employer, a disciplinary proceeding was initiated against the Petitioner by which itself esteem, prestige and reputation of the Petitioner have been lowered in the eyes of his employer, friends and colleagues, thus a case of defamation is clearly made out.
9. Now if we look into the nature of the contents of the two letters; first letter dated 12.10.2012 made to the Project Director and Second a application moved under Right to Information Act for seeking certain informations from the employer regarding the Petitioner. It clearly reflects that so far as the letter dated 12.10.2012 is concerned it was made primarily for bringing to the notice of the employer of the Petitioner regarding the case which was pending before the Court at Durg for the offence under Section 498A of the IPC. In the said letter the complainant has brought to the notice of the employer that she has lodged a complaint before the Mahila Police Station, Raipur which was registered as Crime No. 22/2011 and the charge-sheet of which subsequently has been filed before the Court at Durg where the Petitioner is being prosecuted for the offence under Section 498A IPC. In this regard there is categorical finding of the Court below that even otherwise registration of criminal complaint against the Petitioner ought to have been brought to the notice of the employer by the Petitioner himself which he has not done. It could also have been brought to the notice of the employer by the Police authorities

³ (2009) 1 SCC 101

in course of investigation. Thus, said information provided by the Respondent-wife can not be said to be false, baseless or incorrect averments rather it is factually correct at least so far as lodging of the complaint and the pendency of the case under Section 498a IPC. Thus, writing of the letter dated 12.10.2012 by the Respondent-wife to the Project Director alone would not fall within the definition of defamation.

10. Likewise so far as the second act on part of the Respondent-wife of moving an application under the Right to Information Act to get certain information from the employer is concerned if we look into the application so submitted by the Respondent it would clearly indicate that the Respondent-wife had sought for details of the medical facilities availed by the Petitioner and his family members during the period from 2003 to 2004 as also copy of the attendance sheet of the Petitioner from September, 2009 to October, 2011. She has also sought for certain information as regards the details of the treatment, ailment and bills if any raised by the Petitioner from November, 2009 to September, 2010. A plain reading of the contents of this letter by itself clearly reflects that these were certain information which the wife has sought from the employer pertaining to her husband and these are also information which are available with the employer and it can not be said that the contents of those letters are defamatory in any manner. The information sought for by the Petitioner from the employer are purely private in nature for the reason that those letters under the Right to Information Act has been

made only to the Public Information Officer and it is not a letter written in the public domain. Therefore, the said correspondence made by the Respondent-wife to the Public Information Officer of the Establishment where the Petitioner husband was working cannot be brought within the definition of defamation nor can the said act be termed to be one which would fall within any of the criteria envisaged under Section 499 and 500 IPC.

11. So far as the judgments which have been cited by the Counsel for the Petitioner, if we peruse the contents, allegation and the charges made in the two judgments it would clearly reflect that those cases were decided under entirely different factual background when compared to the facts of the present case. In the instant case the dispute between the husband and wife, is that the wife has firstly intimated the employer regarding the cases under Section 498A IPC as also the case under Sections 294 and 323 of the IPC against the husband. Secondly, the wife has sought for certain informations from the Public Information Officer under the Right to Information Act from the institution where the husband was working. Thus, under the given factual background, the two judgments cited by the Petitioner are quite distinguishable on the facts of the present case.

12. It is also pertinent to mention that the Court below in its finding held that the since a criminal case has been lodged against the Petitioner and the matter are before the Trial Court the allegations put forth by the Petitioner in his complaint would not be sustainable to meet the ingredients necessary so as to bring home the offence

under Sections 499 and 500 IPC. Therefore the Court below was right and justified in rejecting the complaint case lodged by the Petitioner thereby resulting in the acquittal of the Respondents. Thus in view of the aforesaid reasons this Court of the opinion that no strong case has been made out calling for interference with the impugned order.

13. Accordingly, the present Cr.M.P. being devoid of merits deserves to be and is accordingly rejected. As a consequence the leave to Appeal against the Respondents also stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE