

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

(1) CRM-A-1054-MA of 2011 (O&M).
Decided on:-15.11.2016.

Sohan Lal.
.....Applicant.

Versus

State of Punjab and others
.....Respondents.

(2) CRM-A-1055-MA of 2011 (O&M)

Sohan Lal.
.....Applicant.

Versus

State of Punjab and others
.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Sarju Puri, Advocate
 for the applicant.

HARI PAL VERMA, J.

CRM-71549-2011

Prayer in this application filed under Section 5 of the Limitation
Act is for condonation of delay of 14 days in filing the application under
Section 378(4) Cr.PC for grant of special leave to appeal.

For the reasons stated in the application, the same is allowed and delay of 14 days in filing the application under Section 378(4) Cr.PC for grant of special leave to appeal is condoned.

CRM-A-1054-MA-2011

This order shall dispose of aforementioned two applications under Section 378(4) Cr.PC for grant of special leave to appeal filed by applicant Sohan Lal as the same are interlinked and interconnected with each other. However, for convenience and clarity, facts are being discussed from ***CRM-A-1054-MA of 2011***.

The applicant has filed present application against the judgment dated 24.9.2011 passed by learned Additional Sessions Judge, SBS Nagar whereby judgment/order dated 25.11.2008 passed by learned Sub-Divisional Judicial Magistrate, Balachaur, was set aside.

Vide judgment dated 25.11.2008, the respondents No.2 to 7-accused were convicted for commission of offence under Section 500 IPC and vide separate order, they were sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.200/- each. In default of payment of fine, the accused were further required to undergo imprisonment for 15 days each.

Briefly stated, the applicant-complainant had filed a complaint against the respondents-accused under Sections 499, 500, 501 and 149 IPC. It was alleged in the complaint that there was enmity between the complainant and accused as wife of the complainant had contested

Panchayat elections against the accused. Therefore, in order to defame the complainant, news item dated 22.12.2004 was got published and false and defamatory complaints were submitted by the respondents-accused to the Sub-Divisional Magistrate, Balachaur and Deputy Commissioner, SBS Nagar (Nawanshahr) alleging therein that the complainant raised scuffle with the labour and stopped the work in the presence of Block Development and Panchayat Officer. Further, daughter of the complainant misbehaved with the labour and snatched the measuring tape.

On the basis of pre-summoning evidence, notice was served upon the respondents-accused to face trial for offence committed under Section 500 IPC.

Learned Magistrate held that conduct of the applicant with regard to Kamlesh and Usha as well as his poor service record was established. Learned Magistrate further held that the complainant was defamed by way of Ex.C1 and Ex.C3 which were signed and addressed by the accused persons to the Deputy Commissioner and Sub-Divisional Magistrate and, therefore, the accused had committed the offence under Section 500 IPC. Accordingly, the respondents-accused were convicted and sentenced as indicated above.

Aggrieved against the judgment of conviction and order of sentence dated 25.11.2008, the respondents-accused preferred an appeal before the Court of Session. The appeal was accepted by learned Additional Sessions Judge, SBS Nagar and the respondents-accused were acquitted of the charges levelled against them vide judgment dated 24.9.2011.

Since the respondents-accused were acquitted by the lower appellate Court, the applicant-complainant has filed present application under Section 378(4) Cr.PC impugning the very acquittal of the respondents-accused.

Learned counsel for the applicant-complainant has argued that the applicant has filed a complaint against the respondents-accused on the allegations that he was employed in the Punjab Roadways and the respondents being office bearers of Gram Panchayat of village Oladini passed a resolution dated 21.6.2001 wherein the applicant-complainant was defamed. The news item dated 22.12.2004 was also got published and false and defamatory complaints were submitted by the respondents-accused to the Sub-Divisional Magistrate, Balachaur and Deputy Commissioner, SBS Nagar (Nawanshahr). The accused had approached the local press-reporter of Balachaur so that the matter could be published in newspaper and the reputation of complainant can be harmed.

He has further argued that the respondents have also supplied copy of resolution dated 21.6.2001 to the concerned department which led to suspension of the complainant, though the complainant was reinstated as the allegations levelled by the respondents-accused were found to be false. The resolution dated 21.6.2001 was also circulated by the respondents-accused in the village as well as in local residential area of the applicant-complainant. The copies of the resolution were also pasted on the walls of local area. Thus, the applicant-complainant was defamed. Learned Magistrate has rightly convicted and sentenced the respondents-accused vide

judgment/order dated 25.11.2008 whereas the lower appellate Court has wrongly accepted appeal of the respondents-accused vide judgment dated 24.9.2011. No interference was warranted in the well-reasoned judgment passed by learned Magistrate. Wild imputations were made by the respondents-accused against the applicant by way of resolution in question so as to harm the reputation of the applicant and to defame him. The very object was to lower down the moral and intellectual character of the applicant in the eyes of public.

He has further contended that the extracts of resolution shows that number of allegations were levelled against the applicant with an intention to harm his reputation. It has amply been proved on record that it is on the basis of resolution which was forwarded to the employer of the applicant i.e. Punjab Roadways, the applicant was placed under suspension though in enquiry, the applicant was reinstated in service. He has further argued that on many counts, the witnesses of the applicant-complainant were not cross-examined and accordingly, when facts are not controverted in the cross-examination, such facts are deemed to have been admitted. The defence counsel did not cross-examine the complainant or his witnesses regarding passing of the resolution dated 21.6.2001 and it was specific case of the petitioner that the language used in the resolution is defamatory. Further, the enmity between the parties in the Panchayat elections was also not controverted.

Learned counsel for the applicant has further argued that the respondents-accused have been acquitted by learned lower appellate Court

on the premises that the witnesses examined by the applicant-complainant are interested witnesses and there was election rivalry. He has prayed that the judgment dated 24.9.2011 passed by learned Additional Sessions Judge, SBS Nagar be set aside and the judgment/order dated 25.11.2008 passed by learned trial Court be upheld.

I have heard learned counsel for the applicant and perused the record.

The relevant observations of learned Additional Sessions Judge, SBS Nagar in para Nos.11 and 12 of the impugned judgment dated 24.9.2011 read as under:

“11. Perusal of order passed by the learned trial Court shows that the learned trial Court in para No.17 held that the allegations contained in Ex.C1 and Ex.C-3 were proved to be false. However, merely by holding that the allegations are false a person can not be convicted until and unless it is proved that by said imputation were made with intention to harm the person or lower the moral or intellectual character or credit of the said person.

12. As a sequel to my above discussion, it is held that complainant has not been able to prove the charges levelled against the appellants beyond shadow of reasonable doubt. Accordingly, appeal is allowed and judgment passed by the trial Court is set aside and accused are acquitted of the charges levelled against them by giving benefit of doubt. The record of the lower Court along with a copy of this judgment be sent back immediately and that of appeal be consigned to record-room.”

Further, Section 499 IPC, which is relevant to deal with the present case reads as under:

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, 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 cases hereinafter excepted, to defame that person.”

Explanation 4 to Section 499 IPC provides that no imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

The record reveals that in FIR No.27 dated 20.3.2000 under Sections 354, 506 and 323 read with Section 34 IPC, the applicant-complainant was convicted by the trial Court. The said judgment was upheld upto this Court.

The basic plea as put forward by learned counsel for the applicant is that because of resolution dated 21.6.2001 passed by the respondents-accused, which led to suspension of the applicant, is a clear case of defamation, more particularly when subsequently he was found innocent and was reinstated. But this Court finds that all the witnesses examined by

the applicant-complainant are not only interested witnesses but even the applicant-complainant has not mentioned in the evidence the words used against him which bring out his case within the ambit of term “defamation”. He has not examined any person or relative before whom his reputation was lowered. The resolution dated 21.6.2001 has not been proved in accordance with law.

Further, the judgment dated 25.11.2008 passed by learned Magistrate is very cryptic as the complainant does not meet the very ingredient as provided in Exception 8 of Section 499 IPC wherein it has been provided that it is not defamation when an accusation is preferred in good faith against any person who hold lawful authority over that person with respect to the subject matter of accusation.

In view of the above, this Court does not find any illegality, irregularity or perversity in the impugned judgments dated 24.9.2011 passed by learned Additional Sessions Judge, SBS Nagar (Nawanshahr). Therefore, affirming the same, both these applications, being devoid of any merit, are dismissed.

November 15, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No