

212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1790-MA of 2015 (O&M)
DECIDED ON: APRIL 11, 2016

JAI PARKASH

.....APPLICANT

VERSUS

ISHWAR DHARA

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harchand Singh Batth, Advocate for
Mr. Sant Lal Barwala, Advocate
for the applicant.

JASPAL SINGH, J

CRM No. 35582 of 2015

In view of averments made in the application, the same is allowed and delay of 291 days in filing the instant application is condoned.

CRM No. 35583 of 2015

Application is allowed, as prayed for.

CRM-A-1790-MA of 2015

Through this application, applicant has sought leave to appeal to challenge the order dated November 03, 2014 passed by Judicial Magistrate Ist Class, Hisar whereby, respondent has been acquitted of all the charges under Sections 499, 500 and 506 IPC in a criminal Complaint Case No. 498-I dated

10.04.2010 and 01.11.2013. Similarly, the dismissal of revision petition preferred by the applicant before Sessions Judge, Hisar is also on account of non-application of judicial mind as well as non application of unrebutted and unchallenged evidence adduced by the applicant.

2. The contention of learned counsel for the applicant is that learned trial Court has not properly appreciated the various witnesses examined by the applicant, which has resulted into miscarriage of justice. It has been wrongly observed by learned trial Court that whatever was published in the newspaper, it was published with regard to the proceedings which had actually taken place and further that publication is governed by Exception 6 but learned trial Court completely ignored and remained only a silent spectator with regard to the following allegations contained in the complaint:-

“6. That on the occasion of Subhash Jayanti on 23.01.2010, the representation Dr. Mukta madam of 'Haryana Shityak Academy' organized a function named as 'Kavya Chetna Manch' Uklana Mandi in order to give respect and honor to writers and poet of said Manch and in this function many respectable persons of Uklana and poets attended the programme. In the presence of these persons accused defamed the complainant. In the presence of Dr. Neena, Ajit, Kali Ra, accused told that the poem of 'Dard-e-Wattan' were of some other poets and the complainant is a fraud, thief and antisocial person. The accused also told that he would definitely defame the position of complainant and he would not make him possible to live in Uklana Mandi.

9. That on 30.03.2010 the accused in the presence of Kali Ram s/o Bakshi Ram and Channo Devi mother of the accused/respondent, the accused/respondent gave a threat to the complainant that he would fully defame the reputation of the complainant, so, that his reputation would be destroyed in Uklana Mandi and he will kill the complainant and his family members one by one.

1. That the reputation of the complainant has been defamed by

the accused due to the application dated 23.01.2010 by accused to residential of village Bhitmira and Uklana Mandi.

3. It has further been submitted by learned counsel for the applicant that since the evidence brought on record by the applicant is unrebutted and unchallenged at the stage of summoning, the learned trial Court was not required to substitute its own view and was obliged to issue summoning order against respondent. If at any subsequent stage allegations were found to be false or against actual facts, the applicant could have been penalized for the same under the law but the dismissal of complaint is not justified. Accordingly, there being sufficient evidence, the applicant should be granted leave to prefer an appeal against the judgment/order of acquittal.

4. This court has given a deep thought to the submissions made by learned counsel for the applicant but find the same to be without any factual and legal substance.

5. As per the case put forth by the complainant, he launched a book in the name of 'Dard-e-Vatan' in the year 2009, which was published and sponsored by the 'Haryana Sahitya Academy' and was appreciated in the Society. There was an old enmity between the complainant and respondent-accused. Thus he was finding an opportunity to harass him. On August 10, 2009, after the release of afore-said book, he (respondent/accused) threatened him in the presence of Jagdish and Kali Ram that he would make an effort to get his book banned and shall defame him in Uklana Mandi. With a view, he lodged a complaint before Deputy Commissioner, Hisar on 24.08.2009 and distributed the various copies of the said complaint in Uklana and Bhitmara. Thereafter, in the year 2010, on the occasion of Subhash Jyanti when Dr. Mukta Madan arranged a function in honour of writers and poets, the

respondent/accused insulted him in the presence of Dr. Neena, Ajit and Kali Ram by calling him thief, fraudster and an antisocial person. Due to his aforesaid acts, he lost his reputation in the eyes of persons present there who treated him earlier with great respect and various persons like Subhash, Jagdish, Vijender, Ram Chander and Pawan etc who used to listen his poems did not turn up. Subsequently, he lodged a complaint under Sections 499, 500 and 506 IPC.

6. Undoubtedly, complainant has examined as many as five witnesses in support of the allegations unfolded by him in the complaint. But the mere fact that he has examined five witnesses and their testimonies are unrebutted and unchallenged, does not *ipso facto* mean that whatever is unfolded by them is a gospel truth. It is a well settled proposition of law that an order passed by a Magistrate in respect of summoning of a person as an accused must reflect that he has applied his mind to the facts of the case as well as law applicable to it. It is not that Magistrate is a silent spectator at the time of recording the preliminary evidence and passing of summoning order. He is not only to carefully scrutinizing the evidence brought on record, even he can put questions to the complainant and his witnesses to elicit answers to find out the falsity and truthfulness of the allegations. Summoning of an accused in a criminal case is a serious matter and 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.

7. In fact, learned Magistrate after scrutinizing the entire evidence brought on record by the applicant as well as taking into consideration the provisions contained in Section 499, 500 and 506 IPC has passed the impugned order vide which, the complaint preferred by the applicant has been dismissed

by observing that the case of the complainant false within sixth Exception annexed to Section 499 IPC.

8. Learned trial Court has rightly concluded that whatever was published in the newspaper, it was published with regard to the proceedings which had actually taken place in respect of the dispute of book authored by complainant/applicant. Since, the allegations are squarely covered by Exception sixth of Section 499 IPC, thus no case is made out for summoning the accused. Accordingly, this court is of the considered view that there is no infirmity, illegality or perversity in the impugned order. As such, application under Section 378(4) Cr.P.C is dismissed and further consequent upon the dismissal of application, instant appeal also stands dismissed.

APRIL 11, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No