

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

**CRM No.A-694-MA of 2014 (O&M)
Date of decision: October 25, 2016**

Rajender Singh

...Applicant

Versus

Babita Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.C.Kinra, Advocate
for the applicant.

Mr.Vivek Suri, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Rajender Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Babita Sharma and Kailash Bhardwaj, challenging the impugned order dated 02.09.2013 passed by learned Judicial Magistrate Ist Class, Rohtak, vide which the accused-respondents were discharged.

It is mainly stated in the application that the order of discharge passed by learned trial Court, which amounts to acquittal in a summons case, is not sustainable under the law on the grounds taken in the grounds of appeal. It is, therefore, prayed that leave to appeal be granted.

Notice of motion was issued and learned counsel for the respondents appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record.

As per the record, the complainant Rajender Singh filed a

complaint against accused Smt.Babita Sharma and Kailash Bhardwaj under Sections 499 and 34 IPC. The brief facts of the complaint as noted down in order dated 02.09.2013 passed by learned JMIC, Rohtak, are as under:-

“2. Before proceeding further, it is pertinent to discuss briefly the facts of the present complaint, the complainant has filed the present complaint with the averment that he and accused no.1 are posted as J.B.T. Teacher at Govt. Primary School Saraya Ahmad Nasirpur Chamaria, Tehsil & District Rohtak. The complainant ha averred and asserted that accused gave a complaint to the Sarpanch of the village against the complainant. The Sarpanch of the village found the complainant to be innocent. It was stated by the accused No.1 in the same, that complainant used to come in the school in inebriated condition and used to put his attendance forcefully and also misbehaved with the accused no.1. It is also averred and asserted by the complainant that accused no.1 withdrew her complaint. Accused Babita also made complaint against complainant to B.E.O Sampla and to the police. It is also averred that false complaints were made by the accused. The accused no.1 and 2 also threatened to kill the complainant.”

From the perusal of the record, especially the impugned order dated 02.09.2013, I find that, in no way, the findings can be held as perverse. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. The perusal of the impugned order also shows that findings are not against the law and are not illegal.

The accused were summoned by learned JMIC, Rohtak. Then the evidence was produced for the purpose of framing of charge but learned Magistrate vide order dated 02.09.2013, discharged the accused by finding that no prima facie case is made out. A revision was filed by the present petitioner, which was withdrawn by learned counsel for the petitioner.

As the complaint is a summons case, therefore, after summoning of the accused, the discharge order will amount to acquittal.

There is no provision for discharge of accused in summons case after

summoning of the accused, which will result either into conviction or acquittal. Therefore, the order passed by learned Magistrate will be treated as acquittal of the accused in this case.

From the record, first of all, I find that the complaint was filed under Sections 499 and 34 IPC and it has not been filed under Section 506 IPC. There is also no particulars or allegations regarding any threat given to the complainant. As regarding the case under Section 499 IPC, I find that there is only allegation that false complaint was made by the accused to the Sarpanch and B.E.O. There is nothing in the evidence or in the complaint that the accused has published defamatory material to defame the complainant in the eyes of law. The accused has only availed the remedy by filing the complaint to the appropriate authority and filing of complaint, in no way, amounts to publication of defamatory material in the public for the purpose of defaming. As one of the necessary ingredient to prove the offence of defamation i.e. publication of the defamatory material is missing, therefore, learned JMIC, Rohtak, has rightly discharged the accused-respondents..

In view of the above discussion, I find that the impugned order dated 02.09.2013 passed by learned JMIC, Rohtak, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

October 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No