

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

CRM-M-39618 of 2013.
Decided on:-27.02.2016.

Hari Chand.

.....Petitioner.

Versus

Krishan.

.....Respondent.

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

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. S.S. Kharb, Advocate
for the petitioner.

HARI PAL VERMA, J.

Petitioner Hari Chand son of Baru Ram, resident of village Karad, Tehsil Israna, District Panipat has filed the present petition under Section 482 Cr.PC for quashing the order dated 7.8.2012 (Annexure P-1) whereby a criminal complaint filed by him under Sections 500/501-B/506 IPC read with Section 357 Cr.PC, was dismissed by learned Judicial Magistrate 1st Class, Panipat.

Challenge has also been laid to the order dated 24.7.2013 whereby the revision petition against order dated 7.8.2012 passed by learned Magistrate, was dismissed by learned Additional Sessions Judge, Panipat.

Briefly stated, the petitioner has filed complaint under Sections 500/501-B/506 IPC read with Section 357 Cr.PC against the respondent on the premises that he is a Sarpanch of village Karad from the year 2005 to 2010. The respondent-accused is his neighbour. He had ill will against the complainant and caused injury to the petitioner regarding which FIR No.96 of 2006 under Sections 323, 325 and 452 read with Section 34 IPC was lodged against him and his sons. The respondent has moved several false and defamatory applications to the higher authorities against the petitioner and his family members. The police has proceeded against him under Section 182 IPC. The complainant has also alleged that the respondent-accused has filed a petition under Section 13 of the Hindu Marriage Act, 1955 (for short, the Act) for dissolution of marriage wherein there is an allegation of illicit relations of the complainant-petitioner with the wife of respondent-accused.

The complainant, petitioner herein, in his preliminary evidence has examined himself as CW1, Ramphal as CW2 and Jai Parkash, Clerk, ADC Office, Panipat as CW3. However, after recording preliminary evidence and hearing arguments of the counsel for the complainant, learned Magistrate dismissed his complaint vide order dated 7.8.2012. The revision filed against said order was also dismissed by learned Additional Sessions Judge, Panipat vide order dated 24.7.2013. It is in these circumstances, the petitioner has filed the present petition.

Learned counsel for the petitioner has argued that both the Courts below have committed illegality while dismissing the complaint as also revision petition and have not appreciated the evidence. He has argued that even the divorce petition filed by the respondent-accused was dismissed which substantiates the plea of the petitioner that the allegation of illicit relation was false. He has further argued that the Forensic Science Laboratory, Madhuban, District Karnal has conducted DNA test wherein it has been mentioned that the respondent is a biological father of Surjit and the petitioner is not a biological father of Surjit, whereas Santra Devi has been found to be biological mother of Surjit. He has further submitted that the defamatory allegations, thus, are false and it has defamed the petitioner in the eyes of society.

In support of his contentions, learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in ***Chandra Deo Singh Versus Prakash Chandra Bose alias Chabi Bose and another*** 1963 AIR (SC) 1430 to argue that the committing Magistrate is bound to commit an accused for trial and the Magistrate has to give sufficient reason to dismiss the complaint, whereas in the case in hand, there was sufficient material with learned Magistrate to proceed against the respondent. Reliance has also been placed on judgment of Hon'ble Kerala High Court in ***Ragesh P.K. Versus State of Kerala*** 2013(7) CRC (Criminal) 3087 to contend that dismissal of a complaint by the Magistrate at pre-cognizance stage is not permissible.

A complaint can be dismissed only under Section 203 Cr.PC and such power can be exercised only at the post-cognizance stage. As such, the impugned order dated 7.8.2012 passed by learned Magistrate is illegal. Learned counsel has further relied upon judgment of Hon'ble Supreme Court in ***Maikaal Fibres Limited and another Versus ICICI Bank Limited and others 2006(1) SCC (Cri) 545*** to contend that in a complaint case when a Magistrate dismisses the complaint filed through a cryptic and non-speaking order, the same is not in accordance with law.

I have heard learned counsel for the petitioner.

Vide impugned order dated 7.8.2012, while dismissing the complaint filed by the petitioner-complainant, learned Magistrate has observed as under:

“5. It is relevant to mention that as per the complaint, the complainant claims to have been defamed by virtue of the accused filing a divorce petition against his wife, in which petition, some false allegations were levelled against the complainant. It has further been admitted that said petition is still pending in the court of Shri Naresh Katyal, learned Additional District Judge, Panipat. Since the said petition is still pending in the court of learned ADJ, Panipat, no final conclusion, regarding defamation or otherwise of the complainant, can be drawn in this complaint. Moreover, the complainant has failed to prove on record the alleged DNA report, which shows that he had not fathered the child of the wife of the accused. No medical expert has been examined in

this regard and even the original of the said report has not been placed on file nor got compared with its copy (placed on record).

6. *Secondly, as regards the police having proceeded against the accused under Section 182 IPC, the said criminal proceeding is stated to be pending in a competent court of law and till the same is decided against the accused, no conclusion can be drawn regarding the accused herein having defamed the complainant in any manner.”*

The petitioner preferred a revision petition against order dated 7.8.2012 passed by learned Magistrate, but the same was also dismissed by learned Additional Sessions Judge, Panipat vide order dated 24.7.2013 by observing as under:

“8. *The allegation of complainant is that accused has alleged him to be having illicit relations with his wife, resulting into birth of a son. However, as rightly held by learned trial Court, the matter is still pending before court and till the same is decided, nothing can be commented upon it. Though it is the case of the complainant/revisionist that the said petition has been dismissed under Order XVII Rule 3 CPC, however, no copy of any such order has been placed on record, due to which, it cannot be held that the petition has been disposed of.*

9. *Same is the situation with regard to proceedings under Section 182 IPC against accused. Though complainant alleged that the complaints filed by the accused against him were found to be false and he was tried under Section 182 IPC, but the trial of accused under Section 182 IPC is still going on and has not*

been decided finally. In these circumstances, it cannot be held safely that the complainant had to suffer any defamation at the hands of the accused.

10. Moreover, though as per allegations of the complainant, accused had threatened to kill him and his family members, but only vague allegations have been levelled by the complainant and there is no specific date, month or year of the alleged threat, extended by the accused to the complainant.

11. No doubt, at the time of summoning of accused, only prima facie grounds to proceed, and not of conviction, against accused are to be seen, but in the given circumstances, even no prima facie case is made out to proceed against accused and no ground is made out to summon the accused in this complaint.”

Learned counsel for the petitioner has contended that the divorce petition under Section 13 of the Act filed by the respondent was dismissed by learned Additional District Judge, Panipat vide order dated 20.12.2011 (Annexure P-4). However, a perusal of the order dated 7.8.2012 passed by learned Magistrate reveals that there is no such reference in that order and the said point was neither argued nor brought to the notice of learned Magistrate.

Further, perusal of order dated 20.12.2011 (Annexure P-4) passed by learned Additional District Judge, Panipat shows that the petition under Section 13 of the Act was dismissed by invoking the provision of Order XVII Rule 3 CPC and, therefore, there is no such finding which can be taken as an answer to the allegation made by the complainant. No such

evidence has been led by the respective parties in the said divorce petition.

The provision of Order XVII Rule 3 CPC reads as under:

“Court may proceed notwithstanding either party fails to produce evidence, etc.— Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default,—
(a) if the parties are present, proceed to decide the suit forthwith, or
(b) if the parties are, or any of them is, absent, proceed under rule 2.”

No doubt, at the time of summoning of the accused, only prima-facie grounds are required to be considered to proceed with the case and conviction of the accused is not to be seen at that stage. But in the given circumstances, no prima-facie case is made out to proceed against the accused and, therefore, the judgments cited by learned counsel for the petitioner in ***Chandra Deo Singh's case (supra)***, ***Ragesh P.K.'s case (supra)*** and ***Maikaal Fibres Limited and another's case (supra)*** are not applicable in the facts and circumstances of the present case.

Therefore, taking into consideration the fact that the petition under Section 13 of the Act filed by the respondent against the petitioner was not decided on the basis of adduced evidence, rather the same was dismissed having recourse of Order XVII Rule 3 CPC, plea of the petitioner-complainant

that he was entitled for the process in the complaint, cannot be accepted.

In view of the above, this Court finds no reason to interfere with the impugned orders passed by the Courts below. As such, affirming the impugned order dated 7.8.2012 (Annexure P-1) passed by learned Magistrate and order dated 24.7.2013 (Anneuxre P-2) passed by learned revisional Court, the present petition, being devoid of any merit, is dismissed.

February 27, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE