

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

**CRR No.3886 of 2014 (O&M)
Date of decision : 04.04.2016**

Suman & Anr.

.....Petitioner(s)

Versus

Geeta

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashok Kaushik, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate
for the respondent.

ANITA CHAUDHRY, J(ORAL)

This revision is directed against the order dated 09.09.2014, passed by the Additional Sessions Judge, Faridabad who remanded the case back to the trial Court and directed the trial Court to see whether any case for summoning under Section 191, 192, 194 and 199 IPC was made out.

The backdrop is necessary. Geeta had filed a complaint against Suman and her husband Dal Chand who are her neighbours. The husband of the complainant had purchased a buffalo from Wazir Chand in 2001. The buffalo was sold to the accused. The accused had borrowed some amount from the complainant and they had assured to pay the amount back in installments. A sum of Rs.31,000/- was due.

Since the relations were good no writing was made. Complainant demanded the amount back. The accused threatened the husband and her husband to implicate in a serious case and later got FIR No.124 registered under Section 452, 354, 323, 506, 34IPC at Police Station Chhansa, Faridabad against the husband and her father in law of the complainant. A separate FIR under Section 323, 325, 34 IPC was registered against Satto and others. The trial ended in acquittal. It was pleaded that one of the accused namely Roopi had died during trial and a false case had been registered and it had caused mental torture and their reputation had been tarnished and complainant was entitled Rs.1 lacs as compensation as they had been defamed. The complainant had pleaded that the accused had committed an offence which was punishable under Sections 499, 500, 501, 506 IPC. In the end, the prayer made was for compensation for Rs.5 lacs for causing loss/ harm to their reputation. The trial Court vide its order dated 15.11.2013 refused to summon the accused and dismissed the complaint noting the following:-

“The present complaint has been filed by the complainant with the allegations that the accused had lodged a false criminal case against her and her husband and they were acquitted by the Court vide judgment dated 09.12.2010 and due to the filing of false case against her and her husband they have suffered huge economical, physical and mental loss and their reputation has been tarnished. Hence, the present complaint for defamation has been filed by the complainant against the accused. The complainant has made the judgment dated 09.12.2010 whereby she and her husband had been acquitted as the basis of filing of the present complaint. However, in the entire judgment there is no observation of the Ld. JMFC Faridabad that the

allegations leveled against the accused (complainant in present case) are false. The accused in that case had been acquitted due to non-corroboration of the testimony of complainant Suman (accused in the present complaint). Thus it could be said that the allegations levelled by the accused against the complainant and her husband in FIR No.124 were false. The complainant and her husband had been acquitted on the basis of benefit of doubt. Thus there being no substantial material on record to prove that the case lodged by the accused against the complainant was a false case, hence this Court is of the considered view that there are no sufficient ground to summon the accused for the offence in question. Hence, complaint is hereby dismissed.”

A revision was preferred against the order by the complainant and held that the title alone given in the complaint was not enough and the Court had to look into the allegations made in the complaint and taking into consideration the version of the witnesses and the deposition made therein, a case under Section 191, 192, 194, 199 IPC appears to be made out. It would be necessary to notice the observations made in para no.11 of the judgment which reads as under:-

“In the present case, the Id. Trial Court mechanically, gone through the title of the complaint as it is wrongly mentioned as complaint under Section 499, 500, 501, 120-B IPC whereas the Court has to look into the contents and allegations made in complaint. After taking into consideration the complaint, version of the witnesses and deposition of complainant before the Id. trial Court, a case under sections 191, 192, 194 and 199 appears to be made out against the respondents/accused. The Id. trial Court did not appreciate

the fact that in the present era when criminal courts are facing a drought of prosecution witnesses, in present case there are two independent witnesses came forward to support the version of petitioner/complainant. The Id.trial Court did not take a notice that every death case has a case of section 302 as per a layman. It is for the Court to see after going through the contents of the application or allegation whether such death case is a homicide or suicide and if homicide whether such case is a culpable homicide amounts to murder or not. The Id.trial Court has to opt such approach while taking with such application of laymen or illiterate persons. The court has to went up to the mental level of such innocent litigants who approach the court just for the sake of justice. It is not the ultimate aim of innocent litigant to drag their opponents in frivolous litigation. It is the duty of the Court to arrive on truth by examining of witnesses and by all relevant witness to depose before the court for just decision of the case or to arrive on truth or to fair disposal of the case and more important it is also necessary to perform judicial function to give justice.

In view of the above discussion, the present petition of the petitioner is accepted and allowed. The order of the Id.trial Court dated 15.11.2013, is hereby set aside. The Id.trial Court is ordered to see afresh the complaint and appreciate the evidence as per law and proceed against the prosecution, if any case under Section 191, 192, 194, 199 is made out against the respondents/accused. The observations made herein is for the sake of this decision and do not taken as guiding instructions for disposal of this case.

In view of the same petition is allowed.”

I have heard the counsels of both the sides.

The counsel for the petitioner contends that the FIR lodged by the petitioner ended in acquittal and benefit of doubt was given and no finding was recorded that allegations were false and a complaint of defamation was filed and the Magistrate refused to summon the accused and challenge was made before the Revisional Court. It was urged that the Revisional Court was only required to go into the correctness of the order but it passed an illegal order and gave directions to the trial Court to see if a case under Sections 191, 192, 194 & 199 IPC was made out. It was urged that the complainant was seeking compensation of Rs.5 lacs in a criminal complaint and prosecution of the accused for defamation under Section 500 IPC and the Court without any material or allegation made out a new case for the complainant. It was urged that no directions could have been given nor it could have revealed its mind. It was urged that only if it was found that some evidence had been ignored then it could remand the case but it had directed the trial Court to examine the case when no allegations or evidence existed.

The counsel for the respondent supported the order and it was urged that the petitioners should not have any grievance as the only direction made therein is to examine if any case under those sections was made out.

A perusal of the impugned order would reveal that the Revisional Court had given its mind when it directed the trial Court to examine the issue again. It noted with disapproval that the Court had ignored the general conditions prevailing in the country and it wrongly

directed the Court below to appreciate the evidence in the light of the observations made before it. The Revisional Court could not have disclosed its mind. In para no.11 of the order, a categorical finding was recorded that “a case under Section 191, 192, 194 and 199 IPC appears to be made out against the accused”. The Revisional jurisdiction possessed by the Sessions Judge or even this Court could be exercised only to examine the legality or propriety of the order and more particularly it would interfere only if there is error of law or procedure.

The complainant had approached the Court seeking damages/compensation for defamation. The complaint was filed under Section 500 IPC. The Revisional Court made out a new case without there being any allegations or material. Therefore, the order has to be set aside.

The revision is accepted. The order of the Revisional Court is set aside.

04.04.2016

sunil

(ANITA CHAUDHRY)
JUDGE