

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1507/2015 & CrI.M.A. Nos.5548-5549/2015, 8630/2015

Date of Decision: June 13th, 2016

R K AGGARWAL

..... Petitioner

Through Mr.K.K. Manan, Sr. Adv. with
Ms.Anjali Rajput, Adv., Mr.Nipun
Bhardwaj, Adv. & Mr.Ankush
Narang, Adv.

versus

BRIG MADAN LAL NASSA & ANR

..... Respondents

Through Mr.Meet Malhotra, Sr. Adv. with
Mr.Prateek Dahiya, Adv. for R-1.
Mr.Kamal Kumar Ghai, APP for the
State.
SI Kuldeep Yadav, PS Connaught
Place

AND

+ CRL.M.C. 1527/2015 & CrI.M.A. Nos.5589/2015, 8633/2015

PRABHAT RANJAN DEEN

..... Petitioner

Through Mr.K.K. Manan, Sr. Adv. with
Ms.Anjali Rajput, Adv., Mr.Nipun
Bhardwaj, Adv. & Mr.Ankush
Narang, Adv.

versus

BRIG MADAN LAL NASSA & ANR

..... Respondents

Through Mr.Meet Malhotra, Sr. Adv. with
Mr.Prateek Dahiya, Adv. for R-1.

Ms.Manjeet Arya, APP for the State.
SI Kuldeep Yadav, PS Connaught
Place.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petitions have been filed under Sections 482 Cr.P.C. seeking to invoke the inherent powers of this Court to set aside/quash the order dated 31.01.2015 passed by Sh.Satvir Singh Lamba, MM, Patiala House Courts, New Delhi and to further direct the Trial Court not to read the evidence adopted by the complainant against the present petitioners and quash the Trial Court proceedings qua the petitioners in Complaint Case Nos.:469/1/06 under Section 500/501/502 IPC pending before the Trial Court.

2. The facts of the case in nutshell are that the complaint in question dated 06.05.2002 was filed by the complainant alleging that Janta Express, a Hindi Daily newspaper published a story on 15.03.2002 with date line Lucknow 14 March, 2002 authored by the petitioner/Prabhat Ranjan Deen concerning tragic deaths of some youths at Army Recruitment Centre, Lucknow in septic tank accident. It was alleged in the complaint that to sensationalize the said story, knowingly false malicious and baseless allegations against the complainant were leveled in the story in order to defame him and his family, smearing his good name by not only connecting him with the so call corruption in MES but also dubbing him as anti-national by falsely and maliciously asserting that the complainant was caught red

handed for the charge of supplying Arms to the Kashmiri Militants. It was further stated in the said story that the complainant while serving as Chief Engineer MES was arrested at Jammu Airport with Rs.28 lakhs cash on the charge of supplying arms to Kashmiri militants and was still undergoing imprisonment. The caption of the story read: 'AATANKIYON KO HATIIYAR SUPPLY KARNEY WALAY BRIG. KAY BETAY PER THA RKAHRAKHAO KA ZIMMA', which was alleged to be defamatory.

3. It was further alleged that the publication of the said story was false and baseless and malicious assertions made in the said story has defamed the complainant causing him tremendous loss of reputation and tarnished his image and lowered him in the estimation of others causing mental agony to him and his family members.

4. It was further alleged that the said story was authored by the petitioner/ Prabhat Ranjan Deen and printed by the petitioner/R.K.Aggarwal without verifying the truth of the allegations contained in the publication which were false, malicious and defamatory.

5. Based on the presuming evidence, the Trial Court vide order dated 08.01.2007 opined that there is prima facie material on record to summon all the accused under Section 500 IPC as the alleged publication Ex.CW1/A was prima facie defamatory.

6. Vide order dated 27.11.2012, at the stage of recording of statement of accused, it was observed that notice under Section 251 Cr.P.C. was inadvertently not served upon the accused before the commencement of complainant's evidence as the matter was

advertently being listed for recording of pre-charge evidence despite the fact that the matter pertains to commission of an offence for which the procedure of summons trial is to be followed and no pre charge evidence is to be recorded. Thus, the matter was fixed for consideration of notice under Section 251 Cr.P.C. on 17.12.2012. Thereafter arguments were heard in the matter on procedural irregularity on service of notice of accusation under Section 251 Cr.P.C. on the accused persons before recording of evidence. The said issue was decided by the Trial Court vide order dated 01.04.2014 where it was opined that non service of notice of accusation upon the accused under Section 251 Cr.P.C. would not vitiate the trial as the accused persons were duly represented by their counsels who had not only cross examined the complainant at length on seven dates of hearing but had also preferred a quashing petition under Section 482 Cr.P.C. for getting the present proceedings quashed. Thereafter the matter was fixed for recording the statement of accused. At that stage, the learned counsel for the petitioners argued that there was no incriminating evidence against the accused persons in the present case. Hence, there was no need to record the statement of accused persons under Section 313 Cr.P.C. It was submitted on behalf of accused persons that after the summoning of accused in the present case, neither any new evidence had been led on behalf of the complainant nor the documents were exhibited in the presence of accused persons. Hence, no new incriminating evidence had been brought on record at the stage of post summoning evidence during the trial. Thus, it was prayed that the petitioners be discharged/acquitted.

7. The Trial Court observed that the petitioners were summoned for the offence under Section 500 IPC vide order dated 08.01.2007 and vide order dated 02.05.2011, the complainant was permitted to adopt his pre-summoning evidence as evidence for the further prosecution of the present case. Thereafter the complainant and his witnesses were duly cross-examined and thus the petitioners/accused cannot seek discharge/acquittal upon the conclusion of post summoning evidence on behalf of the complainant. The Trial Court further observed that the case involved the summons case which is covered by Chapter XX of Cr.P.C. which does not contemplate a stage of discharge like Section 239 which provides for the discharge in a warrants case. Thus, the objections of the petitioners/accused were rejected and the matter was put up for recording the statement of accused under Section 313 Cr.P.C. to explain the circumstances appearing in the evidence against them.

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

9. So far the contention of the petitioner regarding non-framing of notice under Section 251 Cr.P.C. is concerned, it is apparent from the record that against the non-framing of notice, the petitioner had preferred a revision petition bearing CR No.64/2014 which was disposed of by the learned ASJ vide order dated 13.08.2014. Learned ASJ directed the Trial Court to frame a formal notice under Section 251 Cr.P.C. against the accused persons including the petitioner-herein. It was also observed that the evidence of the complainant already recorded at the stage of pre-charge evidence shall be

considered and read as evidence recorded during post notice under Section 251 Cr.P.C. Thereafter, a formal notice under Section 251 Cr.P.C. was framed by the Trial Court against the petitioners on 06.09.2014 and an opportunity to cross-examine the complainant witnesses was given to the accused persons. The said opportunity was duly availed by the accused persons and the witnesses of the complainant were cross-examined.

10. The other limb of argument of the petitioners is that since the evidence of the complainant was not recorded in their presence, therefore, no incriminating evidence came on record against them and they were liable to be discharged. There is no basis in the contention of the petitioners for discharge for the reasons that firstly, there is no stage of discharge in a summons case. Under Chapter XX of Cr.P.C., after filing a private complaint, in a summons case, the accused is either convicted or acquitted. There is no stage of discharge of an accused at any stage under Chapter XX of Cr.P.C. The other aspect of the matter is that during the pendency of the revision petition preferred by the petitioners-herein, it was duly conceded by the learned counsel for the petitioners to consider the evidence of the complainant already recorded during pre-charge stage as evidence recorded after the stage of framing notice under Section 251 Cr.P.C. When it was fairly conceded by the petitioners themselves that the evidence recorded during pre-charge stage be considered as evidence recorded post notice stage, now it does not lie in the mouth of the petitioners to challenge the same while contending that no evidence was recorded in their presence which results into discharge in the absence of any

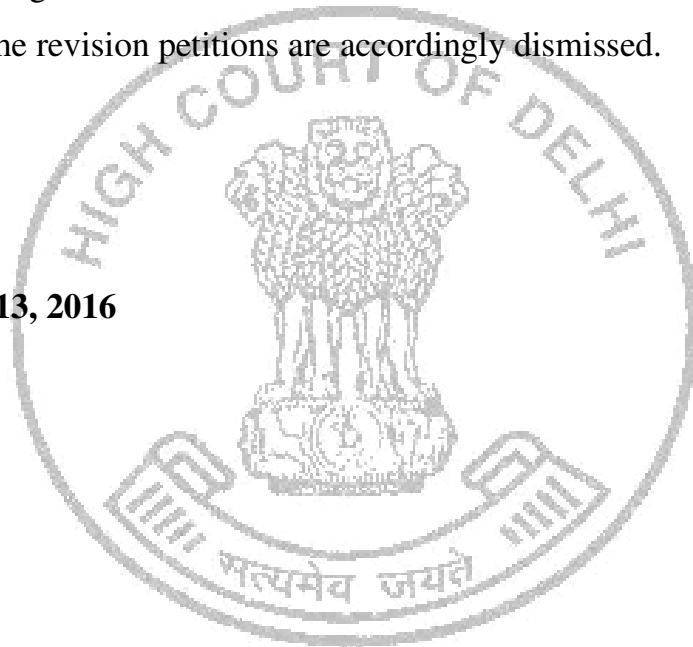
incriminating evidence. The proceedings to which the petitioners themselves were party cannot be questioned by them subsequently.

11. In view of the above facts and circumstances, this Court is of the considered opinion that neither any abuse to the process of law has been established nor any interference is warranted in the impugned order dated 31.01.2015.

12. Before parting with, any observation made above shall not have any bearing on the merits of the case.

13. The revision petitions are accordingly dismissed.

JUNE 13, 2016
dm



(P.S.TEJI)
JUDGE