

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

CRM-A-110-MA-2015(O&M)

Date of decision:-3.8.2017

Parveen Gupta

...Petitioner

Versus

Arun Poddar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Atul Lakhanpal, Senior Advocate with
Ms.Babli Kumari, Advocate
for the applicant.

Mr.Gautam Dutt, Advocate
for the respondents.

H.S. MADAAN, J.

Applicant – Parveen Gupta has filed this application under
Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant -
Parveen Gupta had brought a criminal complaint under Section 500 IPC
read with Section 34 IPC against Arun Podder, Director, Kamal Kumar
Poddar, Director, Joginder Singh, Senior Manager (Personnel and
Administrator), Prabhu Lal Nandwana, General Manager (Commercial)
and Rohit Poddar, Director, Poddar Tyres Ltd., VPO G.T. Road, District
Ludhiana on the allegations that complainant was posted as Legal
Officer in Poddar Tyres, Ludhiana in January 2002; that earlier he was
practicing as an Advocate at District Court, Kurukshetra and he belongs
to a reputed family; that there arose a dispute between the complainant

and the accused from 4.9.1998 inasmuch as accused No.3 – Joginder Singh at the instance of accused No.4 – Prabhu Lal manhandled the complainant and forced him to give resignation; that the complainant had lodged his protest in writing before the police; that the matter was still pending before Superintendent of Police, City 1, Ludhiana; that on 24.1.2009 Shalini Gupta wife of Vipin Gupta, brother of complainant expired at Ludhiana and her dead body was brought to Kurukshetra for cremation; that all the relatives, family members and friends had assembled there; that family members of the complainant were mourning the death of the deceased for 13 days; that the complainant was at Kurukshetra in that connection, though, his residence was at Sahnewal, which was very much within the knowledge of the accused. However, all the accused knowingly and intentionally and in collusion of each other with a view to defame and humiliate the complainant and to counter the action of complainant in reporting the matter to police got published a public notice in Punjab Kesari, Daily Newspaper dated 28.1.2009 specifically in Kurukshetra edition which is as under:

“It is notified that the services of Mr.Parveen Gupta son of Sh.Badri Prashad Gupta working with us as 'Legal Officer' has been terminated w.e.f. 25.12.2008 and a Termination letter No.PTL/9870/2008-2009 dated 25.12.2008 has been sent to his present residence at Opp. Sacred Heart Convent School, Majara Road, New Model Town, Sahnewal, District Ludhiana (Punjab). He has also not deposited company's property and files, documents which are in his possession. The public is intimated through this notice that

company will not be responsible for his act and conduct in future.

GENERAL MANAGER
PODDAR TYRES LIMITED
G.T. ROAD – JUGIANA
DISTT. LUDHIANA(PB) – 141 420

The accused had served the termination letter to the complainant at his residence at Sahnewal through registered post, which was received by the son of the complainant on 30.1.2009 with some dues – through cheque. However, the entire dues of the complainant have not yet been cleared. Hence, the public notice in the newspaper dated 28.1.2009 was not required. The accused knowingly and intentionally with a view to spoil the future of the complainant and to block the further employment opportunities for the complainant, in other corporate houses has got published the notice. The accused without any requirement published the photograph of the complainant in a defamatory manner. The complainant is not in possession of any property and documents of the accused but the accused in the defamatory manner got mentioned in the publication, *“He has also not deposited the company's property and files, documents which are in his possession. The public is intimated through this notice that company will not be responsible for his act and conduct in future.”* The accused has projected complainant as a cheater through these defamatory words used against him. This publication is defamatory-in-nature.

According to the complainant, the language used is defamatory which may block the future of complainant. Then the accused by way of registered post sent the amount of Rs.52,000/- approximately by cheque along with termination letter on 30.1.2009 as

full and final payment presuming as nothing is in possession of the complainant relating to the accused. The accused knowingly and intentionally with a *mala fide* intention got circulated the public notice in Kurukshetra edition of Punjab Kesari dated 28.1.2009 during the funeral ceremonies of the family members of the complainant, when the relatives and friends assembled at Kurukshetra, with a view to damage the reputation of the complainant. After publication of said notice in the newspaper, accused No.3 Joginder Singh made a telephone call to complainant on 28.1.2009 and said “*aaj da Punjab Kesari padh lena tenu pata-lag jyega. Kurukshetra edition zaroor dekhin*”, roughly translated it means that do read Punjab Kesari newspaper of today, you would come to know and you must see Kurukshetra edition of the newspaper. According to the complainant after publication of the notice, he received many telephone calls from relatives and friends including Anju wife of Sandeep Gupta, resident of Jalandhar, Rameshwar Dass Gupta son of Amar Nath, resident of Ambala and Shyam Lal son of Om Parkash, resident of Urban Estate, Kurukshetra etc. enquiring about contents of the notice. The complainant was fed up by explaining his position before the public and such persons refuting defamatory allegations levelled by accused. The complainant and his family members remained in prolonged depression after publication of the defamatory public notice along with his photograph. The accused have projected the complainant in the newspaper as a criminal.

The Magistrate in whose Court the complaint was filed vide order 16.4.2009 summoned the accused to face trial for the offence under Section 500 read with Section 34 IPC. The accused put in

appearance. Notice of accusation was served upon them. However, the accused had challenged the order dated 27.1.2014 vide which notice of accusation was served upon them. Learned Additional Sessions Judge, Kurukshetra vide order dated 11.2.2014 accepted the revision petition coming to the conclusion that there was no *mens rea* on the part of the accused – petitioner and no prima facie offence under Section 500 read with Section 34 IPC was made out against them, therefore, impugned order dated 27.1.2014 was set aside and petitioners were acquitted. That order left the complainant aggrieved and he has filed an application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the order dated 27.1.2014 passed Judicial Magistrate Ist Class, Kurukshetra.

This application has not been filed within time. Rather there is delay of 251 days in filing the application/appeal. *Inter alia* in the said application, it is contended that the appeal was filed on 24.4.2014 and it was returned with some objections by the registry on 25.4.2014. It was re-filed on 13.6.2014, after removal of objections. However, it was returned with some objection again on 1.7.2014 and the Clerk for the counsel placed the file into some other brief and when the appellant asked about his case then on search the papers were found, so the appeal was filed belatedly by 251 days, therefore, the same be condoned.

Notice of the application under Section 5 of the Limitation Act was ordered to be given to respondents, who put in appearance.

The limitation for filing such an application is 60 days from the date when the order of acquittal was passed. This application has been filed much beyond period of limitation.

Section 378 Cr.P.C. deals with appeal in case of acquittal. Sub-Section 4 of this Section provides that if such an order is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court..

Sub-Section 5 provides that no application under Sub-Section 4 for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant and sixty days in every other case, computed from the date of that order of acquittal.

It being so the petitioner was required to file application for grant of special leave to appeal within 60 days of the order passed by the Additional Sessions Judge, Kurukshetra. However, which has not been so done and there is delay of 251 days in filing of the appeal. The explanation rendered for delay is least convincing and no ground is made out for condonation of delay in filing the application. Section 3 of the Limitation Act, 1963 deals with bar of limitation providing that every suit instituted, appeal and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

The petitioner having failed to cross the hurdle of the limitation, the application for special leave to appeal is bound to fail on that score alone. Otherwise also, there is a major defect in the application inasmuch as in the application seeking special leave to appeal, the order which is sought to be challenged is the order passed by

Judicial Magistrate Ist Class dated 27.1.2014 acquitting the accused, when as a matter of fact vide order dated 27.1.2014 learned Magistrate had directed service of notice under Section 500 read with Section 34 IPC upon the accused. The petitioner by way of seeking setting aside of this order, rather is going against his own interest. The order which ought to have been challenged is the order dated 11.2.2014 passed by learned Additional Sessions Judge, Kurukshetra vide which the revision preferred by accused Arun Poddar, Rohit Poddar and Joginder Singh was accepted and summoning order dated 27.1.2014 was set aside, resultantly the accused were acquitted. Thus, there is a vital defect in the application for which it cannot survive.

Nevertheless on merits also, the judgment passed by learned Additional Sessions Judge, Kurukshetra is well reasoned one. Learned Additional Sessions Judge has gone into all aspect of the case in detail and referring to Section 499 IPC dealing with offence of defamation has come to the conclusion that the case in hand falls within **Ninth Exception** which deals with imputation made in good faith by person for protection of his or other's interest and that it is not defamation to make any imputation on the character of another providing that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Learned Additional Sessions Judge, Kurukshetra giving reasons for the judgment has observed that services of complainant were terminated as he had not been reporting for duty for a long time and by way of notice the public in general was cautioned not to deal with the

complainant as he was no longer working for the company; that the news item on the face of it does not appear to be defamatory at all and the circumstances were such that the company was constrained to publish such a notice as the complainant had stopped working for the company. It was issued in good faith for the interest of the company.....

I have gone through the notice with which the complainant is aggrieved with the assistance of the learned counsel for the parties and I do not find anything defamatory in the same. Such type of notices are usually published by the employers with regard to the employees, who were absent from duty without intimation or are guilty of some misconduct. Too much cannot be looked into between the lines so as to interpret the notice to have element of *mala fide*. It seems that the instant complaint was filed as a pressure tactic on account of tussle between the parties resulting in termination of services of complainant by his employer – Poddar Tyres Ltd.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

3.8.2017

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No