

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

(i) CRM No.A-1746-MA of 2015 (O&M)

Rajesh Mehta

...Applicant

Versus

Rajesh and another

...Respondents

(ii) CRM No.A-1762-MA of 2015 (O&M)

Mohinder Kumar Mehta (since deceased and now represented by Rajesh Mehta)

...Applicant

Versus

Rajesh and another

...Respondents

Date of decision: July 11, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr.Vipul Aggarwal, Advocate
for the applicants.

INDERJIT SINGH, J.

CRM No.34758 of 2015 in CRM No.A-1746-MA of 2015 and CRM No.35376 of 2015 in CRM No.A-1762-MA of 2015

Heard.

For the reasons mentioned in the applications, the same are allowed. Delay of 809 days in filing the applications seeking leave to appeal, is condoned.

Main cases

Both the above-mentioned cases are taken up together for decision as the point for determination in both the cases is the same.

Applicants have filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents Rajesh and Ravi Parkash Jain, challenging the judgments dated 09.05.2013 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the accused-respondents were acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to file appeal be granted to the applicants.

From the record, I find that complaints were filed by applicants against accused Rajesh, Sat Pal Jian and Ravi Parkash Jain under Sections 500, 182 read with Section 34 and 506 IPC. The material facts are taken from CRM No.M-1762-MA of 2015.

The brief averments of the complaint as noted in the judgment passed by learned JMIC, Ludhiana, are as under:-

“The complainant has filed the instant complaint under Section 500, 182 read with Section 34, 506 IPC against the accused with the averments that the complainant owns a property bearing No.B.IX.293/715, Chauri Sarak Gulchaman Gali Ludhiana. The property bearing No.B.IX.293 was inherited by the complainant from his father Walaiti Ram by virtue of a registered Will. The property bearing No.B.IX.715 was purchased through registered sale deed. The accused No.2 and 3 are the neighbours of the complainant and accused No.1 is the son of accused No.2. All the accused wanted to sell the house at a very high rate to the complainant but he did not agree to purchase the same. The accused stated that as they are the defaulters of UCO Bank, Haibowal Kalan branch, Ludhiana and in order to repay the loan amount they want to dispose off their property. On refusal to purchase their house, all the accused in order to fulfill their illegal demand started moving false and frivolous application under their respective

signatures to the different Government officials including police as well as to the Municipal Corporation, Ludhiana. On 09.05.2001 at about 6.30 pm, the accused No.1 to 3 trespassed in the property and caused injuries on the body of the complainant and an FIR bearing No.26 dated 10.05.2001 was lodged with police station Division No.3. As the accused have got links with high police officials and other employees of the MC, Ludhiana they got cancelled the FIR registered against them. Before the cancellation of the FIR, the accused started declaring openly that due to their links, they might get the FIR cancelled. Feeling apprehension, immediately, the complainant's son got filed a complaint against the accused in the court of Mrs. Anshul Beri, JMIC, Ludhiana where by the Ld. Court after taking consideration on the serious allegations, all the accused were summoned for 06.06.2003. The accused had already notice that a criminal complaint is pending before the court and they thought it proper to harass the complainant and his son. The complainant is suffering from lungs problem and he has other physical ailment as well. On 01.10.2002, a letter was written by the accused No.1 to SSP, Ludhiana which was marked by him to Police Division No.3 vide dispatch No.69 division No.3 dated 06.10.2002. The contents of the application are with regard to the facts that the complainant and his son in connivance with the officials of the Municipal corporation, Ludhiana have committed theft of the Municipal file and have misappropriated the same. The complainant made a statement to the police official i.e. ASI Hakam Singh that he has no role to play in the alleged allegations contained in the application. The matter was fully investigated by the police and the statements of the officials of the Municipal employees were also recorded and the matter was investigated at their end and they stated that the file is lying with them and no theft has been committed. The application was sent back to the SSP by the DSP City, Kotwali on dated 5.12.2002 in which it was reported by him that the application is without any force and the same is false and frivolous. As the complainant lodged an FIR against the accused No.1 and the same was cancelled by the police and in order to take revenge, the accused No.1 moved false and frivolous application against the complainant and his son. Another application was given on dated 06.11.2002 by the accused No.1 which was received by SSP, Ludhiana vide dispatch No.84, Div.No.3 on dated 17.11.2002 by levelling allegations that the complainant submitted fake, false and fabricated affidavit. The matter was again investigated by the DSP Sarabha Nagar and the statement of the Executive Magistrate was recorded who attested the affidavit and after due investigation the same application was dismissed by the DSP, Sarabha Nagar being false and frivolous vide dispatch No.1312-R-DSP dated 2.12.2002. Thereafter, another application was moved by the accused vide dispatch No.66-B-HRC/19.12.2002 to the Punjab Human

Rights Commission, Chandigarh and was received to the DSP, City Kotwali, for making investigation. The above referred application was written by the accused No.1 by making allegations in the complaint that the complainant and his son want to kill him and are sending different persons and his father is ill and that the complainant want to eliminate them by paying a ransom amount. The above referred application was again duly investigated and found to be false as Surjit Singh, SHO on dated 29.6.2001 cancelled the FIR and in order to harass the complainant and his father false and frivolous application were moved against them. The concerned DSP on dated 17.01.2003 sent the report to the SSP for filing the false and frivolous application. It was further held by the police that the accused are in the habit of moving false applications. All the accused have moved and given false information to the police and the MC, Ludhiana which they knew that the same is false intending thereby to cause to do illegal acts upon the complainant and his family members. The intention of all the accused for moving the false application is only to harass the complainant and his father and other family members. All the accused are threatening the complainant and his son with a dire consequence and they are openly declaring that they had got link with antisocial persons and they will eliminate them by their hatch men and are advancing threats to their life and property and the same is in danger. The complainant felt insecure in these circumstances. Even all the accused have gone to such an extent by advancing threats to the minor children of the complainant and they are saying that they shall get the children abducted from antisocial persons with a purpose to extort money by illegal means to fulfill their demand which is uncalled for and unwarranted. The allegations contained in the above referred applications moved by the accused No.1 in conspiracy and with common intention with each other has lowered the reputation of the complaint and his son. Even the relatives, friends, nearer and dearer have started repeating the allegations contained in the application against the complainant as per the information given by the accused No.1 to 3. Even accused No.1 to 3 have also circulated the copies of the false and frivolous application in the area where the complainant and his son resides and in the area where the relatives, friends of the complainant are residing with a purpose to lower their reputation in their eyes. The complainant received a number of telephonic messages asking by them with regard to the allegation levelled by the accused against him. On each and every occasion, the complainant and his son had to explain the truthfulness of the same. Thus, the accused No.1 to 3 are liable to be prosecuted for the offence of defamation. Hence the complaint.”

read with Section 120-B IPC. During the pendency of the complaint, complainant Mohinder Kumar died and his son Rajesh was allowed to pursue the complaint. Notice of accusation was served upon the accused, upon which they pleaded not guilty and claimed trial. Complainant examined CW-2 Hemraj, CW-3 Head Constable Ajit Singh, CW-4 Shingara Singh, CW-5 Surinder Kumar and Rajesh Mehta examined himself as CW-6.

Accused in the statement under Section 313 Cr.P.C. claimed that they have been falsely implicated in this case. Accused Rajesh Jain claimed that the complainant indulged in various illegalities in construction of building in Chauri Sarak over property and he brought the illegalities to the notice of Municipal Corporation, District Administration and Human Rights Commission, which resulted into proceedings under Section 269/246 of the Punjab Municipal Corporation Act. As per accused Rajesh Jain, action has been taken against the complainant on his application. He never intended to defame the complainant nor he circulated any paper in the locality or amongst the relatives and friends. Accused Ravi Parkash Jain claimed that he never defamed the complainant nor he ever sent any communication containing defamatory language nor he circulated any such communication.

Learned JMIC, Ludhiana after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated 09.05.2013.

Aggrieved from the above-said judgment, present appeal along with applications for grant of leave to appeal has been filed.

through the record.

The perusal of the findings given by learned trial Court shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned Court below.

After going through the evidence on record, learned Court below held that as per the complainant, accused have large number of false complaints against him and circulated the same in the area by which the defamation of the complainant has taken place amongst his relatives, friends and other persons who know him. In support of this case, complainant examined six witnesses. CW-2 Hem Raj, who is the father in law of Rajesh Mehta. CW-3 HC Ajit Singh brought the original application dated 15.12.2002. CW-4 Shingara Singh brought the record in the Court and proved the copy of Ex.P7 moved by Rajesh Kumar Jain received on 2.12.2002. CW-5 Surinder Kumar deposed that Mohinder Kumar has expired, who was his brother in law and Rajesh Kumar Mehta is son of Mohinder Kumar. Complainant Rajesh Kumar examined himself as CW-6.

For proving the offence under Section 500 IPC, first of all, it is to be proved that there is some defamatory statement; secondly, it is to be published to the general public or friends and relatives and thirdly, due to this defamatory statement, the complainant has been defamed and his reputation has been lowered in the eyes of persons knowing to him or in the society. In the present case, I find that there is no cogent evidence

regarding publication of defamatory material. Mere filing of the complaint to the competent authority does not amount to publication of defamatory material. Any person aggrieved can file complaints to the authorities and it is for the authorities to look into those complaints. The complaint is not sent for bringing it to the notice of general public and this was not the purpose of filing the complaint that these will be circulated among the general public by the competent authority or the reputation would be lowered or it will be brought to the notice of the general public. Therefore, filing of the complaint to the competent authority, does not amount to publication of defamatory material and one of the necessary ingredients is missing in these complaints.

Secondly, as regarding circulation of all these letters, no independent person has come to depose that these were circulated among the general public. Only two close relatives of the complainants have appeared to depose regarding the circulation. Furthermore, copies which have been circulated are shown to the Court at the time of arguments. The copies of the complaints have the notings of the office, to whom these complaints were sent. The notings on these photocopies, which are stated to have been circulated, show that the complainants may have received these copies from the office or from the enquiry officer etc.

From the perusal of the judgments passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective. In no way, the judgments can be held as perverse or against the evidence. The accused have been rightly acquitted by learned trial Court.

In view of the above discussion, I find that the impugned

judgments dated 09.05.2013 passed by learned JMIC, Ludhiana, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, both the applications stand dismissed.

July 11, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No