

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

**CRM No.M-23973 of 2017 (O&M)
Date of Decision: August 02, 2017**

Umakant Tripathi

...Petitioner

VERSUS

Mrs.Monika Dhiman

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Onkar Singh Batalvi, Advocate,
for the petitioner.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondent Monika Dhiman for quashing the order dated 25.05.2017 passed by learned Judicial Magistrate Ist Class, Pathankot, vide which the complaint filed by the petitioner under Sections 156(3) Cr.P.C. for directing the SHO, P.S. Sadar, Pathankot, for lodging FIR against the accused-respondent under Sections 182, 499, 500, 506 IPC and Section 66-A of the Information and Technology Act, 2008, was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that complainant Umakant Tripathi filed a complaint against Monika Dhiman under Sections 156(3) Cr.P.C. for

lodging of FIR under Sections 182, 499, 500, 506 IPC and Section 66-A of

the Information and Technology Act, 2008. The brief averments of the complaint as noted down by learned JMIC, Pathankot, are as under:-

“2. The brief facts as per complainant’s version are that he is posted as Librarian in Kendriya Vidyalaya, Nangal Bhur, Tehsil and District Pathankot since Sept. 2015 and is enjoying unblemished and clean service record. He is also acting General Secretary of All India Kendriya Vidyalayas Teacher Association, Jammu Region since May 2015 and is enjoying good reputation in the estimation of his colleagues, teaching staff of the school, students, friends, near and dears, relatives and public in general. Accused is also serving in the same school as TGT English (Teacher) and she is jealous with the complainant for many reasons including that of his position and alleged arbitrariness while allocation of time-table.

3. It has been further averred that Gunjan Tripathi is the real daughter of the complainant, who is studying in 2nd 'B' Class in the same Vidyalaya and her date of Birth is 31.08.2009. On 31.08.2016 on the occasion of transfer of the then Principal there was a farewell party in the school premises, in which all the teachers along-with accused Mrs. Monika Dhiman participated, the farewell party continued up to 05.00 PM. As lot of time was consumed in the school itself and there was raining outside, the daughter of the complainant started weeping that his father (Complainant) was not celebrating her birthday. Due to these facts and for his daughters happiness the complainant brought cake and hosted a small get together in which few classmates of daughter of the complainant, their parents including complainant and his wife participated. The accused somehow got some photographs of Birthday party in her mobile phone and after making a fake 'E-Mail ID' by addressing herself as parent with the face name as Gopal Chand (Cgopal123@yahoo.com) using her mobile No. As: 7508512859 in order to create the said fake 'E-Mail ID' thereafter addressing a completely false and baseless complaint to the Commissioner/Addl. Commissioner (Admn.)/ Joint Commissioner (TRG) Kendriya Vidyalaya Sanathan Head Quarter, New Delhi against the complainant by using defamatory and derogatory remarks against the complainant in order to tarnish his reputation and prestige in the estimation of his colleagues, teaching staff of the school, its students, friends, near and dears, relatives and Public in General.”

Learned Magistrate, dismissed the complaint by holding that

first of all, as per the version of the complainant himself, an e-mail was sent

under the name of Gopal Chand from mobile of the accused to the

Commissioner etc., Kendriya Vidyalaya Sanathan. Therefore, if the false complaint is given, then complaint can only be lodged by same authority and none else. The complainant cannot file the complaint under Section 182 Cr.P.C. Secondly, as the main allegations are under Section 500 IPC qua defamation, therefore, this offence being non-compoundable, the complaint need not to be sent for registration of the FIR.

Furthermore, from the record, I find that there are three important ingredients to prove the offence of defamation i.e. firstly, there should be defamatory material, secondly publication of defamatory material to the general public or near and dear ones of the complainant and thirdly, that publication has lowered the reputation of the complainant in the eyes of general public and his close relatives and friends etc.

In the present case, e-mail has been sent to the authority, which means that there is no publication of defamatory material to the general public. Therefore, one of the necessary ingredient is missing in this case. Further, from the record, I find that e-mail has been sent in the name of Gopal Chand. Even if it is presumed that there was a defamatory material and false complaint, even then, one of the necessary ingredient i.e. publication of defamatory material is missing

Learned Magistrate held that Section 66-A of the Information and Technology Act has been declared unconstitutional by the Hon'ble Supreme Court. Moreover, the complainant himself admitted regarding birthday party of his child in the complaint.

In view of the above discussion, I find that the impugned order dated 25.05.2017 passed by learned JMIC, Pathankot is correct, as per law

and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

August 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No