

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

**CRM No.M-44035 of 2015 (O&M)
Decided on: 24.08.2017**

Navjote Kaur Khara

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Bains, Advocate
for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is a petition filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') seeking quashing of complaint No.COMI/30600198/2011 dated 08.01.2011 (Annexure P8), summoning order dated 27.10.2012 (Annexure P9) and the order dated 16.04.2015 (Annexure P10) passed by the trial Court whereby the petitioner has been summoned and later on declared as proclaimed offender.

As per office report dated 08.04.2016, service of respondent No.2/complainant has been effected but there is no representation on his behalf as is clear from the earlier orders dated 15.07.2016, 21.07.2016 and 31.03.2016.

It is submitted on behalf of the petitioner that since the petitioner has already put in appearance before the trial Court and has been granted fresh bail vide order dated 18.07.2016, the prayer *qua* order dated 16.04.2015 (Annexure P10) has become infructuous.

It is further submitted that marriage between the petitioner

and respondent No.2 was solemnized on 24.09.2001 and out of this wedlock a son namely Gurninder Singh was born on 15.05.2003. However later, on account of matrimonial discord between the parties, the marriage of the petitioner and respondent No.2 was dissolved by way of decree of divorce dated 24.07.2011. It is further submitted that during the pendency of matrimonial litigation between the parties, the petitioner had given a complaint on 10.06.2005 to the Director General of Police for registration of a case under Sections 406 and 498-A of the Indian Penal Code, 1860 (in short 'IPC') against the respondent/husband. It is further submitted that since the relationship between the parties was not cordial, certain other litigation levelling the allegations and counter-allegations also remained pending. The case regarding custody of the child was decided and in FAO No.5361 of 2009, the custody of the child has been given to the petitioner and the appeal stands admitted.

The respondent/complainant instituted a complaint under Section 500 IPC against the petitioner on 08.01.2011 before the trial Court i.e. criminal complaint No.RBT-198/1 of 2011 and as per the allegations in the complaint, the petitioner while submitting a complaint to the Director General of Police, Punjab has levelled certain allegations which according to the respondent/complainant are derogatory and defamatory. It is further submitted that a perusal of the complaint would show that there are no allegations that this complaint was ever published to lower the estimation of the respondent/complainant before the general public or his close relatives.

The trial Court vide impugned order dated 27.10.2012

summoned the petitioner (Annexure P9) to face trial under Section 500 IPC.

It is further submitted that while passing the order, the trial Court has not appreciated the provisions of exceptions 8 and 9 to Section 499 IPC, especially, in view of the fact that the petitioner/accused was the ex-wife of respondent/complainant and parties were litigating before the Court of law. It is also submitted that the maximum punishment provided under Section 500 IPC is 03 years and, therefore, the limitation provided for filing a complaint as per Section 468(2) Cr.P.C. is 03 years and the complaint which has been filed on 08.01.2011, before the trial Court on the basis of a complaint filed by the petitioner dated 10.06.2005 is time barred. Counsel for the petitioner has further submitted that in fact, the petitioner was also involved in a false FIR No.65 dated 25.06.2005 registered under Sections 420, 467, 468 and 471 IPC at Police Station Harike, District Tarn Taran relating to a Will executed by her father in favour of her mother as well as the petitioner, registered at the instance of respondent No.2. This FIR was ultimately quashed by this Court in CRM-M No.2510 of 2006 vide order dated 16.12.2011 as the police has cancelled the aforesaid FIR. Counsel for the petitioner has further submitted that the averments made in the complaint dated 10.06.2005 against the complainant and his relative was that a case under Sections 406 and 498-A IPC be registered on the allegations that the respondent/complainant was demanding 1/3rd share from the estate of her parents i.e. House No.1257 situation in Urban Estate, Phase I, Jalandhar as well as 1/3rd share in the agricultural land situated in

village Harike. It has further been submitted that the said averments made in the complaint dated 10.06.2005, in no manner can be considered as defamatory or derogatory as the same was filed before the Director General of Police, Punjab well within the legal rights available to the petitioner/wife at that time. Therefore, it is submitted that the alleged defamatory imputation cannot be said to be published by the petitioner so as to defame the respondent. Counsel for the petitioner has also referred to the news item (Annexure P11) dated 08.12.2009 relied upon by the trial Court to submit that this is a news item published by a correspondent namely Manpreet Randhawa who is not even arrayed as respondent in the complaint and the news item only describes the allegations in the complaint made by the petitioner. Counsel for the petitioner in support of his contentions has relied upon the judgments ***“Harjit Kaur vs Dr. Jaswinder Singh Bhogal”***, 2008(2) RCR (Criminal) 25 as well as ***“Shalu @ Shalini and others vs Manmohan @ Munny and another”***, 2015(4) Law Herald 3634 where in similar circumstances, it was held by this Court that the allegations made during the pendency of matrimonial dispute, in a complaint made by one of the spouse cannot be termed as defamatory in view of Exceptions 8 and 9 to Section 499 IPC. It would be relevant to refer to 9th Exception to Section 499 IPC, which reads as under:-

“Defamation – Whoever, by words either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases

hereinafter expected, to defame that person.

Ninth Exception – Imputation made in good faith by person for protection of his or other's interests. It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.”

On the other hand, counsel for the State has opposed the prayer made by counsel for the petitioner.

After hearing, counsel for the parties, I am of the view that the petition deserves to be allowed. A perusal of 9th Exception to Section 499 IPC provides that any imputation made in good faith by a person for protection of his or other's interest is not a defamation. The complaint filed by the petitioner before the Director General of Police, Punjab was only to the extent that she was harassed on account of demand of dowry and had prayed for registration of a case under Sections 406 and 498-A IPC. The alleged publication of the complaint by a correspondent in the newspaper was not intended to lower the reputation of the respondent/complainant as it was an imputation made in good faith by a person for protection of her interest. Admittedly, subsequent to filing of this complaint, the marriage between the petitioner and respondent No.1 was dissolved by way of decree of divorce and the matter relating to the custody of the minor child is still pending, in which interim custody of the child has been given to the petitioner/mother, thus, it cannot be said that the allegations made in the complaint will constitute an offence under Section 500 IPC. There is another aspect of the case, the complaint which was filed on 10.06.2005

was dealt with by the police authorities at various stages and it was well within the knowledge of the complainant that the complaint was filed on 10.06.2005, therefore, the present complaint which has been filed on 10.01.2011 is barred by limitation as the same has been filed after a period of 03 years after filing of the complaint and, therefore, itself is time barred. Thus, it is apparent that no offence on the bare reading of the complaint is made out and, therefore, continuation of the criminal proceedings will prejudice the right of the petitioner/accused as the complaint is time barred.

In view of the above, the present petition is allowed; the complaint dated 08.01.2011 (Annexure P8); summoning order dated 27.10.2012 (Annexure P9) passed by the trial Court are quashed.

(ARVIND SINGH SANGWAN)
JUDGE

24.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No