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

+ CRL.M.C. 3303/2013

GAURI ANAND & ANR

..... Petitioner

Through Mr.Siddharth Yadav and Mr.Washim
Ashraf, Advs.

versus

RISHI ANAND

..... Respondent

Through Mr.Rajesh Kumar and Ms.Anju
Bagai, Advs.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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07.02.2017

Arguments heard.

The present petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Cr.P.C. for quashing of the criminal complaint no.287/1/2, Police Station Mukherjee Nagar under Section 499 and 500 IPC.

The facts, in brief, are that a complaint under Section 499 and 500 IPC was filed on behalf of the respondent-herein through his attorney holder Sh. R.K. Anand, father of the complainant (respondent-herein). It was alleged in the complaint that the complainant went to U.S.A. as a student and pursued his Masters degree in 1994 and had been living there since then.

By way of present petition, the petitioners are prayed for quashing of above mentioned criminal complaint on the ground that

the complaint filed by the complainant (respondent-herein) through his attorney was not maintainable and thus liable to be quashed.

In the present case, the criminal complaint under Section 499 and 500 of the IPC was filed by the attorney holder of the complainant. It is a settled law that, the complaint under Section 499/500 IPC can be initiated only by the person aggrieved and not by any other person including the attorney holder.

The Hon'ble Apex Court in the case of ***Fr. Thomas Maniankerikalam & Anr. V. Thomas J. Padiyath & Anr. VI (2005) SLT 672*** held that the filing of complaint by an attorney on the ground that the complainant was residing out of India is not a justified ground to authorise the Power of Attorney Holder to file the complaint on his behalf. Relevant portion is reproduced as under :

“By the impugned order, the High Court refused to quash prosecution of appellants under Section 500 of the Indian Penal Code. The point involved in this case is as to whether the complainant was justified in authorising Power of Attorney Holder to file the complaint under proviso to Section 199(1) of the Code of Criminal Procedure, 1973, which lays down that where a complainant is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf. In the present case, the complainant himself did not file the complaint because he was residing in Dubai which was not a ground under the said proviso. As such the complainant was not justified in authorising the

Power of Attorney Holder to file the complaint on his behalf. This being the position, we are of the view that the complaint having not been presented in accordance with the provisions of Section 199(1) of the Code of Criminal Procedure, 1973, as such prosecution of the appellants is fit to be quashed.”

In the present case, the case of the respondent-herein is that the complaint was filed by him before the Court below through his attorney. The ground for not filing the complaint by the complainant (respondent-herein) was that he was residing in U.S.A. That cannot be a ground, as per the proviso to Section 199(1) of the Cr.P.C., to authorize his attorney holder to file the complaint.

Consequently, in view of the law laid down in the case of ***Fr. Thomas Maniankerikalam*** (supra) and in view of the facts and circumstances mentioned above, this Court is of the considered opinion that this is a fit case to quash the complaint case against the petitioners-herein as the complaint filed by the respondent-herein through his attorney holder was not presented in accordance with law.

Accordingly, the present petition is allowed. The criminal complaint bearing no.287/1/2 and the proceedings emanating therefrom are quashed qua the petitioners-herein.

P.S.TEJI, J

FEBRUARY 07, 2017
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