

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5598-2005 (O&M)
Date of Decision:-06.09.2018.

Badlu Khan

.....Petitioner

Versus

Israil

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Deepinder Singh, Advocate for the petitioner.

Mr. Anil Ghanghas, Advocate for
Mr. Sunil Panwar, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant petition, petitioner has sought quashing of complaint titled as Israil Vs. Badlu Khan under Sections 500/420/511 IPC dated 08.09.2000 (Annexure P-1), order dated 08.09.2000 (Annexure p-2) and order dated 28.07.2013 (Annexure P-3) and order dated 2.11.2014 (Annexure P-4).

2.) Learned counsel for the petitioner submitted that there was a dispute relating to certain property. Decree was obtained on behalf of the respondent which was subject matter of suit filed by the petitioner on 21.12.1987 against the respondent. Respondent had filed written statement in the suit on 1.6.1990, whereas, the complaint was filed on 08.09.2000 in respect of making certain derogatory statement in the suit like “*defendant*

illegally shown himself as son of Mangal Khan deceased though he is son of Smt. Noor Jahan and came as Gailarh at the time of Kareva.” Learned counsel for the petitioner submitted that Magistrate has not taken note of the delay issue and proceeded to issue summons on the date of submission of complaint and petitioner has not been heard before condoning the delay. In support of these contentions, learned counsel for the petitioner relied on the following decisions:-

1. Surinder Mohan Vikal Vs. Ascharj Lal Chopra 1978 AIR (SC) 986.
2. Amar Singh and others Vs. Naranjan Lal 1984 (1) R.C.R. (Criminal) 108.
3. Sunil Mahajan and another Vs. State of Punjab and another 2012 (2) R.C.R. (Criminal) 219.
4. P.K. Choudhury Vs. Commander, 48 BRTF (GREF) 2008(2) R.C.R. (Criminal) 482.

Judgment Nos.1 and 4 are on account of delay and judgment Nos. 2 and 3 are with reference to protection under Exception Nine of Section 499 Cr.P.C.

3.) *Per contra* learned counsel for the respondent while resisting the petitioner's contention submitted that what has been averred in the suit are more serious allegations which amounts to defamation. Hence, complaint was filed after disposal of suit on 19.08.1994 and dismissal of appeal on 28.09.1999. Therefore, question of delay in initiation complaint proceedings against the petitioner on the allegation of derogatory statement made by him in the civil suit are within the time limit and no interference is

4.) Heard the learned counsel for the parties.

5.) Short question for consideration in the present petition is whether complaint is belated one or not. Undisputed facts are that civil suit was filed by the petitioner on 21.05.1987 and written statement was presented by the respondent on 1.6.1990. Therefore, respondent had knowledge of the alleged derogatory statement made by the petitioner relating to defamation cited supra as on 01.06.1990. Thus, he had cause of action at the best on 1.6.1990, the date on which respondent had presented written statement in the suit. Learned counsel for the respondent's contention cannot be accepted that respondent had the cause of action as and when suit and appeal was decided in the year 1994 and 1999 for the reasons that whether proving the defamatory word used by the petitioner in the civil suit was not the subject matter. What was the subject matter is relating to decree in civil suit captioned as Isrile Vs. Mangal bearing No.409 of 1980 which was in favour of the respondent. Therefore, question of waiting for the decision in the civil suit or appeal for the purpose of cause of action may not be correct. Thus, complaint is highly belated and such belated complaint cannot be entertained in the absence of delay application in view of the decisions cited supra. Accordingly, complaint, summoning order and other orders Annexures P-2 to P-4, respectively are quashed.

6.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

September 06, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.