

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22153-2015
Date of Decision: 16.03.2018

Kirandeep Mann

.....Petitioner

Vs.

State of Punjab and another

.....
Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Ms. Monika Jalota, D.A.G., Punjab.

Mr. Deepak Arora, Advocate,
for respondent no. 2.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned Sessions Judge, Jalandhar, passed in a Criminal Revision Petition filed by her, i.e. Kirandeep Mann, challenging the order of the learned trial Court (JMJC, Jalandhar), dated 19.01.2015, framing charges in respect of the commission of offences punishable under Sections 295-A and 427 of the IPC, on a 'private complaint' instituted by the respondent herein, Harbans Kaur.

The challenge was essentially on two grounds; the first of which was that an accused cannot be charged with an offence punishable under Section 295-A IPC without previous sanction of the Central/State Government, in view of the bar contained in Section 196 of the Code of Criminal Procedure, 1973, which reads as under:-

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. (1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, [Section 295-A or sub-section (1) of section 505] of the Indian Penal Code, (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub-section (2) or sub- section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit (an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub- section (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub- section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of Section 155.

Section 295-A of the IPC also reads as follows:-

“[295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.]”

Classification of Offence-- The offence under this Section is cognizable, non-bailable, non-compoundable and triable by the Magistrate of first class.

The 2nd ground of challenge before the learned Sessions Judge was that the petitioner had been summoned, without evidence of the complainant and the 2nd witness produced by her, adduced in the presence of the petitioner, thereby violating Sections 244 and 273 of the Cr.P.C., (specifically Section 273 which stipulates that evidence must be taken in the presence of the accused).

The learned Sessions Judge, after considering the pleadings and arguments and referring to various judgments of different High Courts on the issue, held that the impugned order was not sustainable, the pre-charge evidence led by the complainant not having been recorded in the presence of the accused.

He consequently remitted the case to the trial Court to proceed in accordance with law, complying with the provisions of Sections 244 and 273 Cr.P.C.

Learned counsel for the petitioner submits that the impugned order has been passed at a stage when the petitioner has also cross-examined the

complainants' witnesses, and therefore she is now prejudiced having disclosed her defence and further, the complaint having been instituted in the year 2010, almost 08 years having now gone by, it would prolong her agony even further, if the trial was to virtually commence afresh, at this stage.

Learned counsel for respondent no. 2, however, submits that the impugned order having been passed only to correct a basic procedural defect, at the earliest stage that the revisional Court could have passed it, the petitioner would suffer no prejudice and therefore, the order is perfectly sustainable.

Having considered the aforesaid arguments, it is seen that this petition was filed in the year 2015 and after notice was issued on 10.07.2015, proceedings before the trial Court were stayed on 31.08.2015.

Thereafter, the matter has been adjourned from time to time either to await the record or on request made on behalf of learned counsel for the petitioner, and on the last date of hearing, i.e. 20.02.2018, as counsel for respondent no. 2 was not present, (the matter having been taken up after 04:00 p.m., its turn not having reached by that time).

Except on the issue of the sustainability of the charge under Section 295-A IPC, I see no error in the impugned order of the learned Sessions Judge, remitting the case back to the learned trial Court to record evidence of the complainant only in the presence of the accused, in terms of Sections 244 and 273 of the Cr.P.C.

This petition is therefore disposed of with a direction to the trial Court that before framing the charge afresh, the provisions of Section 196 Cr.P.C. be duly adhered to. Naturally, the order of the learned Sessions Judge with regard to compliance of Sections 244 and 273 Cr.P.C., would also, be adhered to, before proceeding further.

It is made clear that no observation whatsoever has been made by this Court on the merits of the case in favour of either party, which would be gone into by the trial Court wholly on the basis of the evidence led before it.

March 16, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No.