

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision. No.1995 of 2013 (O&M)

Date of Decision: 07.08.2018

Satbir

...Petitioner(s)

Versus

State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Surender Dhull, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

Mr. Amaninder Preet, Advocate
as Amicus Curiae.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition against judgment dated 07.02.2013 passed by learned Additional Sessions Judge, Bhiwani, whereby the appeal filed by respondent no.2-accused against the judgment of conviction dated 19.05.2011 and order of sentence dated 20.05.2011 passed by Sub Divisional Judicial Magistrate, Loharu, in a complaint case titled as *Satbir Vs. Subhash and another*, was accepted.

Briefly stated, the petitioner-complainant had filed a complaint under Section 200 CrPC before Sub Divisional Judicial Magistrate, Loharu against respondent no.2 Subhash and his father

Chandgi Ram. The complainant belongs to a reputed family whereas the accused are criminal type of persons and have no faith in law. While the petitioner-complainant was a candidate for the post of Harijan Numberdar of Vill. Kudal, the accused-respondent no.2 was also a candidate for the said post. The allegations against the accused are that both the accused in collusion with each other moved a false application against the petitioner-complainant before the Tehsildar, Loharu that he has encroached upon panchayat land. Though the petitioner never remained in illegal possession of the Panchayat land, but still, the accused filed a false affidavit in order to defame him and lower down his position of Namberdari. They also produced false documents i.e. FIR No.196 dated 27.10.1998, P.S. Loharu, copy of complaint titled as "Ram Kuwar Vs. Ram Niwas etc., despite having knowledge that the said FIR was wrongly recorded and the case was decided by the Court on 15.07.2008, whereby the petitioner was acquitted. The accused submitted a false affidavit and documents only to defame the petitioner, so as to oust him from consideration for the post of Namberdar pending before the Tehsildar Loharu, where many persons were present. Thus, the accused committed offence under Sections 499, 500, 501, 191, 192, 193, 196, 199 and 200 IPC. The trial Court vide judgment dated 19.05.2011, though acquitted accused Chandgi Ram, as there was nothing to link him with the evidence in the entire episode in order to implicate him in filing of affidavit Ex.C1, but held that respondent no.2-accused has intentionally filed a false affidavit, knowing that the contents of the said affidavit were wrong and thus, filing of the affidavit before the Tehsildar in the presence of large number of persons did affect the reputation and

prestige of the petitioner-complainant. Therefore, the trial Court vide judgment dated 19.05.2011 and order of sentence dated 20.05.2011, while holding respondent no.2 guilty for offence under Section 500 IPC, sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for two months. A compensation of Rs.30,000/- was also granted to the petitioner-complainant for loss of reputation.

Aggrieved against the aforesaid orders of conviction and sentence, respondent no.2-Subhash filed an appeal before the Appellate Court, which was accepted vide judgment dated 07.02.2013 passed by learned Additional Sessions Judge, Bhiwani and the respondent no.2 was acquitted of the charge framed against him. The relevant observations of the Appellate Court read as under:-

“18. The contents mentioned in the complaint and the evidence produced on the file by the complainant reveals that the complainant and the accused are residents of the same village Kuarl and complainant and accused No.1 were candidates for the post of Harijan Namberdari of Village Kural and accused no.2 is father of accused No.1. The objections were invited by the Tehsildar Loharu regarding the conducts and character of candidates of Namberdari with each other, then the affidavit and statement of accused No.1 was recorded by the Tehsildar Loharu in good faith. If any statement made by the accused before the Tehsildar and affidavit filed about character and conduct of the complainant for protection of his interest, then the case fall within the 9th exception of Section 499 IPC. The copies of criminal case produced by the complainant on file Ex.C-4 and Ex.C-5 and the cases were contested in the Court on merit by

complainant/respondent. The conduct of the witness in criminal or civil case are not came within the provision of Section 499 IPC but the case fall under 5th exception of Section 499 IPC.

19. The documents placed on file by the complainant and the appellant shows that there was no document produced on the file athat the false contents were made in the affidavit filed by the appellant before the Tehsildar for the post of Namberdar of the village but the same was made in good faith for protection of his interest, therefore, it is no defamation on filing the affidavit and making the statement by accused No.1 about the character and conduct of the complainant/respondent.

20. Hence, the learned Trial Magistrate has not properly appreciated the evidence on record and on wrong appreciation of facts and law, has wrongly convicted and sentenced the appellant-accused and hence, the impugned judgment of conviction dated 19.5.2011 and order of sentence dated 20.5.2011 are not sustainable in the eye of law and the same are liable to be set aside and this appeal is liable to be accepted.”

Learned counsel for the petitioner has argued that the impugned judgment of the Appellate Court dated 07.02.2013 has been passed without appreciating the evidence on record and thereby, brought the case of the respondent-accused under the 5th exception attached to Section 499 IPC. He has further submitted that the Appellate Court has wrongly come to a conclusion that the affidavit was filed before the Tehsildar, Loharu in good faith and therefore, 5th Exception to Section 499 IPC is not attracted.

I have heard learned counsel for the parties and perused the impugned judgment.

5th Exception to Section 499 IPC reads as under:-

Fifth Exception.—*Merits of case decided in Court or conduct of witnesses and others concerned. It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.*

Admittedly, the Tehsildar, Loharu had invited objections regarding the conduct and characters of the candidates for the post of Namberdar and accordingly, filing of affidavit and documents and making statement by the respondent-accused about the character and conduct of the petitioner-complainant were protected by the provisions of 5th Exception to Section 499 IPC and thus, the same does not amount to defamation.

Therefore, this Court does not find any illegality in the impugned judgment passed by learned Additional Sessions Judge, Bhiwani.

Accordingly, the present revision petition is dismissed.

August 07, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No