

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-607-MA of 2018 (O&M)

Date of Decision: 05.11.2019

Om Parkash

.....Applicant

Vs.

Ashok Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Sunil Kumar, Advocate for
Mr. Deepak Agnihotri, Advocate
for the applicant.

HARNARESH SINGH GILL, J.

CRM-9112-2018

This is an application under Section 5 read with Section 14 of Limitation Act, 1963 seeking condonation of delay of 33 days in filing the application under Section 378 (4) Cr.P.C. seeking leave to appeal.

As per learned counsel for the applicant, under a bonafide mistake a Criminal Revision was filed instead of Criminal Appeal. The said Criminal Revision was returned by the Registry and thereafter the present appeal was filed and in this process delay of 33 days had occurred, which is not intentional.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 33 days in filing the application under Section 378 (4) Cr.P.C., is condoned.

CRM-A-607-MA of 2018

The applicant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated

1.11.2017 passed by the learned Judicial Magistrate Ist Class, Jalandhar vide

which the complaint filed by applicant-complainant Om Parkash against respondent-accused Ashok Kumar was dismissed and the respondent was acquitted of the charge under Section 500 of the Indian Penal Code, 1860 ('IPC' for short).

As per the applicant, he remained Sarpanch/Panch of his village. One Nichattar Pal and his wife Parveen Kumari had marital discord with each other. The applicant being Sarpanch of the village, tried to resolve the dispute but somehow Parveen Kumari had left her matrimonial home. Later Nichattar Pal had also left the home. His brother Ashok Kumar-respondent filed a complaint before the local police authorities making Parveen Kumari responsible for the disappearance of Nichattar Pal and in the said complaint, the respondent had made specific allegations against the applicant that the applicant had an active role/involvement in that matter. Later the applicant searched out Nichattar Pal and produced him before the police, who suffered a statement that he had left his house of his own and the applicant had no role to play.

After recording of the preliminary evidence, the respondent was summoned to face the trial under Section 500 IPC.

In pre-charge evidence, the complainant had examined four witnesses including himself.

After closure of pre-charge evidence, charge was framed against the accused under Section 500 IPC to which he pleaded not guilty and claimed trial.

In his statement recorded under Section 313 Cr.P.C., the accused denied the allegations and pleaded false implication.

After hearing the arguments of both the sides, learned trial Court acquitted the respondent of the charge framed against him by drawing the

conclusion in the impugned judgment. Para Nos 14 and 15 of the judgment would read as under:-

*“14. Now, reverting back to the facts of the present case, it comes out that it is the grouse of the complainant that accused, in order to lower the reputation of complainant made false allegations before the police authorities with regard to the disappearance of his brother. No legal action was taken against the complainant and the said imputation was found to be false on the appearance of brother of accused. The said allegations were subsequently found to be false and were raised only on the basis of suspicion. It is general trend that complainants named the persons on the basis of suspicion qua their accusations and it is generally enquired by the police authorities from the complainants that whether they are having suspicion upon any person in connection with the commission of offence concerned. It is not necessary that all the suspected persons comes out to be the actual accused after the inquiry or investigation. If such like contentions of the complaint are being accepted by the courts, then courts would be flooded with such like litigations of defamation. Apart from this, complainant had not forced any litigation or agony due to the allegations raised by the accused as deposed by the defence witnesses. Consequently, the imputations so leveled can be termed to be made in good faith to police. Further, in **Kamlesh Kaur versus Lakhwinder Singh and others reported in 2009 (4) Recent Criminal Reports 663, our own Honorable High Court has held that “allegations to the police does not constitute the offence of defamation and falls under eight exception punishable under Section 500”**. Similar analogy was adopted by Hon'ble Apex Court in **Darshan Singh versus Avtar Singh reported in 2002(1) Recent Criminal Reports 521, it has been held that “mere acquittal in criminal case is no ground to call in interference of the court for commission of offence punishable under Section 499 of Indian Penal Code.” in this case the summoning order too was quashed**. Therefore, from the allegations of complainant, offence of defamation is not sustainable.*

15. *As far as, the evidence recorded by the complainant is concerned, it has come on record that accused and complainant are having political rivalry. The witnesses examined by the complainant had also not supported the case of complainant. One Amarjeet Singh had gone to the extent of deposing that he cannot tell the exact date, month and year of the complaint Ex. C1 and he had never seen the said complaint. If the witnesses had not seen the original complaint, then how the actual truth can be ascertained from their testimonies. The things do not rest over here, both the witnesses specifically claimed that they appeared in the witness box at the instance of complainant Om Parkash. Therefore, it is implied that they had not provided the actual facts before the court and deposed on the dictates of the complainant. Last but not the least, the witnesses examined by the accused deposed in clear-cut terms that image of the complainant has not been lowered in the eyes of the villagers or other relatives, due to the complaint of accused, rather these witnesses claimed that complaint enjoys a good reputation in the village.”*

I have heard the learned counsel for the applicant and have gone through the case file.

It is argued by the learned counsel for the applicant that the respondent had made specific allegations against the applicant, who was the Sarpanch of the village, alleging that the applicant was involved in the present case and thus, Parveen Kumari left her matrimonial home and further he was also involved in the act of missing of Nichattar Pal, brother of the respondent. By act of the respondent the reputation of the applicant had been lowered in the eyes of his family and public at large and because of the malafide intention the respondent had maligned the reputation of the applicant and his voters/local people had started maintaining distance from him and the Court below has failed to appreciate the evidence on record and its action is based on

conjectures and surmises.

To my mind, the essential ingredients in the complaint must be an imputation of harming or knowing or having reason to belief that it will harm the reputation of the person about whom it is made. The witness of the applicant Amarjeet (CW-3) did not support the case of the applicant. As per the case law discussed by the trial Court, the allegations to the police do not constitute the offence of defamation so as to fall under Section 500 IPC as there is a trend that in the complaints, person/persons are named on the basis of suspicion and it is not necessary that all suspects come out to be the actual accused or are acquitted during investigation. In this case the applicant did not face any litigation or agony at the hands of the respondent. Thus, the respondent has been rightly acquitted of the charge framed under Section 500 IPC.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

November 05, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes