

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-94-MA-2018 (O&M)

Date of decision: 22.07.2019

Sahib Ram

....Applicant

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Brar, Advocate
for the applicant.

ARVIND SINGH SANGWAN, J.

CRM-12924-2019

For the reasons stated in the application, same is allowed. The order dated 05.04.2019, vide which the main case was dismissed for non-prosecution, is hereby recalled and the main case is restored to its original number.

CRM stands disposed of.

CRM-A-94-MA-2018

Prayer in this application, filed under Section 378 (4) Cr.P.C. for grant of leave to file appeal, is for setting aside the judgment of acquittal dated 30.10.2017 passed by the trial Court, vide which complaint No.RBT No.68-1 of 06.11.2007, COMI No.56/2017, titled as Sahib Ram Vs. Pardeep

Kumar and others, filed under Sections 419, 500, 465, 471, 120-B IPC, was dismissed.

Brief facts of the case are that the applicant-complainant had filed the aforesaid complaint against the accused-respondents with the allegations that he was Sarpanch of the Village and during his tenure, the accused persons gave an application to Sub Divisional Magistrate, Abohar on 12.06.2007 by levelling false allegation of selling the trees, which were standing on the panchayat property i.e. cremation ground. It is further stated that the application was forwarded to the SHO, Police Station Abohar for inquiry and upon inquiry, it was found to be false and therefore, the accused persons have caused loss to the reputation of the complainant.

The complainant, in the preliminary evidence, examined Bhupinder Singh as CW1, Sushil Kumar as CW2, Rajinder Kumar as CW3, Vikram as CW4, Kundan Singh as CW5 and he himself stepped into the witness box as CW6 and thereafter, closed the evidence.

The trial Court, thereafter, dismissed the complaint vide order dated 04.02.2013. The applicant-complainant filed a revision petition and the revisional Court, vide order dated 04.08.2015, remanded the case back to the trial Court with a direction to pass the fresh order.

Thereafter, the trial Court, vide impugned judgment dated 30.10.2017, dismissed the complaint and acquitted the accused-respondents.

The operative part of the impugned judgment of acquittal reads as under: -

“I have heard Ld. counsel for the parties and have gone through the evidence as well as the file carefully. After hearing both the

parties following points arises for determination in the present case:-

1. Whether the accused have given the application against the complainant to SDM Abohar in order to harm his reputation and committed the offence of defamation?

2. Conclusion.

Point No. 1

After going through all the evidence produced on record by the complainant this court is of the considered view that complainant has failed to prove these allegations that accused are given the application in order to defame the complainant. Under article 19 clause 1 of the Constitution the Right to speech and expression has been provided to the citizen which provides that every citizen of India has a right to speech and expression where he can express his concern before the appropriate authority. In this case perusal of evidence reveals that all these persons have given their application regarding the conduct of the complainant and other persons in discharge of his official duties of being Sarpanch and the members of the Ram Bag samiti. Though the said application could not have been proved by the accused persons, but no bad intention on the part of accused for defaming the complainant and the other persons is proved by the complainant.

*Further Ld. counsel for the accused has also argued that the area of Shamshan Bhumi and the Mandir are adjoining to each other and as per admission of all the CWs the trees were lying uprooted at the spot when the investigation was conducted and it is also mentioned in the report of ASI Kundan Singh. He has further argued that one room was also lying constructed there. In this regard this court has gone through the cross examination of all the CWs and found that all the CWs has admitted in their cross examination that trees were lying uprooted at the spot. Further CW4 ASI Kundan Singh who has conducted enquiry at the spot and submitted his report Ex.CW4/1 has admitted in his cross examination that some trees were lying uprooted in the cremation ground. One room was already constructed in the cremation ground and one was under construction by Devi Chand. Therefore in the considered view of this court the complainant could not prove that the application was moved by the accused only to defame the complainants and the members of Ram Bag samiti. In this regard this court is guided by the law laid down by **Hon'ble Punjab and Haryana High Court in case titled as Balwinder Kaur vs Kuldeep Singh and another, 2016 (2) R.C.R (criminal) 251**, wherein the Hon'ble court has held that making a complaint to the senior officer is not defamation even if it is found that the allegations could not be proved. Further this court is further guided by the*

*law laid down by **Hon'ble Punjab and Haryana High Court in case titled as Col. (Retd.) Ranbir Singh Yadav vs Chet Ram, 2016 (3) RCR (criminal) 1007**, wherein the Hon'ble court has held that merely because the respondent has filed the complaint to the police and the consequence thereof the police have questioned the applicant this act does not fall within the ambit of section 500 IPC. The applicant has not been able to establish that in what manner, filing of complaint by the respondent has harmed the reputation of the applicant. Further **Hon'ble Punjab and Haryana High Court in case titled as Jarnail Singh and others vs Ranbir Singh, 2014 (7) R.C.R. (criminal) 2368**, a has observed that in it is evident that petitioners who were residents of the village, in good faith, had removed the representation before the director to look into the irregularities committed by the respondent however, the said fact would not amount to defamation as it wouldn't be covered under the 8th exception to section 499 IPC-hence continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law. The Hon'ble court has further held that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.*

Hence in view of above discussion this court is of the considered view that the accused has moved to the application in

question to the SDM Abohar who was having lawful authority over the Sarpanch and the members of the Ram Bag Samiti who were taking care of the government property at the local level. Though the said the application could not have been proved on record by the accused, but it cannot be said that they have moved the application only to defame the complainant and the members of the Ram Bag Samiti. As per the law laid down by triple Punjab and Haryana High Court in above stated authority even if the application moved to a senior officer could not have been proved on record, it does not amount to defamation. Further the complainant has failed to prove his allegations that the accused has moved the present application in question only for the purpose of defamation of the complainant and the members of the Ram Bag Samiti as contained in the complaint beyond shadow of reasonable doubt, hence point No. 1 is decided against the complainant and in favour of the accused.

Conclusion

In view of my discussion on point No. 1, this court reached the conclusion that the complainant has failed to prove his allegations as contained in the complaint beyond shadow of reasonable doubt, therefore the complaint of the complainant is hereby dismissed and the accused are acquitted of the notice of accusation framed against them. Their bail bonds and surety bonds are hereby discharged. File be consigned to the record

room of Abohar after due compliance.”

Learned counsel for the applicant has argued that it is apparent from the statement of complainant that the accused persons have filed a false application before the authorities, wherein the matter was inquired into by the police and the same was found to be false. It is submitted that in this manner, the accused, knowingly that the application is false, had filed the same before the authorities, just to defame the applicant-complainant. Learned counsel further submits that the application given against the applicant to the Sub Divisional Magistrate, Abohar that while working as Sarpanch, he has cut the trees standing on the panchayat land, was in fact moved with an intention to harm his reputation and therefore, there was sufficient evidence to prove that the offence of defamation is committed.

After hearing learned counsel for the applicant, I find no ground to interfere in the finding recorded by both the Courts below: -

- (a) As noticed above, even on an earlier occasion, the trial Court had dismissed the complaint, however, the case was remanded back by the revisional Court with a direction to the trial Court to pass a fresh order and thereafter, the trial Court has again dismissed the complaint.
- (b) As per the report of ASI Kundan Singh, the trees, which were standing on the panchayat land, were found uprooted at the spot, however, it was found in this report that the applicant has not uprooted the trees. Therefore, the purpose of filing the application was to apprise the authorities about cutting of the

trees from the panchayat land, which is public property and therefore, the applicant-complainant failed to prove that the application was moved only to defame the complainant, being a Sarpanch.

- (c) The trial Court, while discharging the accused-respondents, had passed a well reasoned order, based on the various judgments of this Court that the application was made by the residents of the village in good faith to bring this fact to notice of the authorities about the irregularities committed by members of the Panchayat and therefore, the application against the applicant-complainant do not amount to defamation, as per 8th Exception to Section 499 IPC.

Accordingly, the present application for grant of leave to file appeal is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

22.07.2019
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No