

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1) CRM-M No.16537 of 2010 (O&M)

Devinder Singh

..... Petitioner

Versus

Hardarshan Singh

..... Respondent

(2) CRM-M No.15070 of 2010 (O&M)

Harjeet

..... Petitioner

Versus

Hardarshan Singh

..... Respondent

(3) CRM-M No.31621 of 2011 (O&M)

Parm Paul Singh

..... Petitioner

Versus

Surinder Singh

..... Respondent

(4) CRM-M No.38449 of 2012 (O&M)

Parm Paul Singh

..... Petitioner

Versus

Hardarshan Singh Dilawari and another

..... Respondents

Date of Decision: 12.03.2019

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. R.S.Cheema, Senior Advocate assisted by
Mr. Kartik Tayal, Advocate for the petitioner.

Mr. Gagandeep Singh Sirphikhi, Advocate
for the respondent.

*CRM-M No.16537 of 2010 (O&M);
CRM-M No.15070 of 2010 (O&M);
CRM-M No.31621 of 2011 (O&M) &
CRM-M No.38449 of 2012 (O&M)*

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MAHABIR SINGH SINDHU, J.

This order shall dispose off the aforementioned four petitions being identical on facts and law between the parties.

All the petitions have been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) by Devinder Singh, Harjeet Kaur and Parm Paul Singh for quashing of different complaints along with summoning orders as well as consequential proceedings resulting therefrom.

It is clarified that above Harjeet Kaur and Parm Paul Singh are daughter and son, respectively, of Devinder Singh. Also necessary to mention here that Param Paul Singh had filed two petitions, whereas Harjeet Kaur and Devinder Singh one each.

Similarly, there are three different respondents/complainants i.e. Hardarshan Singh, Amarjeet Kaur and Surinder Singh.

Amarjeet Kaur and Surinder Singh are wife and younger brother, respectively, of Hardarshan Singh. Also deserves to be mentioned here that respondent-Surinder Singh was married with petitioner-Harjeet Kaur.

The dispute primarily has arisen on account of matrimonial acrimony between Harjeet Kaur and her husband-Surinder Singh.

CRM-M No.16537 of 2010 has been filed by Devinder Singh, whereas CRM-M No.15070 of 2010 by Harjeet Kaur for quashing of common Complaint No.176 dated 10.12.2007 as well as summoning order dated 18.12.2009, passed by learned Judicial Magistrate 1st Class,

Amritsar (*for short 'JMIC'*).

CRM-M No.31621 of 2011 is by Parm Paul Singh (brother of Harjeet Kaur) for quashing of Complaint No.308 dated 30.09.2005 as well as summoning order dated 15.11.2008, passed by learned JMIC, Amritsar, whereas CRM-M No.38449 of 2012 by Parm Paul Singh for quashing of Complaint No.497 dated 01.10.2005 as well as summoning order dated 29.03.2008, passed by learned JMIC, Amritsar. Primarily, the basis for filing the complaint(s) is alleged communication dated 30.08.2002 (*P-7 in CRM-M-31621-2011*), made with some defamatory remarks.

A brief undisputed factual background giving rise to the present litigation is that Harjeet Kaur was married with Surinder Singh on 19.01.1985 at Guruharsahai, District Ferozepur and out of their wedlock, two daughters, namely, Indeeep Kaur and Prabhjot Kaur were born on 14.05.1986 and 14.09.1988, respectively. On account of some temperamental differences, a petition under Section 13 of the Hindu Marriage Act, 1955 (*for short 'Act'*) dated 20.07.2002 was filed by Surinder Singh against Harjeet Kaur, *inter alia*, on the grounds that his wife has levelled allegations against him to the effect that he is having “illicit relations” with his elder brother's wife (*Bhabhi*), namely, Amarjeet Kaur, but later on, the said petition was dismissed as withdrawn, vide order dated 05.05.2003, passed by learned Additional District Judge, Amritsar.

In the interregnum, offending communication dated 30.08.2002 is claimed to had been made to DIG, Border Range, Amritsar by Parm Paul Singh with the similar allegations as made in divorce petition, referred

above, that Surinder Singh is having “illicit relations” with his elder brother's wife (*Bhabhi*), namely, Amarjeet Kaur, which was entrusted to Senior Superintendent of Police, Amritsar for further action, however, it seems that the matter was closed by the police as there is nothing on record by either side and that has been made the basis for filing Complaint No.308 dated 30.09.2005 (*P-8 in CRM-M No.31621 of 2011*) as well as Complaint No.497 dated 01.10.2005 (*P-7 in CRM-M No.38449 of 2012*).

It is contended by learned Senior Counsel for the petitioner(s) that impugned complaints as well as summoning orders are abuse of the process of the Court being revengeful in nature, which disclose no offence from their bare reading and as such, liable to be quashed and set aside by this Court, *inter alia*, on the following grounds:-

- 1. There is a considerable delay in filing the complaint(s);*
- 2. Criminal Complaint No.6 dated 06.01.2004 was filed on the basis of communication dated 30.08.2002 by Amarjit Kaur against Harjit Kaur, under Sections 499, 500 & 504, IPC and which has already been dismissed by learned Chief Judicial Magistrate, Amritsar, vide judgment dated 01.02.2010 (P-4 in CRM-M-15070-2010) and attained finality;*
- 3. Civil Suit No.55 dated 31.08.2005, titled as '**Surinder Singh Dilawari** Versus **Parm Paul Singh Duggal**' for damages of ₹ 1 Lakh on the basis of alleged defamatory remarks made in the communication dated 30.08.2002 was also filed and which has been dismissed by learned trial Court, vide judgment and decree dated 25.01.2013 and even attained finality as there is no further challenge to the same;*

- 4. Parties are living separately since long and pendency of the criminal proceedings before learned trial Court(s), resulting out of the impugned complaints as well as summoning orders, are total abuse of the process of the Court, just to harass the petitioner(s) without any remote chance of conviction;*
- 5. Petitioner-Devinder Singh i.e. father of Harjeet Kaur and Parm Paul Singh has already died on 16.09.2016 at the age of 88 years;*
- 6. Petitioner-Harjeet Kaur is residing separately since long from her husband-Surinder Singh, leading a peaceful life as elder daughter after completing MBA already married, whereas younger is a BDS Doctor;*
- 7. From bare reading of the complaint(s) in question, no offence under Section(s) 499/500, IPC is made out in view of the exception 8 of Section 499, IPC.*

On the other hand, learned Counsel for the respondents/complainants opposed the submissions made on behalf of the petitioner(s) and argued that there is no delay in the present cases as the complaint(s) were filed well within the prescribed period of limitation of three years. Further submitted that acquittal of Harjeet Kaur by learned JMIC, Amritsar vide judgment dated 01.02.2010 as well as dismissal of Civil Suit filed by Surinder Singh against Param Paul Singh on 25.01.2013 are not helpful to the petitioners as a similar petition bearing CRM-M No.3443 of 2007, titled as '**Harjeet Versus Surinder Singh**' has already been dismissed by this Court, vide order dated 03.04.2012 and they are not entitled for the benefit of exception 8 of Section 499, IPC in view of the facts and circumstances of the present cases.

Heard both sides and perused the paper-book.

Before proceeding with the matter, it is necessary to reproduce the contents of the alleged communication dated 30.08.2002, which is the bone of contention for giving rise to the initiation of the proceedings against the present petitioner(s) and same reads as under:-

DIG Sahib,

Subject: Complaint against:

*1. Surinder Singh (husband) 2. Hardarsahn Singh (Jeth),
3. Amarjeet Kaur (Jethani), 4. Sukhdarshan Kaur (mother-in-law),
5. Harbans Singh (father-in-law), r/o 19-A, Majitha Road, Amritsar.*

Again, harassment of my sister Harjeet through their hands because of demand of dowry, beating and mentally harassing her, attempt has also been made to kill her, earlier two/three times.

Another reason is that Surinder Singh husband is having illicit relations with his 'Bharjai' (Amarjeet Kaur).

Not only they are harassing her, but even whole of the expenses of mine sister as well as her two minor daughters are being born by us.

Please do the justice.

Yours

(Sd/-)

Parm Paul Singh

Brother of Harjeet

R/o 1277 37-B, Chd.

Tele. 691229

Mobile 98140-33525

Perusal of the communication, reproduced above, reveals that there were general allegations of harassment, demand of dowry, beating, mental torture against Surinder Singh (husband), Hardarshan Singh (*Jeth*), Amarjeet Kaur (*Jethani*), father-in-law and mother-in-law of Harjeet Kaur and reason was assigned that Surinder Singh (husband) was having “illicit relations” with Amarjeet Kaur (*Bhabhi*) and said communication is shown to have been made by Parm Paul Singh i.e. brother of Harjeet Kaur.

It is averred in the complaint that allegation of “illicit relations” amounts to defamation, thus, punishable under Section 500, IPC and resultantly, petitioners are liable to be prosecuted for the same.

Admittedly, Harjeet Kaur and Surinder Singh were married on 19.01.1985 and out of their wedlock, two daughters, namely, Indeeep Kaur and Prabhjot Kaur were born. Elder one is already married after completion of her MBA, whereas younger is a BDS Doctor. This is also an admitted fact by both sides that husband and wife are living separately since quite long.

During the course of hearing, it was admitted by both sides that Devinder Singh (father of Harjeet Kaur and Param Paul Singh), who was/is also one of the petitioners being an accused/respondent in Complaint No.176 dated 10.12.2007, died on 16.09.2016 at the age of more than 88 years.

Paper-book reveals that a Civil Suit No.55 dated 31.08.2005, titled as '**Surinder Singh Dilawari Versus Parampal Singh Duggal**', was filed for claiming damages of ₹ 1 Lakh on the basis of defamatory remarks contained in the communication dated 30.08.2002, but the same has already been dismissed by learned trial Court, vide judgment and decree dated 25.01.2013 (*P-19 in CRM-M-38449-2012*) and attained finality as there is no further challenge by plaintiff-Surinder Singh.

A perusal of the aforesaid judgment reveals that on the basis of pleadings of both sides, four Issues were framed and Issue No.1, being material, reads as under:-

“ Whether the plaintiff was entitled to damages of Rs.1,00,000/- against defendant No.2 in respect of defamation? OPP ”

Learned trial Court, while recording findings on the above Issue, came to the conclusion that plaintiff-Surinder Singh Dilawari has failed to prove that any such complaint was made against him by defendant-Parampal Singh Duggal and para 10 of the judgment, being relevant, extracted as under:-

“ As regards written complaint dated 30.08.2002 bearing diary no.24085 written by defendant to DIG Border Range, Amritsar against plaintiff, the same is brought on record as mark A and I have perused the same. Defendant, during his cross-examination, was confronted with above document and he categorically denied his signature at 'point B' on it. Photocopy of document is inadmissible in evidence. DW4 brought on record Ex.P2 to show that only photocopy of above complaint was available in their office but no attempts were made by plaintiff to lead secondary evidence with respect to above application. I have also perused Ex.P1 the report no.89 dated 08.04.2007 prepared by SSP, Amritsar. The concerned official who prepared the above report has not been examined and therefore Ex.P1 cannot be held to be proved. Moreover, it is nowhere asserted in the contents of Ex.P1 that defendant Paramjit Singh had raised allegations against plaintiff that latter had illicit relations with his “Bharjai” the instant case of plaintiff was based on the written complaint dated 30.08.2002 bearing diary No.24085 alleged addressed by defendant to DIG Border Range, Amritsar with the assertions that because of contents of above complaint, plaintiff was defamed and his reputation was lowered in the eyes of society, but the above complaint has not been proved in accordance with law.

Plaintiff has failed to prove if defendant actually moved such complaint against plaintiff and in these circumstances, question of causing loss to reputation of plaintiff by above complaint does not arise. Accordingly, present issue is decided against plaintiff. ”

A bare glance at the above findings, recorded by learned Civil Court, makes it apparently clear that plaintiff-Surinder Singh Dilawari even failed to substantiate that such a communication dated 30.08.2002 was ever made by Parm Paul Singh as he denied his signature on this document and plaintiff miserably failed to prove the same in accordance with law. Still further, the report No.89 dated 08.04.2007 (Ex.P-1), prepared by SSP, Amritsar, was also not proved and as such, the very basis of the complaint (s) i.e. the allegation of “illicit relations” remained unsubstantiated before learned Civil Court against the respondent(s)/complainant(s) and those very allegations have been made the foundation for the prosecution of the petitioner(s) in the present litigation.

Admittedly, on the basis of communication dated 30.08.2002, Criminal Complaint No.6 dated 06.01.2004, under Sections 499, 500 and 504, IPC was also filed before the Court of competent jurisdiction by Amarjeet Kaur against Harjeet Kaur, but after hearing both sides and taking into consideration the entire material available on record, respondent-Harjeet Kaur was acquitted by learned Chief Judicial Magistrate, Amritsar, vide judgment dated 01.02.2010, while observing that since allegations were not published and as such, no offence under Section 500, IPC has been made out against her.

Still further, as per the averments made by the respondent(s) themselves, the alleged communication is dated 30.08.2002 and the complaint was filed on 26.09.2005 that is approximately after a period of three years and which clearly shows that the same has been filed just to vent their personal vengeance, otherwise, had there been any feeling of such humiliation at the instance of the petitioners, warranting defamation, then there was no occasion to wait for a considerable period of three years for filing the present complaint(s). Therefore, in the opinion of this Court, the action of the respondent(s) by filing the present complaint(s) is nothing, but just to keep their nostalgic warring memories alive against the petitioner(s) while continuing to drag them in avoidable litigation.

The argument of learned Counsel for the respondent(s) to the effect that CRM-M No.3443 of 2007, titled as '**Harjeet Versus Surinder Singh**' has already been dismissed by this Court on 03.04.2012 is of no help for the simple reason that a perusal of that order (*R-2 in CRM-M-31621-2011*) reveals that neither the judgment and decree dated 25.01.2013, passed by learned Civil Court; nor the judgment of acquittal dated 01.02.2010, passed by learned Chief Judicial Magistrate, Amritsar were the subject matter of consideration at that time and these are the most material documents for adjudication of the present matters in controversy between the parties. Moreover, both the trial Courts i.e. on criminal as well as civil sides have already crystallized the issue against the respondents/complainants while observing that communication dated 30.08.2002 as well as consequent report No.89 dated 08.04.2007 (Ex.P-1),

prepared by SSP, Amritsar, were not proved and also to the effect that no offence under Section 500, IPC is made out against the petitioner(s). Thus, the very basis of the present complaint(s) i.e. the allegation of “illicit relations” is a closed chapter and the continuation of the criminal proceedings on the basis thereof is nothing, but can be termed as litigator's paradise just to multiply the dockets of the trial Court having not even the remotest chance of conviction of the surviving petitioner(s).

As concluded above, the crucial issue of “illicit relations”, in the alleged communication dated 30.08.2002, has already attained finality on civil as well as criminal side, therefore, in view of the facts and circumstances of the present case, there is no need to further dilate upon the exception 8 of Section 499, IPC.

It is noteworthy that CRM-M No.16537 of 2010 has been filed by Devinder Singh, whereas CRM-M No.15070 of 2010 is by Harjeet Kaur for quashing of common Complaint No.176 dated 10.12.2007 as well as summoning order dated 18.12.2009, passed by learned JMIC, Amritsar on the allegations that an FIR No.49 dated 27.02.2004, under Sections 204, 218, 221 and 120-B, IPC, was registered at Police Station, C-Division, Amritsar by Devinder Singh Duggal at the instance of petitioner-Harjeet Kaur and which was found to be without any substance, resulting into cancellation report and which was accepted by the Court of competent jurisdiction.

Since the *de facto* complainant of the FIR i.e. Devinder Singh is no more; as he died on 16.09.2016, therefore, continuation of the

proceedings against a dead person for the commission of offence under Sections 499 and 500, IPC on the basis of Complaint No.176 dated 10.12.2007 are not legally permissible. As a result thereof, the pendency of the same very complaint against Harjeet Kaur, being the co-accused, is also an exercise in futility in view of the fact that FIR No.49 dated 27.02.2004, which is the basis for institution of the said complaint, was allegedly registered by Devinder Singh (since deceased) and not by petitioner-Harjeet Kaur. Still further, Harjeet Kaur has not been summoned in this complaint with the aid of any abetment or conspiracy and as such, the continuation of this complaint and consequential proceedings pending against Harjeet Kaur would be flocking the dead horses and merely wastage of precious time of the learned trial Court in view of the death of the main accused i.e. Devinder Singh.

Although, in routine, this Court ought not to enter into the merits of the controversy while invoking jurisdiction under Section 482 Cr.P.C. for quashing the criminal proceedings in such like case(s), but there cannot be an absolute bar if the circumstances so warrant i.e. being an abuse of the process of the Court or the criminal proceedings are totally vexatious or to secure the ends of justice or no offence at all has been made out from the bare reading of the complaint(s) itself.

In view of the facts and circumstances, discussed hereinabove, this Court is of the firm opinion that present petitions deserve to be allowed, not only in the interest of the petitioner(s), but for betterment of both sides to bury their bitter past and to live with peace and harmony as

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the continuation of the complaint(s) in question as well as criminal proceedings will be nothing, but an abuse of the process of the Court.

Accordingly, all the above petitions are allowed and the impugned criminal complaints, summoning orders along with all consequential proceedings resulting therefrom pending before learned trial Court(s) are quashed and set aside.

March 12th, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>