

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

CRM-M-26519-2015 (O&M)
Date of Decision : 30.5.2019

Siddharth SanwariaPetitioner

Versus

P.C. SanghiRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajiv Kataria, Advocate for the petitioner.

Mr. P.C. Sanghi, Respondent in person.

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioner Siddharth Sanwaria has approached this Court seeking quashing of complaint dated 14.11.2011 (Annexure P-3) as well as summoning order dated 6.7.2013 (Annexure P-4) passed thereupon by the Judicial Magistrate, Chandigarh whereby the petitioner has been summoned to face trial for an offence under Section 500 IPC. The petitioner also assails order dated 15.7.2015 (Annexure P-8) whereby the learned JMIC has ordered for proceeding with the case as a summons case while earlier the same was proceeding as a warrants case.
2. A few facts necessary to notice for disposal of this petition are that respondent P.C. Sanghi filed a complaint dated 14.11.2011 (Annexure P-3) against the petitioner for offence under Section 499 punishable under Section 500 of IPC alleging therein that he retired as a Chief Engineer from

Housing Board, Haryana and has been an ex-nominated Councillor of Municipal Corporation, Chandigarh and has dedicated his post-retirement life to social service and to serve community at large and had received several commendation certificates in this regard. It is asserted that complainant has continuously been elected as President of Citizen's Association, Sector 21, Chandigarh for a decade and has also been elected as Chairman of Federation of Sector Welfare Associations, Chandigarh (in short-FOSWAC) since the last 8 years. The complainant has alleged that the respondent – petitioner has been indulging in dubious activities since long. The gist of the said dubious activities, as extracted from the complaint(Annexure P-3), mainly pertaining to conduct and antecedents of accused, may be stated as follows :-

- (i) that the accused, his father, mother and brother had furnished false affidavits regarding their residential addresses so as to avail undue benefit of allotment of dwelling units and although pursuant to investigation, the District Attorney, Chandigarh had recommended registration of case against them for offences under Sections 420, 120-B and 511 IPC but they were able to stall the registration. Subsequently, a private complaint was filed against the aforesaid persons in which they were summoned.
- (ii) that the accused, as an Advocate, had accepted bribe of ₹ 1 lac in the name of High Court Judge for the purpose of securing bail and consequently the Bar Council of Punjab and Haryana had suspended licence of the accused for 1 year which the accused, later on, managed to get restored and managed to get the complaint titled 'Rajesh Kumar Vs. Siddharth Sanwaria' referred to the Bar Council of India, New Delhi, under Section 36-B of Advocates Act, 1961, which is still pending.

(iii) that the complainant had brought to the notice of Home Secretary, Law, Chandigarh Administration, the professional and social misconduct of the accused and pursuant thereto the accused/petitioner was removed from the panel of Advocates by the Chandigarh Administration while observing as follows :-

“ Social and professional behaviour of Sh. Siddharth Sanwaria, Advocate is injurious to the decorum and dignity of the Bar as well as posing a danger to the peace and tranquility of the area.”

(iv) that the accused is in the habit of threatening and intimidating innocent persons who do not toe his line and in one such case, he was summoned on the basis of complaint filed by Shri Sanjeev Goel for offence under Sections 323/506/34 IPC by the Court of Shri R.K.Singla, JMIC on 15.1.2008, which is still pending.

(v) that the accused while misusing his position as Government Pleader of Chandigarh Administration had been issuing letters to private parties on his official letter-head.

3. The conduct of accused/petitioner, alleged to be defamatory, has been stated in complaint (Annexure P-3) as follows:

(i) It is alleged that the accused was earlier appointed as an Executive member of Citizen's Association, Sector 21, Chandigarh in the year 2004-2005 whereas his father was Senior Vice-President and they were working in close camaraderie with complainant but later parted company on account of the fact that father of the accused was aspiring for the post of Chairman of FOSWAC. However, his name was not included by the electoral college due to which he nursed a grudge against the complainant. In 2007 when father of accused contested elections for the post of President against the complainant, he used all sorts of unethical practices including defamatory, derogatory and

undignified expressions with an intent to damage the reputation of the complainant.

- (ii) It is further alleged that in order to defeat the complainant the accused and his father even instigated a lady named Anarkali who was earlier working as a Sweeper in the Association to file a complaint against the complainant levelling allegations that the complainant had unlawfully removed her from service and had not been making complete payment of salary and even alleged that the complainant had used derogatory remarks about her caste. It is alleged that the accused even pressurised 12 other 'Safai Karamcharis' of the Association to state against the complainant. However, the matter was investigated by DSP as well as by SSP and thereafter IGP submitted his report to Governor of Punjab and Administrator, U.T., Chandigarh clearly holding that the complaint filed by Anarkali was 'politically motivated'.
- (iii) It is further alleged that the accused submitted a complaint against the complainant dated 7.11.2011(Annexure P-2) to the Governor of Punjab and the Administrator of U.T. Chandigarh and circulated copies of the same to President Congress Chandigarh and also to Sh. Hitesh Kumar Puri, Advocate, General Secretary FOSWAC, with an intent to defame and degrade the complainant in the eyes of public and to prejudice the mind of the Administrator, U.T. Chandigarh. It is alleged that the said complaint had been made to mar the chances of the complainant for being nominated as a Counsellor of Municipal Corporation, Chandigarh. It is alleged that the complainant read news about the same which had appeared in the newspaper i.e. "Aaj Samaj" on 9.11.2011 and thereafter obtained a copy of the complaint from Sh. Hitesh Kumar Puri, General Secretary, FOSWAC, wherein complainant has been portrayed as a corrupt officer and his service record had been projected in an adverse

manner and twisted, distorted and concocted versions had been highlighted out of personal bias and prejudice.

4. The trial Court, after referring to testimonies of the 7 witnesses examined by the complainant, found sufficient grounds to proceed against the accused /petitioner and consequently passed order dated 6.7.2013(Annexure P-4) summoning the accused to face trial for offence under Section 500 of IPC, which has been assailed in the present petition.
5. The learned counsel for the petitioner while assailing the complaint dated 14.11.2011 (Annexure P-3) and the summoning order dated 6.7.2013 (Annexure P-4) has broadly made the following submissions:
 - (i) that the alleged defamatory statements can not be said to be false and that infact all the facts stated in the petitioner's complaint dated 7.11.2011 (Annexure P-2) are borne out from record and are true statements of facts and that the purpose of making the statement was "public good" i.e. to ensure that undeserving person is not nominated as a Councillor of the city. The learned counsel places reliance upon 2007(4) RCR(Crl)6 Aroon Purie Vs. State of Haryana to contend that it is not defamation to impute anything which is true concerning any person if it be for the 'public good' that the imputation should be made or published.
 - (ii) that since the fact that the complainant had been suspended from service during his tenure has not been denied specifically by the complainant in his complaint and complainant has merely stated that twisted facts have been stated in the petitioner's complaint dated 7.11.2011 (Annexure P-2), therefore it has to be taken that complainant admits the facts to be true and consequently the conduct of petitioner can not be said to be false or defamatory.

(iii) that, in any case the petitioner's complaint dated 7.11.2011 (Annexure P-2) had been made to the Governor of Punjab and Administrator, U.T. Chandigarh while highlighting misconduct of the complainant in his official capacity and the Governor of Punjab, being the Administrator of U.T. Chandigarh was the person in "authority" over the complainant and the right person to be approached in such like eventuality and thus, the act of petitioner in submitting complaint (Annexure P-2) to the Governor Punjab and Administrator of U.T. Chandigarh in "good faith" would be covered under '*Eighth Exception*' to Section 499 of IPC. The learned counsel relies upon a judgement of Supreme Court reported as AIR 1999 SC 1028 Rajendra Kumar Sitaram Pande vs. Uttam and another to hammer forth his aforesaid submission.

(iv) that since apart from the Governor of Punjab and Administrator U.T. Chandigarh, a copy of the said complaint had been forwarded to the President, Congress-I, Chandigarh Pradesh Congress Bhavan, Chandigarh and Shri Hitesh Puri, Advocate, General Secretary, FOSWAC, Chandigarh only in official capacity as the name of the complainant was being recommended for nomination as Councillor, Municipal Corporation, Chandigarh, by FOSWAC, therefore, in these circumstances, it cannot be said that there had been any publication of the alleged defamatory material by the accused so as to attract an offence under Section 499/500 IPC.

6. The respondent/complainant, who is appearing in person, on the other hand has submitted that he has an unblemished record of service and it was on account of his dedicated work and conduct that he got all the promotions and retired from the top-most post in the department i.e. as Chief Engineer upon attaining the age of superannuation with all the retiral benefits. It has further been submitted that although the petitioner and his father also used to

appreciate the work and conduct of the complainant as President of Citizens Association, Sector 21, Chandigarh, but the petitioner later developed a personal grudge against the complainant after petitioner's father could not succeed in getting appointed as Chairman of FOSWAC and was defeated by the complainant in the election of the President of Citizen Association, Sector 21, Chandigarh held on 13.05.2007. It has further been submitted that thereafter the petitioner instituted almost 3 dozen false and frivolous complaints against the complainant with various authorities but all such complaints were either filed or dismissed by the authorities concerned as no substance of truth was found in the same. The respondent/complainant in this context has referred to a statement of such complaints and Court cases annexed with his reply as Annexure R-2 and Annexure R-3.

7. It has been submitted by the complainant that the complaint (Annexure P-2) filed by the petitioner to the Governor of Punjab and Administrator of U.T. Chandigarh was filed with the sole objective of sabotaging the chances of the complainant of being nominated as a Councillor and such complaint cannot be said to have been filed in 'good faith' or for 'public good' so as to fall within the "*Eighth Exception*" to Section 499 of IPC. It has been submitted that since the complaint(Annexure P-2) filed by the petitioner to the Governor of Punjab and Administrator of U.T. Chandigarh smacks of malice and did not portray the correct picture and was defamatory, the petitioner has committed an offence of 'defamation'.
8. It is further submitted by the respondent/complainant that even the conduct of the petitioner in instigating Anarkali to file complaint with scandalous allegations against the complainant which was ultimately found to be

'politically motivated' would also attract an offence under Section 500 of IPC. The respondent, in this context, has drawn the attention of this Court to report of Dy.S.P., annexed with complaint as Annexure C-7, wherein after a detailed inquiry, the following findings have been recorded:

“..... from the enquiry conducted so far by S.I. Udaypal Singh and previous enquiry conducted by Dy.S.P., East, it appears that the above allegations have been levelled by Smt. Anarkali(complainant) against Mr P.C. Sanghi at the instance and motivation by the opposite group headed by Dr. A.P. Sanwaria, with the only motive to win the confidence of the voters by defaming his opponent and thus getting benefit out of it. Smt. Anarkali filed different complaints which contradict each other with some ulterior motive.

..... The said election passed off peacefully as elaborate security arrangement had been made by local police on 13.5.2007. Now, after the elections were over and Sh. P.C. Sanghi was declared elected, both the parties are levelling allegations and counter allegations against each other on one pretext or the other as per details given above by SHO-19.”

9. I have considered rival submissions addressed before this Court. It is mainly the petitioner's complaint (Annexure P-2) containing various allegations as regards the conduct and past of the complainant which is alleged to be defamatory. It has been stated therein that the complainant had been placed under suspension for use of inferior quality of sanitary and other building materials and that although he was charge-sheeted but the complainant allegedly managed to manipulate and stall criminal action against him. It has further been stated therein that the complainant through his shrewd skills managed to avoid criminal prosecution for his serious and gross misconduct. The petitioner claims that all the facts stated in the petitioner's complaint

(Annexure P-2) are correct and truthful and were stated for public good in good faith.

10. The petitioner's submissions, as noticed above, are mainly to contend that he is entitled to be protected as his case falls in '*First Exception*' or in any case under the '*Eighth Exception*' to Section 499 IPC. The said exceptions to Section 499 IPC read as under:

499. Defamation. - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

First Exception. - Imputation of truth which public good requires to be made or published. -

It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Eight Exception. - Accusation preferred in good faith to authorised person. -

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.

11. Before proceeding to consider as to whether the case in hand falls within any of the exceptions to Section 499 IPC, it is apposite to refer to a judgment of Supreme Court reported as AIR 1970 SC 1372 Chaman Lal vs. State of Punjab wherein three of the most often invoked exceptions have been

discussed in context of circumstances under which the same can be invoked.

The relevant extracts read as follows:

“15. In order to come within the *First Exception* to Section 499 of the Indian Penal Code it has to be established that what has been imputed concerning the respondent is true and the publication of the imputation is for the public good. The onus of proving these two ingredients, namely, truth of the imputation and the publication of the imputation for the public good is on the appellant. The appellant totally failed to establish these pleas. On the contrary, the evidence is that the imputation concerning the respondent is not true but is motivated by animus of the appellant against the respondent.

16. The *Eighth Exception* to Section 499 of the Indian Penal Code indicates that accusation in good faith against the person to any of these who have lawful authority over that person is not defamation. We have already expressed the view that there is utter lack of good faith in accusation.

17. The *Ninth Exception* states that if the imputation is made in good faith for the protection of the person making it or for another person or for the public good it is not defamation. There is no evidence whatever to support the plea that the imputation was for the public good. The accusation was not also made in good faith. Good faith requires care and caution and prudence in the background of context and circumstances. The position of the person making the imputation will regulate the standard of care and caution. Under the Eighth Exception statement is made by a person to another who has authority to deal with the subject-matter of the complaint whereas the Ninth Exception deals with the statement for the protection of the interest of the person making it. Interest of the person has to be real and legitimate

when communication is made in protection of the interest of the person making it.”

12. A perusal of the complaint dated 14.11.2011 (Annexure P-3) would show that the complainant, apart from being aggrieved by the petitioner's complaint dated 7.11.2011 (Annexure P-2), is also aggrieved by the conduct of the petitioner in instigating a lady namely Anarkali to file a complaint against the complainant levelling allegations of use of derogatory remarks against her caste and regarding withholding of salary which were all found to be false during inquiry by senior police officials and it was reported that infact the allegations were “politically motivated”.
13. In the present case, since the petitioner himself admits that no criminal action had been taken against complainant in respect of alleged misconduct and corruption, as has been specifically stated in petitioner's complaint(Annexure P-2), it was not expected of the petitioner to highlight the said instances. Although, on the other hand, it is the case of the complainant that he retired from top-most post of Chief Engineer on attaining the age of supperannuation with full retiral benefits but even if the assertions of the accused in his complaint(Annexure P-2) regarding the service career or conduct of the complainant/respondent are taken to be correct still such statements would tend to harm reputation of the complainant so as to attract an offence under Section 499 IPC unless the petitioners/accused is able to establish that such revelation was for 'public good'. In the present case, it is *prima-facie* apparent that the purpose of the petitioner in highlighting these instances was to mar the chances of the complainant with regard to his nomination as a nominated Councillor of

Municipal Corporation, Chandigarh and also to satisfy his personal vendetta. The fact that issue of Anarkali's complaint which had been found to be false in 2007, that too during election time in 2007, was raised again in 2011 when process of nomination of Councillors was underway suggests motives other than 'public good'. This Court in 2007(4) RCR(Cr)6 Aroon Purie Vs. State of Haryana held that the doctrine of "fair comment" encompasses that if a publication which broadly speaking is true in fact and not made to satisfy any personal agenda or vendetta would seemingly be protected.

14. Although, the counsel for the petitioner has vehemently argued that he would be covered under '*Eighth Exception*' to Section 499 IPC inasmuch as he had made complaint(Annexure P-2) to the Governor of Punjab and Administrator of U.T. Chandigarh to whom the complainant would be subordinate, but since in the present case, a copy of the petitioner's complaint containing defamatory material was also sent to the President, Congress-I, Chandigarh Pradesh Congress Bhavan, Chandigarh and Shri Hitesh Puri, Advocate, General Secretary, FOSWAC, Chandigarh and also came to be published in the newspaper, the petitioner may not be able to seek protection of '*Eighth Exception*' to Section 499 IPC.
15. Further, as per settled position of law, in order to establish good faith, it has to be seen - firstly circumstances under which defamatory matter was written or uttered; secondly, whether there was any malice; thirdly, whether the accused made an enquiry before he made allegations; fourthly, whether there are reasons to accept version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith.

16. The contention of the petitioner that the complainant, not having specifically denied the facts stated in petitioner's complaint(Annexure P-2), ought to be construed as an admission of facts stated in petitioner's complaint, cannot be accepted so as to extend the benefit of any of the exceptions to the petitioner at this stage in exercise of inherent jurisdiction under Section 482 Cr.PC., as in order to avail protection of the exceptions the petitioner would be required to lead evidence to establish the same. The mere fact that there is no specific denial of the imputations at this stage cannot be taken to be an admission of the facts by the complainant. It will be a matter of evidence as to whether the same are indeed correct or not and such exercise can only be done during the course of trial and it will not be possible to embark upon mini-trial at this stage.
17. This Court in 2007(4) RCR(Criminal) 462 Sudesh Vij vs. Arun Sharma, held that the defences as available to accused for bringing about the case in exceptions to Section 499 IPC is a matter which can not be gone into while exercising jurisdiction under Section 482 Cr.P.C. The relevant extracts from the said judgements read as under :
- “8. Here is a case of scathing attack by the petitioner on the character and conduct of respondent No.1. Whatever defences which are available to him with which he can justify such an allegation, cannot be gone into while exercising jurisdiction under Section 482 Criminal Procedure Code. The matter will have to be seen by the trial court to find if the allegation, as made, is amounting to *defaming* respondent No. 1 and necessary consequences accordingly would follow. It can not be said that *prima-facie* nothing is made out against the petitioner to quash the complaint or the summoning order.”

18. In the above referred case, this Court, while referring to a judgement of Supreme Court in AIR 2001 Supreme Court 2037 M.N.Damani vs. S.K.Sinha and others, further held under :

“The Hon'ble Supreme Court in this case further observed that High Court can not at this stage say that there was no reasonable prospect of conviction resulting in case after trial. It was further observed that question whether imputations were made in good faith, in what circumstances, with what intention etc. are to be examined on the basis of evidence in the trial and hence, the trial must go on. Quashing of the complaint was held not proper in this case. In this very case, the Hon'ble Supreme Court dealt with the aspect of Exception 9 of Section 499 Indian Penal Code. As observed by the Hon'ble Supreme Court, even if it is assumed that imputations made could be covered by the said exception, several questions would still remain to be examined i.e. whether such imputations were made in good faith, in what circumstances with what intention etc. As observed by the Supreme Court, all these things can be examined on the basis of evidence at the trial.”

19. To a similar effect is a subsequent judgement of Hon'ble Supreme Court reported as 2010(6) SCC 243 Jeffrey J. Diermeier & Anr. vs. State of West Bengal, wherein while upholding a judgement of High Court dismissing a petition filed by accused under Section 482 Cr.P.C. seeking setting aside of summoning order as well as quashing of complaint under Section 500 IPC on the ground that imputations were made in good faith and that as such no offence made out under Tenth Exception to Section 499 of IPC, it was held as under:

“40. In the instant case, the stage for recording of evidence had not reached and, therefore, in the absence of any evidence on record, we find it difficult to return a finding whether or not the appellants have satisfied the requirements of "good faith" and "public good" so as to fall within the ambit of the Tenth Exception to Section 499 Indian Penal Code. Similarly, it will neither be possible nor appropriate for this Court to comment on the allegations levelled by respondent No. 2 and record a final opinion whether these allegations do constitute defamation. Reading the complaint as a whole, we find it difficult to hold that a case for quashing of the complaint under Section 482 of the Code has been made out. At this juncture, we say no more lest it may cause prejudice to either of the parties.”

20. As regards the case cited by the learned counsel for the petitioner i.e. Rajendra Kumar Sitaram Pande's case (*supra*) the accused in the cited case had made a report against complainant that he abused his officers while in drunken condition and since the complainant was found guilty in departmental enquiry, no case of defamation was held to be made out against accused in view of 'Exception Eighth' to Section 499 of IPC. However, the present case is factually distinct inasmuch as there is no finding regarding misconduct or complainant's corrupt character of any Court or in any departmental inquiry. Rather the facts are suggestive of some kind of political rivalry and vendetta between the parties. In such circumstances, the question as to whether the statements were made in “good faith” or with some ulterior motive is certainly a fact to be decided on the basis of evidence that may be led by both the parties.

21. In view of the aforesaid discussion and in light of the ratio of judgement of Hon'ble Supreme Court in Chaman Lal's case (supra) and Jeffrey J. Diermeier's case (Supra) and also ratio of judgement of this Court rendered in Sudesh Vij's case (supra), this Court is unable to accept the contentions raised on behalf of the petitioner for quashing of the complaint or the summoning order on the ground that his case would fall within the exceptions to Section 499 IPC as the said questions are questions of fact to be decided on the basis of the evidence led before the Trial Court and it would not be possible to go into the said questions while exercising inherent jurisdiction.
22. The learned counsel for the petitioner has also assailed order dated 15.7.2015 whereby an application filed by the complainant for issuance of notice of accusation in terms of Section 251 Cr.P.C. to the accused has been allowed. The learned counsel has submitted that infact the trial Court had earlier been proceeding with the trial while treating it to be warrants case and infact the matter had been adjourned for pre-charge evidence of the complainant at one stage and that in these circumstances, it was not open to the Trial Court to change the procedure and switch over to summons trial at this belated stage when infact the summoning order was passed way back in 6.7.2013.
23. I have considered the aforesaid submission. The offence of defamation is punishable with imprisonment for a period upto 2 years. As such, the case has to be tried as a summons case and not as a warrants case. Although, the Trial Court initially proceeded with a case presuming the same to be a warrants case but once the said error came to notice of the Court, it has

rectified the same by passing order dated 15.7.2015 and by ordering that notice of accusation be served upon the accused. It has been held by Hon'ble Supreme Court in a case reported as Gopal Das Sindhi and others vs. State of Assam and another 1961 AIR (SC) 986 that adopting warrant procedure in a case triable as a summons case is a curable irregularity. The relevant extract reads as under:

“10. Regarding the second contention, it is true that after the amendment of the Code of Criminal Procedure an offence under Section 448 is triable as a summons case and Mr Goswami adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of Section 537, as no prejudice to the accused has been established in the case.”

(The aforesaid judgement was delivered while interpreting Section 537 of old Cr.P.C. 1898 the contents of which are substantially the same as Section 465 of the new Code i.e. Cr.P.C. 1973)

24. Bearing in mind the ratio of Gopal Das Sindhi's case (supra), no infirmity can be found in the aforesaid order dated 15.7.2015 pertaining to change of procedure.
25. As an upshot of the aforesaid discussion this Court neither finds any ground for quashing the complaint or the summoning order or to set aside the impugned order dated 15.7.2015. There is no merit in this petition and the same is hereby dismissed.

30.5.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No