

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

203

CRM-M-27652-2017(O & M)

Date of Decision:22.07.2019

Avtar Singh Gill

....petitioner

Versus

Kashmir Singh Saini

.....respondent

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL

Present: Ms.G.K.Mann, Advocate for the petitioner

Mr.A.S.Gill, Advocate for the respondent

ANIL KSHETARPAL, J. (ORAL):

Prayer in this petition is for quashing of Complaint No.281/2016 dated 18.07.2016 and also the summoning order dated 07.06.2017 (Annexure P4), vide which the petitioner has been summoned under Section 499 IPC and all the consequential proceedings arising thereof.

On 31.07.2017, notice of motion was issued as learned counsel for the petitioner had relied upon two judgements passed by this Court i.e. ***“Shalini Mehta @ Shalu vs Dr. J.L. Mehta”***, 1993(3) RCR (Criminal) 589 and ***“Sunil Mahajan and another vs State of Punjab and another”***, 2012(2) RCR (Criminal) 219, holding that under Exception 8 of Section 499, if a complaint has been moved to police with certain allegations, which are defamatory in nature, proceedings under Section 499/500 IPC cannot be initiated.

Learned counsel for the respondent has drawn attention of the Court to a judgment passed by Hon'ble Supreme Court in the case of

“M.A.Rumugam vs. Kittu @ Krishnamoorthy” 2009 AIR (SC) 341, to contend that if an accused wants the Court to believe that his case is covered by Exception 8, it is necessary for him to prove that the accusations were made in the good faith for protection of interest of the persons making it or any other persons or for public good. He has to lead that evidence. Hence, the complaint on that basis cannot be quashed.

On the other hand, learned counsel for the petitioner has drawn the attention of the Court to order passed by Hon'ble Supreme Court in the case of *“Rajendra Kumar Sitaram Pande vs. Uttam”* 1999 AIR (SC) 1028, to contend that if the case is covered by Exception 8 to Section 499, then complaint can be quashed.

On a careful reading of the aforesaid judgment in the case of *Rajendra Kumar Sitaram Pande* (supra), it is found that the Hon'ble Supreme Court, after perusal of the allegations made, had in fact found that no case for defamation has been made out. The aforesaid judgement, does not, as a ratio decidendi laid down that whenever protection under Exception VIII is sought, the Court while exercising powers under Section 482 Cr.P.C., must quash the FIR. Judgment passed by the Hon'ble Supreme Court is no doubt binding, however, judgment passed in peculiar facts and circumstances of a particular case, cannot be said to be laying down ratio decidendi.

In view thereof, the petition stands disposed of. The petitioner is relegated to the remedy before the trial Court.

22.07.2019

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Whether speaking/reasoned

Whether reportable-

(ANIL KSHETARPAL)

JUDGE

Yes/No.

Yes/No