

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

(1)

Crl. Misc. No. M-11992-2017 (O&M)

Date of decision: December 20, 2019

Yashvant Malhotra

..... PETITIONER(s)

Versus

A.K. Sinha

....RESPONDENT(s)

(2)

Crl. Misc. No.M-13649 of 2017 (O&M)

J.N. Parsad

..... PETITIONER(s)

Versus

A.K. Sinha and another

....RESPONDENT(s)

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Arshdeep Singh Cheema, Advocate
for the petitioner in CRM-M-11992-2017.

Mr. Sumeet Goel, Advocate
for the petitioner in CRM-M-13649-2017.

Mr. Mohan Singla, Advocate for
respondent No.1.

Mr. Sukant Gupta, AP.P. for U.T. Chandigarh.

SURINDER GUPTA, J(Oral)

The complaint describes the brief facts of the case in para 3,
which are reproduced as follows:-

“That the brief facts leading to the present complaint are

as under:

(a) when the complainant was working as Commissioner and Secretary to Govt., Haryana Govt., at Chandigarh the accused no. 1, suo moto, registered a preliminary enquiry (hereinafter referred to as 'PE') in a transaction conducted during the period 1979-80, alleged to have been connected with some purchase order for WEEDICIDE issued by the complainant as the Director of Agriculture Haryana in 1980.

(b) the accused no. 1, thereafter, marked the same enquiry to accused no. 2 and ordered him to submit a P.E. report. The accused no. 2 conducted the whole P.E. within a span of 4-5 weeks and submitted a P.E. report to the accused no. 1.

(c) the accused no. 1, thereafter, suo moto registered an FIR bearing No. RC 5 of 1987 u/s 120-B Indian Penal Code read with Section 5(2) r/w 5(1) (d) of the Prevention of Corruption Act 1947 (& Sec. 5(2) r/w 5 (1) (d) of the Prevention of Corruption Act, 1947) on dated 23.12.1987 against the complainant and two others namely Kamal Oswal and Vimal Oswal. The copy of FIR dated 23.12.1987 is annexed as Annexure C-1.

(d) The accused No. 3 who was the Chief Secretary, Government of Haryana signed the sanction order for the prosecution of the complainant on the behalf of His Excellency Governor of Haryana without having shown the concerned sanction order to the then Excellency Governor.

(e) the accused no. 1, thereafter, handed over the investigation in the above-mentioned FIR to accused no. 4 who was then DSP, CBI. The accused no. 4 had completed the investigation in 28 months and after a long period of 2 years and 4 months i.e. 28 months, he filed a charge sheet on 22.08.1990 against the complainant and

two others namely Kamal Oswal and Vimal Oswal. The copy of charge sheet is annexed as Annexure C-2.

(f) the complainant was never examined by the accused No. 4 during the period of so-called above mentioned investigation on any aspect.

(g) the trial, thereafter, was conducted and during the trial prosecution examined 28 witnesses numbered as PW1 to PW29 except numbered as PW10 and produced so many documents on record.

(h) the trial Court after going through, thoroughly, all the statement of witnesses and the documents on record and arguments of the counsels of the parties pronounced its final judgment on dated 11.09.2014 and acquitted the complainant and two others from all charges. The copy of judgment of the trial Court is annexed as Annexure C-3.”

Learned trial Court on the basis of statement of complainant in preliminary evidence, observed that the accused named in the complaint have not followed the ordinary practice of registration of case, investigation, grant of sanction and putting the complainant to trial in the case registered against him.

Learned Chief Judicial Magistrate was of the opinion that respondent has been victimised and the commission of offence under Section 166 and 499 of Indian Penal Code (for short-IPC) was disclosed against petitioners Yashvant Malhotra, J.N. Parsad along with co-accused Kulwant Singh, Purshotam Lal, and Bhaskar Raj Saxena and ordered their summoning vide order dated 25.09.2015.

Petitioners filed separate revisions against the summoning order, which were dismissed by learned Additional Sessions Judge, Chandigarh

vide separate orders dated 23.01.2017.

Both the petitioners have filed above captioned petitions under Section 482 Code of Criminal Procedure (for short-Cr.P.C.) challenging the orders passed by learned Magistrate and learned Sessions Judge, Chandigarh.

The first point raised by learned counsel for the petitioners is that FIR against the respondent was registered in the year 1987 and the complaint was filed on 22.04.2015 i.e. after a period of 28 years and is barred by limitation. In support of his contention, he has relied on the observations of Hon'ble Apex Court in case of ***Surinder Mohan Vikal Vs. Ascharaj Lala Chopra (1978) 2 Supreme Court Cases 403.***

Learned counsel for the respondent has argued that the offence of defamation is a continuing offence giving recurring cause of action to the complainant-respondent. He was defamed from the year the FIR was registered against him till he was acquitted. From the date of acquittal, complaint is within limitation. In support of his contention, he has relied on the observations of Hon'ble Apex Court in cases of ***Ajay Agarwal Vs. Union of India 1993(3) SCC 609; State of Bihar Vs. Deokaran Nenshi and another 1972(2) SCC 890; and Bhagirath Kanoria Vs. State of M.P. 1984 (4) SCC 222.***

To find answer to the query as to whether the complaint filed by the complainant-respondent is within limitation, reference can be made to the observations of Hon'ble Apex Court in case of ***Surinder Mohan Vikal Vs. Ascharaj Lala Chopra (supra)***, wherein a similar question was directly answered. Order of Magistrate was challenged before the Hon'ble Apex Court on the ground that Magistrate could not take cognizance of the offence

468 Cr.P.C. had expired. The appellant before the Hon'ble Apex Court, who was working as General Secretary, had filed a complaint against respondent Ascharaj Lal Chopra, who was working as Special Assistant in the bank and Amrik Singh, working as Clerk, for the offence punishable under Section 406, 420 IPC on 15.03.1972, alleging some misappropriation by them. They were convicted by the trial Court but acquitted by the Appellate Court vide judgment dated 01.04.1975 and the judgment of acquittal was upheld by this Court. Ashcharaj Lal Chopra (respondent) filed a complaint against Surinder Mohan Vikal (complainant in complaint case) on 11.02.1976 for the offence punishable under Section 500 IPC. Learned Magistrate summoned him and the petition filed by him under Section 482 Cr.P.C. was dismissed by this Court. Taking note of all the above facts, Hon'ble Apex Court observed in para 5 and 6 as follows:-

“It will be recalled that the complaint for the commission of the offence under [section 406/420 I.P.C.](#) was filed on March 15. It has specially been stated in the respondents complaint under [section 500 I.P.C.](#) that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under [section 500 I.P.C.](#) was committed on March 15, 1972, which was the date of the within the meaning of [section 469 \(1\) \(a\) of the Code](#), and the period of three years' limitation would be calculated with reference to that date for purposes of the bar provided by [section 468](#). But, as has been stated, the complaint under [section 500 I.P.C.](#) was filed on February 11, 1976, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of offence after the expiry of the period of limitation.

The High Court ignored the bar of limitation on the ground the "cause of action for proceeding for defamation could not before he (respondent) was acquitted by the Court of Session." the respondent was acquitted on April 1, 1975, it appears that High Court took the view that the "protection of [section 468\(c\)](#) was not available to the appellant. We are constrained to say the question of "cause of action could not really arise in this as the controversy relates to the commission of an offence. It been stated, sub-section (1) of [section 469](#) of the Code specifically provides that the period of limitation prescribed in [section 468](#), in relation to an offender, shall commence (inter alia) on the date of the offence. It would therefore follow that the date of the offence was March 15, 1972, when the defamatory complaint was filed in the Court of the Magistrate, and that was the starting point for purpose of calculating the three years' period of limitation. High Court clearly erred in taking a contrary view."

The citations referred by learned counsel for respondent that it is a continuing offence, as such, are not applicable to the facts of the present case as defamation is by a particular act and is not a continuing offence. The complaint filed by respondent is clearly barred by limitation and learned trial Court and the Court of revision have committed error while overlooking this fact. As such, both these petitions deserve to be allowed on this short ground.

In view of the above settled proposition of law, it is not required to examine the other plea raised by petitioners. Both these petitions have merits and are allowed. Criminal Complaint No.76 of 2015 (Annexure P-4) and summoning order dated 25.09.2015 passed by Chief Judicial Magistrate,

Chandigarh along with all subsequent proceedings arising therefrom, are quashed, qua the petitioners.

December 20, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No