

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03rd July, 2019

+ CRL.REV.P. 412/2015 & CrI.M.A.9641/2015 (stay)

SMT PREETI MAINI(THUKRAL) Petitioner

versus

PAWAN KUMARRespondent

Advocates who appeared in this case:

For the Petitioners : Mr. Sanjeev Manchanda, Mr.Sanjay Pahwa and
Mr.Harish Chawla, Advs.

For the Respondent : Mr.Sudeep Kumar Shortriya, Manish K.Gujral and
Mr.Prakhar Singh, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner impugns summoning order dated 16.12.2014, whereby the petitioner has been summoned to face trial under Section 499 Indian Penal Code read with Section 500 IPC.

2. Petitioner is the daughter of the sister of the respondent, i.e., his niece. Subject order emanates out of a complaint lodged by the respondent against the petitioner and her husband contending that he is the only son of his parents besides two daughters. He had purchased a property in Prashant Vihar in the name of his mother and as his father was not well, he sold the said property and purchased another

flat in Sector-14, Rohini again in the name of his mother and the remaining amount from the sale proceeds were spent on the treatment of his father and for repayment of the loan taken by him for treatment of his father.

3. It is alleged that he was peacefully living with his family till the marriage of his daughter and after the marriage of his daughter, the sister hatched a conspiracy to bring about a difference between him and his mother and the sole motive was to illegally acquire the house in which the complainant was residing.

4. It is alleged that an e-mail was sent on 04.09.2013 by the petitioner to Agewell Foundation, making baseless allegations against the complainant which were defamatory in nature.

5. It is contended that the petitioner in her e-mail alleged that her maternal grandmother (i.e. the mother of the complainant) was suffering from severe domestic violence from the complainant and his wife. She was once forced to leave her house and stayed with different relatives for 1.5 years. The email further alleged that the complainant and his wife and their household servant had crossed all limits and had beaten maternal grandmother (Nani) last night and in the morning. She had injuries on her body and was sitting in the building temple since morning. With support of neighbour she has gone to nearby police station for filing a complaint again and she was in Rohini Court all alone and has not eaten anything since yesterday night. It was

further alleged that her uncle (complainant) was very rich and bribing all the people they got in touch with.

6. It is alleged in the complaint that that the above statements were defamatory containing false and baseless allegations.

7. By the impugned order, the trial court has summoned the petitioner to face trial under Section 499 IPC read with Section 500 IPC on the finding that prima facie the allegations levelled in the e-mail were defamatory in nature which could harm the reputation of a person.

8. Petitioner impugns the summoning order dated 16.12.2014 contending that the alleged offending e-mail was not defamatory in nature and in fact made a complaint about the domestic violence which was being meted out to the grandmother of the petitioner, i.e., mother of the complainant at the hands of the complainant and his wife. It is contended that the property in which the complainant was residing was owned by the grandmother and complainant with the intention of usurping the property and had been harassing the grandmother and even beating her. It is contended that the bare reading of the e-mail shows that said email was written to the NGO seeking assistance for an old lady aged about 80 years who had been beaten by the complainant, his wife and their servants and was forced to stay in a temple. It is contended that the e-mail was written *bona-fidely* with the intention of protecting the interests of the

grandmother.

9. The contention of learned counsel for the respondent is that the e-mail falsely alleges that the complainant is very rich and bribes all persons.

10. For the purpose of ascertaining the true intent of the e-mail, it would be necessary to extract the offending e-mail in toto. The offending e-mail was written by the petitioner to Agewell Foundation - an NGO which works for the welfare and empowerment of old persons.

11. Said e-mail reads as under:-

“I am writing on behalf of my maternal grandmother (Nani) Mrs. Kanta Rani who stays in Delhi and is 80 years old. From the last three years she is suffering from severe domestic violence from her son (Pawan Kumar) and daughter-in-law (Madhu). She has approached local area police multiple times but nothing has helped her so far. She was once forced to leave the house and stayed with different relatives for 1½ year.

But today my Mama, Mami and the household servant have crossed all limits and have been beating my Nani yesterday night and today morning. She has injuries on her body and was sitting in the building temple since morning. With the support of neighbours, she has gone to the nearby police station for filing a complaint again. Right now she is in Rohini Court all alone and has not eaten anything since yesterday night

I stay in Bangalore with my husband and one year daughter and feel really helpless sitting here. I have thus

approached your organisation with lots of trust to please help and guide us on what to do. My uncle is very rich and bribing all people we get in touch with him.

Mistreating your old parents and beating them is a crime and I do not understand why police is not taking any action when they can see my grandmother in such bad condition.

If I try to speak to my Mama and Mami, they threatened me and my husband does not want me to get involved into this. I am really in bad state of mind and very disturbed. Please help my Nani or else my Mama and Mami and their servant will kill her. The property is in the name of my Nani but all the documents are in the custody of my uncle.

Since she is uneducated she is not been guided properly on what she should do and we seek your help.

Following are the details of my Nani:-

Name : Mrs. Kanta Rani

Mobile Number: 8376839920 begin of the skype highlighting 08376839920 FREE end of the skype highlighting

Address, A-2, Banda Bahadur Society, Rohini Sector 14, Delhi.

Thanks for your all help and whatever you can do in this regards. I have given my number below and stay at your disposal for any information that you might need.

Regards,

Preeti”

12. Perusal of the e-mail shows that the e-mail is a complaint made

by the petitioner in respect of her grandmother contending that she is aged 80 years. The e-mail contends that she is suffering from severe domestic violence from her son and daughter-in-law, i.e. the respondent and his wife and she had approached the local area police multiple times but there was no respite. It further contends that she was made to forcefully leave the house and staying with the relatives for 1½ years.

13. The e-mail further contends that on 04.09.2013, the grandmother was beaten by the complainant, his wife and their servant at night and in the morning and that she had injuries on her body and was sitting in the building temple since morning. With the support of neighbour, she had gone to police station for filing a complaint and she was presently in Rohini Court all alone and had not eaten anything since yesterday night. The e-mail further contends that the writer of the e-mail was living in Bangalore with her one year daughter and felt helpless and approached the NGO with lot of trust for help and guidance.

14. The e-mail contents that her uncle is rich and would bribe the people who they would get in touch with him. Further, the e-mail places on record her confusion as to why police was not taking any action when they could see that her grandmother was in such bad condition. The petitioner further had stated that she had spoken to the respondents but they had threatened her not to get involved in this. The petitioner further contended that the property is in the name of the

grandmother but documents were in custody of the respondents.

15. Along with this petition, the petitioner has placed on record the MLC dated 04.09.2013 of the grandmother which shows that that the grandmother had suffered physical assault and sustained bruises below left eye, small abrasions on left cheek lateral to nose, abrasion over right ankle, bruises on right forearm and abrasion over right hand.

16. Respondent in his reply has also placed on record the MLC of the injuries sustained by his wife who is aged 48 years. The MLC suggests abrasions over right forearm, abrasions over left forearm and bruises over left forearm and left finger.

17. Respondent further placed on record a statement dated 04.09.2013 signed by the grandmother as also the complainant placing on record a settlement that had taken place. It is contended on behalf of the respondent that the settlement was in fact recorded in Hindi. The translation of the settlement, which is in Hindi, states that the mother had agreed that she would not beat his wife in future.

18. The respondent has clearly tried to misread the settlement.

19. The settlement which is in Hindi reads as under:-

मेरी पत्नी द्वारा आज दिनांक 4.9.13 को मेरी माता जी
और मेरी पत्नी की आपस में झगडा हो गया था जिसमें
अब दोनों में सुलाह हो गई है। जिसमें मेरी माता जी
(श्रीमती कान्ता) ने अब मेरी पत्नी को आगे से न मारने
का कहा है इसलिये दोनों अब आगे नहीं लडेगा। यह
रिपोर्ट को फाइल की जाये।

कान्ता

20. Reading of the settlement shows that there was a fight between the grandmother and the daughter-in-law which was resolved and the respondent has recorded the settlement in Hindi. The recording in Hindi can be translated in two fashion; one - as the respondent has done – to contend that *the grandmother had stated that she will not beat my wife in future* and the other – that *she has told the complainant's wife not to beat her in future.*

21. The grandmother is aged 80 years and the daughter-in-law was aged 48 years at the time of the incident. Both the parties had appeared before the court. It is highly improbable that an old lady of 80 years would have been in a position to beat her daughter-in-law who is aged 48 years especially when the male servant was present in the house.

22. Coming back to the e-mail which places on record the complaint of the granddaughter that her maternal grandmother was being beaten by her uncle and his wife and the servant and had been turned out of the house and had gone to the police station to make complaint. It had further alleged that she was living in the temple of the building complex having been turned out of the house.

23. The allegations made in the e-mail of a fight having taken place on 04.09.2013 and the grandmother going to the police station to make a complaint are substantiated from the MLC which clearly shows that the fight had taken place and the grandmother had been physically assaulted and had sustained injuries.

24. Section 499 IPC reads 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 expected, to defame that person.

Explanations

1. *It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*
2. *It may amount to defamation to make an imputation concerning a company or an*

association or collection of persons as such.

3. *An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

4. *No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

(a) *A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.*

(b) *A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation unless it fall within one of the exceptions.*

(c) *A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.*

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.

Second Exception.—Public conduct of public servants.—

It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further. Illustration It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending a such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharges of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as

far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest". A is within this exception if he says this is in good faith, in as much as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, in as much as the opinion which he express of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations:-

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage,

submits his acting or signing in the judgment of the public.

(d) A says of a book published by Z—“Z’s book is foolish; Z must be a weak man. Z’s book is indecent; Z must be a man of impure mind”. A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z’s character only so far as it appears in Z’s book, and no further.

(e) But if A says—“I am not surprised that Z’s book is foolish and indecent, for he is a weak man and a libertine”. A is not within this exception, in as much as the opinion which he expresses of Z’s character is an opinion not founded on Z’s book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates. Illustration A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a school-master, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth 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. Illustration If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

25. Requirement of Section 499 IPC is that a person that 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 expected, to defame such person.

26. From, the e-mail is clear that the email was not written with the intention to harm the reputation of the complainant but was written with the intention of protecting the interests of the grandmother. Read as a whole, it conveys a feeling of helplessness on the part of the petitioner, who was living far away from grandmother. She was not in a position to help when her grandmother was being subjected to cruelty and was being physically assaulted at the hands of the complainant and his wife.

27. Bare reading of the e-mail does not in any manner, convey a feeling that petitioner was intending to harm the reputation of the complainant.

28. One has to read the document as a whole and not dissect the same and draw inferences from stray words as is sought to be done by the respondent by picking and choosing sentences from the e-mail and reading them in isolation.

29. Even the imputation – *“my uncle (complainant) is very rich and bribing all the people we get in touch with.”* When read in context and conjunction of the entire e-mail, does not convey any feeling that the petitioner was intending to harm the reputation of the respondent by

the same. Furthermore, the said e-mail would be squarely covered in the Ninth Exception of Section 499 IPC as the e-mail has been written in good faith for protection of the interest of the grandmother.

30. It has also been placed on record that grandmother had also filed a case against the respondent under the Protection of Women from Domestic Violence Act.

31. There is no dispute that the grandmother aged 80 years had a fight with her daughter in law i.e. the wife of the complainant aged 48 years and in that altercation sustained injuries consequent to physical assault and sustained bruises below left eye, small abrasions on left cheek lateral to nose, abrasion over right ankle, bruises on right forearm and abrasion over right hand. There is no dispute that the property where the complainant resides is in the name of the grandmother, though he claims to have paid the sale consideration. There is no denying the fact that the title deed is in the name of the grandmother.

32. There is also no denial by the complainant to the fact that when the subject email was written by the petitioner, there was a fight between his wife and the grandmother in which the grandmother sustained injuries. The grandmother left her home and stayed in the temple of the building complex and thereafter went to the police station and even to Rohini Courts to lodge a complaint against the complainant.

33. Clearly, in the facts of the present case, trial court has erred in summoning the petitioner to face trial under Section 499 IPC read with Section 500 IPC for sending the email to Agewell Foundation a NGO seeking there intervention. The offence under Section 499 IPC is not made out, in the facts and circumstances of the present case.

34. Further, it may be seen that the entire proceedings are smack of arbitrariness and vindictiveness on the part of the complainant substantive justice requires that proceedings of such a mala fide nature should be quashed to prevent abuse of the process of the court and to secure the ends of justice.

35. The Supreme Court of India in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 has held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the*

proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

36. The present case clearly falls in category (7) as enunciated by the Supreme Court in *Bhajan Lal's* Case and is manifestly attended with mala fide and the proceeding have been maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner with a view to spite her due to private and personal grudge.

37. Clearly, the Trial Court committed an error in not noticing the above facts and in a mechanical manner issued the impugned summoning order. In view of the above, the impugned order dated 16.12.2014 summoning the petitioner to face trial for the offence under Section 499 and 500 IPC is not sustainable and is accordingly set aside.

38. Petition is allowed in the above terms.

39. Order *Dasti* under signatures of the Court Master.

JULY 03, 2019/‘rs’

SANJEEV SACHDEVA, J