

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Decided on: 7th August, 2019

+ **CRL.L.P. 668/2017**

OM PRAKASH JAIN Petitioner

Represented by: Tanya Goel, Advocate

Versus

SMT. PUSHPA JAIN Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 19068/2017

For the reasons stated in the application, delay of 130 days in filing the leave to appeal petition is condoned. Application stands disposed of.

CRL.L.P. 668/2017

1. Aggrieved by the judgment dated 30th April 2016 whereby the learned Metropolitan Magistrate acquitted the respondent for the offences punishable under Section 500 IPC, the petitioner has preferred the present leave petition.

1. Brief facts of the case as per the complaint of the petitioner are that the petitioner runs his business of paper merchant under the name and style of M/s OM PRAKASH SANJIV KUMAR JAIN in Chawri Bazar, Delhi-6. In his complaint he alleged that the respondent in connivance with the other accused persons cooked up a false story against the petitioner to defame him in the Jain community and in the business association. On 8th October 1998, police officer SI Bishwajeet and one other police officer visited the house of the petitioner where his wife, brother-in-law, sister, nephew, niece and his children were present. SI Bishwajeet informed the petitioner about the complaint that was received against the petitioner by the respondent. The petitioner requested the police officer for what purpose he has to accompany

2. them to the police station to which the SI read out the entire complaint in front of his family members and the relatives who were present there leveling the allegations of defamatory telephonic calls, written letters, stopping the way and kidnapping .The family members and the relatives of the petitioner took the allegations seriously to which petitioner felt ashamed and was defamed in front of them. The Division Officer SI Bishwajeet along with the other two constables shouted at the petitioner and compelled him to accompany them to PS Chandni Chowk. The petitioner was detained in the police station for one and half hours where the police officers forced him to give his handwriting on two blank paper and then took his statement. On 13th October 1998, the petitioner visited the police station as he was anxious to know the contents of the complaint against him. He requested the Addl. SHO to supply copy of the complaint but it was not supplied to him. On 14th October 1998 at around 7:50 P.M. the police officer visited the petitioner's residence. The concerned I.O. misbehaved with the petitioner and compelled him to accompany him to Explanade Road crossing where he was detained for two hours. The said IO shouted at the petitioner and asked him for the explanation regarding the complaint against him. The respondent made false complaint against the petitioner with intent to harm his reputation in eyes of his family, relatives, Jain community and business community. On the basis of this false complaint by the respondent and other accused persons, the petitioner was called to police station several times, due to which the petitioner faced great mental agony and harassment. Hence, the petitioner filed the complaint against the respondent.

3. Petitioner examined four witnesses to prove his case.

4. Rajesh Kumar Jain (CW-1), paper merchant stated that on 14th

October 1998 at around 8:00 P.M. while he was going towards Lal Mandir, Chandi Chowk after closing his shop he saw the petitioner standing with some public persons. On inquiry, he came to know that the respondent had made a report on behalf of his son and daughter-in-law that the petitioner obstructed their way and threatened them to kidnap their grandson. He stated that he was surprised to to know the said fact as the petitioner was respectable person of the business community. Meanwhile two third of the market persons also reached there. He tried to make the police officer understand and thereafter he left. He stated that from the said incident the reputation of the petitioner was affected in the market. In his cross-examination he stated that he has business relations with the petitioner and that he neither knew the respondent, her son, her daughter-in-law and her grandson nor he knew their residential address. He further stated he did not go through the complaint made by the respondent.

5. Bishwajit Kumar (CW-2), Inspector stated that on 7th October 1998 a complaint was marked to him which was lodged by the respondent. During the course of investigation, he called upon the respondent and her daughter - in-law to join the investigation but they refused to join the investigation and also refused to give their statements. Despite repeated reminders they failed to join the investigation. Thereafter the investigation was closed via report Ex. CW-2/B and was forwarded to SHO concerned. He recorded the statement of Subhash Jain which is Ex. CW-2/C. In his cross-examination he stated that he did not give any notice under section 160 Cr.P.C. to the respondent or her daughter-in-law. He stated that he personally visited the respondent to join the investigation but she refused to give her statement. He further stated that the petitioner was not called to the police station during

the investigation. He also stated that he called the petitioner during the investigation and had not visited his house.

6. Amar Jain (CW-3), brother-in-law of the petitioner adopted his pre-summoning evidence as his post summoning evidence. He stated that on 8th October 1998 he along with his wife and two children went to the house of the petitioner where they were talking about the marriage of his daughter. At around 7:30 P.M. SI Bishwajeet along with other police officials came to the house of petitioner and asked him to accompany them to the police station. When the petitioner asked them the reason, they explained to him that there is a complaint filed against him by the respondent on behalf of her son and daughter-in-law. Police informed that as per the complaint, petitioner used to stop rikshaw of daughter-in-law of respondent and used to extend threats to kidnap her children, he used to drop letters and make calls at the shop of the son of the respondent. All the family members of petitioner were shocked. He further stated that the police officials forcibly took him to Fountain Police Booth, Opposite Sheesh Ganj Gurudwara, Chandini Chowk and kept him sitting at that place for about one and half hour. He along with one neighbour Praveen Kumar went there and on the way , many public persons met and he felt humiliated . They were forced to stand outside the booth for one and half hours. He further stated that the petitioner is a respectable person in the society and after the aforesaid incident his reputation was affected.

7. Om Prakash, petitioner was examined as CW-4 wherein he deposed in sync with his complaint made to the police. He added that on 22nd February 1999 he sent a legal notice to the respondent. He again sent a legal notice to the respondent to withdraw her false complaint and acknowledge her

mistake, but respondent did not respond to it, thereafter, he filed this complaint. He further stated that the in-laws of the respondent also extended threats to the petitioner. In his cross-examination he stated that he did not make any complaint against SI Bishwajeet regarding his conduct. He further stated that before filing of the present complaint he had sent a notice to the respondent under section 500 of the IPC to which she replied to his advocate. He had not received copy of the complaint made by the respondent till date despite making requests to the police officials. He stated that SI Bishwajeet read over the complaint of respondent to him at his house and then he read the same in the fountain booth.

8. Pushpa Jain in her statement under Section 313 Cr.P.C. stated that she had made a complaint dated 8th October 1998 to the DCP Darya Ganj. She gave reply to notice dated 22nd February 1999 and 12th April 1999 on 19th April 1999. She stated that SI Bishwajeet neither gave any notice under Section 160 Cr.P.C. to her nor to her daughter-in-law. She further stated that the witnesses have deposed falsely at the instance of CW-1 Rajesh Kr. Jain. She added that she is innocent and has been facing trial for more than 17 years and the appellant is harassing her by dragging her in false case. She did not make any imputation against the petitioner and had no intention to cause harm to petitioner at the time of making that complaint.

9. After having gone carefully through the evidence, this Court is of the view that there is nothing on record to prove that the complaint made by the respondent against the petitioner was made with a malafide intention. Apart from the complaint made to the police, such statements were not circulated to any other person. Thus, it makes it clear that the respondent did not make such allegations to defame the petitioner. None of the complainant witnesses

deposed about the fact that the respondent published the defamatory content in the society apart from the complaint made to the police. The fact that on 8th October 1998 and 14th October 1998 SI Bishwajeet visited the house of the petitioner and compelled him to accompany him to PS Chandni Mahal has not been supported by CW-2. Further in case SI Bishwajit visited the spot and misbehaved with the petitioner, is not a ground to allege defection against the petitioner.

10. Findings of the learned Metropolitan Magistrate are based on the evidence on record and this Court concurs with the view expressed by the learned Metropolitan Magistrate. The impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

11. Leave to appeal petition is accordingly dismissed.

12. Trial Court record be sent back.

AUGUST 7, 2019

sk

(MUKTA GUPTA)
JUDGE