

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

CRM-M-37622-2013(O&M)

Date of decision:-13.2.2020

B.K. Ramesh Shah and others

...Petitioners

Versus

B.K. Narayani

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.M.S. Nain, Advocate
for the petitioners.

Mr.Dinesh Arora, Advocate
for Sh.Dharampal, brother of deceased respondent.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant – B.K. Naryani, aged about 60 years, resident of Prajapita Brahama Kumari Ishvariya Vishva Vidyalya, Gau Shala Market, Bhiwani, Tehsil and District Bhiwani had filed a complaint under Sections 499 and 500 IPC against accused B.K. Ramesh Shah, B.K. Hardya Mohini and B.K. Anjali on the averments that complainant had been working as Center Incharge of Bhiwani Branch; the complainant had taken the Gau Shala property on rent in the name of Prajapita Brahama Kumari Ishvariya Vishva Vidyala after making payment in advance i.e. Rs.1,20,000/- as

construction loan and maintained that property with the financial help of her father and brother; accused B.K. Ramesh Shah had issued a letter dated 3.12.2004 to B.K. Hardiya Mohini of Delhi Zone, Incharge stating that the complainant was physically not fit due to illness, therefore, she must be provided with an Assistant to look after the matters concerning Bhiwani trust branch, wrongly stating that the complainant had visited the office of Tehsildar, VPO Bound Kalan, Tehsil and District Bhiwani to get the trust property situated at VPO Bound Kalan transferred in the name of a third person/to get the authority letter in favour of Dharampal and Anita; a resolution was passed to assist B.K. Naryani and to take care of the other matters regarding trust on 2.12.2010 in the headquarter at Mount Abu; accordingly B.K. Anjali was appointed as Incharge Bahadurgarh to assist the complainant; B.K. Anjali after appointment made a complaint dated 16.1.2011 signed by more than 60 supporters in the City Police Station, Bhiwani; the signatures of supporters are without address and are forged; in that complaint, the present complainant was termed as a culprit alleging that property of trust situated at Rajan Pana, Bhiwani had been sold by the complainant; the allegations were wrong and defamatory; the intention of the accused was to grab the property of the trust. The complainant prayed that the accused be summoned and tried for commission of offence under Sections 499 and 500 IPC.

During her preliminary evidence, the complainant got her statement recorded as CW1 and in addition to that examined Umesh as CW2 and Jagdish Singh as CW3. With that her preliminary evidence got closed. Thereafter, the complaint was sent under Section 202 Cr.P.C. for

further inquiry but the local police reported that the allegations levelled by the complainant against the accused were not true, however the matter was of civil nature.

After hearing arguments, learned trial Magistrate dismissed the complaint vide order dated 6.5.2013. The operative part of the order is contained in para No.8 of the order, which for ready reference is being reproduced as under:

8. *The complainant was Incharge of Prajapita Brahama Kumari Ishvariya Vishva Vidyalaya at Bhiwani Branch and the matter was reported by B.K.Ramesh Shah to B.K.Hardiya Mohini to appoint any assistant for the smooth functioning of the Centre at Bhiwani Branch. Prima facie for summoning the accused it has to be shown that the act of the accused persons sought to be summoned was actuated with malice. Admittedly, in the report under Section 202 Cr.P.C. it has transpired that the matter is civil in nature. So, in crux, this Court is of the opinion that communication made by B.K.Ramesh Shah shall not attract the commission of offence under Sections 499 and 500 IPC on account of this fact that he had only communicated to B.K.Hardiya Mohini that the complainant is not fit due to her illness. Moreover, the matter was reported to Shri B.K.Hardiya Mohini and B.K.Narayani was at liberty to represent her matter with B.K.Hardiya Mohini. Moreover, B.K.Anjali moved an application to the authority for taking action against the complainant. At this stage, malafide cannot be attributed to the act of the accused persons and what transpired is that there is*

some dispute inter se the parties with regard to holding properties vested with Prajapita Brahama Kumari Ishvariya Vishva Vidyalaya, Bhiwani. Criminal machinery cannot be set into motion for settling the scores. So at this stage, no prima facie case is made out against the accused persons for summoning them under Section 499 and 500 IPC and accordingly the instant complaint filed by the complainant stands dismissed.

The complainant felt aggrieved by such order and challenged it by way of filing a revision petition before the Court of Sessions. Such revision petition was assigned to learned Additional Sessions Judge, Bhiwani, who vide his judgment dated 19.9.2013 accepted the revision petition, set aside the order passed by learned Magistrate and directed the trial Magistrate to summon the accused Nos.1 to 3 for committing offence under Section 500 IPC.

Now it was turn of the accused to feel dissatisfied and they have approached this Court by way of filing the present petition under Section 482 Cr.P.C. praying that the impugned order dated 19.9.2013 passed by Additional Sessions Judge, Bhiwani be set aside.

On getting notice, the complainant – respondent appeared through counsel.

It may be mentioned here that the complainant has since expired. Her brother Dharampal is said to have approached the trial Court for permitting him to continue with the proceedings for the reason that he is sole legal heir of deceased complainant B.K. Naryani on the basis of Will dated 28.12.2011.

An application has been filed by the petitioners for their acquittal for the reason that the offences were private in nature, therefore the complaint does not survive and the same, after the death of the complainant would abate. Reference to various judgment in that regard has been given.

After hearing the counsel for the parties, I find that with death of the complainant the complaint does not survive since defamation is a personal injury and with death of the complainant, no cause of action survives to any other person, may be legal heir of the complainant.

Learned counsel for the petitioners has referred to judgment passed by Co-ordinate Bench of this Court in CRR-1665-2010(O&M) titled “*Ram Singh and others Versus Gurbachan Singh*” decided on 20.2.2014, wherein after discussion the law on the subject at length, it was concluded as under:

*The above said observations on the basis of **Ashwin Nanubhai Vyas (supra)** is to the effect that the decision should be left with the judicial discretion of the Court and the legal provision need only be that death and absence stands on the same footing. Sub section (2) of Section 256 Cr.P.C., has been introduced with this objective. The Magistrate can grant permission to the heirs of the deceased in appropriate cases to proceed with the complaint. It is again observed that the Kerala High Court was not dealing with summons case or provisions of Section 199 Cr.P.C.*

Taking into consideration the entire relevance of Section 256 (2) Cr.P.C., read with Section 199 Cr.P.C., I am of the considered opinion that the trial Court has not exercised the discretion in appropriate manner by permitting the heir of deceased complainant to continue with the criminal proceedings

under Section 500 of the Indian Penal Code. The finding of the trial Court is contrary to Section 199 Cr.P.C., as the respondent is not an aggrieved person under the Code of Criminal Procedure.

The revision petition is allowed. Order dated 30.3.2010, passed by the Judicial Magistrate First Class, Ludhiana, is hereby set aside. The complaint of complainant Avjinder Singh, in the present circumstances of the case, would abate resulting in acquittal of the petitioners. The interim order dated 2.5.2011 stands vacated.

Learned counsel for the petitioners has referred to another judgment passed by Co-ordinate Bench of this Court in CRM-M-43939-2013 titled '**Dharam Pal Sharma Versus State of Haryana and another**', decided on 28.10.2014. The concluding part of this judgment is as under:

The case of the petitioner is that accused had moved a complaint against him by levelling false allegations with a view to defame him. The learned Court of Revision while allowing the revision petition held that the letter Mark-B had not been circulated in public and was exchanged inter-se B.K.Hardya Mohini accused and accused B.K.Ramesh Shah. It has further been noticed by the Court of Revision that in the letter it had been mentioned that the complainant and Kumari Anita were creating lot of hindrances and disturbance in Yagya services. The Court of revision rightly held that the said remarks could not be said to be defamatory. So far as the complaint moved by the accused to the police is concerned, no action was taken by the police on the said letter Mark-A. Nothing on record was produced to establish that

the letter Mark-A had been circulated by the police. Further, no action was taken against the accused by the police under Section 182 IPC for lodging a false complaint. The application had been moved by respondent No. 2 being a public servant and had, thus, been moved in a good faith against the petitioner. Civil suit with regard to the property in question was pending between the petitioner and accused B.K. Ramesh Shah and Prajapita Brahma Kumari Ishvariya Vishva Vidyalaya. Thus, the Court of Revision rightly came to the conclusion that no offence under Section 500 IPC was made out as the case of the petitioner was covered under 8th exception of Section 499 IPC. As per the said provision, if an accusation is made in good faith against any person to those who have lawful authority over that person, then it would not constitute offence of defamation.

No ground for interference by this Court is made out.

Dismissed.

Learned counsel for the petitioners has further referred to judgment **Jarnail Singh and others Versus Ranbir Singh, 2014(7) RCR(Criminal)2368** wherein it was observed that it is 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.

He has further pressed into service **Navjote Kaur Khara Versus State of Punjab and another, 2018(2) RCR(Criminal)333** wherein it was observed that publication of complaint by a correspondent in newspaper not intended to lower reputation of husband

as it was imputation made in good faith by a person for protection of her interest does not constitute offence of defamation.

I find that the order passed by learned Magistrate is detailed and well reasoned. It does not come out to suffer from any illegality or infirmity. Whereas the judgment passed by Additional Sessions Judge, Bhiwani show lack of application of a judicious mind and faulty interpretation of law. The allegations levelled in the complaint even if taken at their face value do not constitute offence of defamation and even if it is taken that some element of defamation was disclosed, then the case is covered by the exceptions of Section 499 IPC. Learned Additional Sessions Judge, Bhiwani fell in error to upset the legal and valid order passed by the trial Court. The impugned order passed by Additional Sessions Judge, Bhiwani cannot stand judicial scrutiny. The same is set aside and the order passed by the Magistrate dismissing the complaint is restored. In addition to that on account of death of the complainant, no cause of action survives since the injury complained of was personal in nature and the legal heir of the deceased complainant cannot proceed with the complaint.

The petition stands allowed accordingly.

13.2.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No