IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 13.01.2020

(1) CRM-M-43748-2015 (O&M)

ICICI Bank Ltd. ....Petitioner

Versus

Kusum Aggarwal .....Respondent

(2) CRM-M-41174-2015 (O&M)

Munish Kumar Kaswan ....Petitioner

Versus

Kusum Aggarwal .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sandeep Suri, Advocate, for the petitioner.

Ms. Harjot Kaur, Advocate, for
Mr. Rose Gupta, Advocate, for the respondent.

Harnaresh Singh Gill, J.

This order shall dispose of the above noted two petitions as the common questions of law and facts are involved therein. For the facility of reference, the facts are taken from CRM-M-43748-2015.

The above-noted two petitions have been filed with a prayer for quashing of complaint (Annexure P.3) filed on 3.12.2014 under Section 499/500 IPC and the summoning order dated 11.09.2015 (Annexure P.1).

In the present case, respondent-Kusum Aggarwal availed loan facility from the bank and on account of non-payment thereof, the bank had instituted a complaint under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act'). The complaint was instituted through Collection Manager, Shri Dinesh Kumar.

The said complaint was dismissed by the learned Judicial Magistrate Ist Class, on 12.02.2014 (Annexure P.2) holding that the cheque in question was a security cheque, so presumption under Section 139 of the Act stood rebutted and the ingredients of Section 138 of the Act had not been attracted.

After the dismissal of the complaint filed under Section 138 of the Act, on 12.02.2014, the respondent filed a complaint under Section 499/500 IPC against the petitioners with the averments that she had suffered a huge loss of image, glory reputation in the eyes of all concerned and also raised the claim of Rs.5.00 lacs and the petitioner along with Munish Kumar were summoned to face the trial vide order dated 11.09.2015 (Annexure P.1).

Even the Bank had been ordered to be summoned through its the then Managing Director Shri K.V. Kamath, who served in the Bank upto 1.5.1996 and had no role to play.

On behalf of the respondent-Kusum Aggarwal, Mr. Rose Gupta, Advocate, appeared in CRM-M-43748-2015 on 9.8.2016, but did not file any reply. Today, on behalf of Mr. Rose Gupta, Ms. Harjot Kaur, addressed the argument, in both the cases.

I have heard learned counsel for the parties and with their able assistance, have also gone through the case files.

While dismissing the complaint under Section 138 of the Act, the trial Magistrate had drawn a conclusion that the cheque in question was nothing but a security cheque which was clear from the fact that it bore the rubber stamp of the Bank and also that once the hypothecated agreement was terminated, the borrower/accused cannot be held liable for the offence under Section 138 of the Act.

In the complaint filed under Section 499/500 IPC by the respondent (who was accused in the complaint under Section 138 of the Act) it was alleged that she had suffered a huge loss of image, glory and reputation in the eyes of all concerned, including the relatives, because of the initiation of the criminal proceedings by the Bank.

The case of the petitioners is that merely deposing as a witness(es) for and on behalf of the employer based on the available official records, of which one of the petitioners i.e. Munish Kumar, was authorized representative, cannot, in any manner be considered to mean that if complaint was dismissed and accused acquitted, offence under Section 499/500 IPC has been committed.

Before proceeding further, it would be appropriate to extract here-under the provisions of Sections 499 and 500 IPC:-

> **"499. Defamation**
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> 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.

Explanation 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.

Explanation 2- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

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

Explanation 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 loath some state, or in a state generally considered as disgraceful.

Illustrations

(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."

500. Punishment for defamation

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Undoubtedly, the respondent, who was accused in complaint case filed under Section 138 of the Act, was acquitted by the trial Court. To my mind, this will not attract Sections 499 and/or 500 IPC against the petitioners.

Mens-rea, a mandatory prerequisite for the offence of defamation is clearly missing in the complaint filed by the respondent under Section 499/500 IPC. Moreover, the Bank or its employees cannot be in any case held to have committed an offence under Section 500 IPC because, the most essential ingredient of the said offence i.e. `mensrea' would be missing as a Bank or its employees.

Further, while considering the provisions contained in Section 499/500 IPC which are penal in nature, a Magistrate has to take into account if the requirement of mensrea which is a mandate for a criminal defamation punishable under Section 500 IPC, was present while committing such offence.

In the present case, mensrea or criminal intention is lacking on the part of the petitioners and hence, they cannot be held guilty of offence of defamation within the meaning of Section 499 IPC.

To my mind, the image or reputation of the respondent was not tarnished in any manner. In a criminal trial, the finding regarding acquittal is recorded by the Court on the basis of the evidence on record. Merely because the Court comes to the conclusion that no offence is made out, does not give a handle to the accused to launch the defamation proceedings against the complainant. If such process is allowed, then in every case, after the acquittal, there would be an eventual and/or consequential initiation of the proceedings under Section 499/500 IPC.

A Single Bench of the Bombay High Court in Deep Vs. Dr. Murli Hanumandas Agrawal, 2018(1) AIR Bom.R (Cri) 104, while relying upon the judgment of the Hon'ble Supreme Court in Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998)5 SCC 749, held as under:-

> "8. It reminds me the law laid down by the Hon'ble Apex Court in Pepsi Foods Ltd. and anr. Vs. Special Judicial Magistrate and Others; reported in (1998) 5 SCC 749 and particularly paragraph 28 of the said authoritative pronouncement. Paragraph 28 of the judgment reads thus:-
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> > "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and

the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. Keeping in mind the law laid down by the Hon'ble Apex Court, if the assertion made in the complaint are scrutinized then following allegations against the non applicants can be listed:

(i) That there was a unanimous resolution of the Directors dated 05.01.2002 that all the cheques should be signed by all Directors.

(ii) The said resolution was brought to the notice of the banks and accused no.3 (non applicant no.3) has given acknowledgment thereof.

(iii) In spite of the resolution, non applicant no.1/original accused no.1, issued the cheque under his signature.

(iv) In spite of the resolution, bank accepted the cheque issued under the signature of the non applicant no.1 alone for clearance.

(v) The cheques were dishonoured for insufficient funds resulting into the complaint filed by the Bank Of India at Mumbai and the issuance of the process in the said complaint against the applicant and non applicant nos. 1 and 2.”

Under these circumstances, in my opinion, the trial Court did not appreciate the contents of the complaint and the material placed on record by the respondent/complainant along with the complaint in the right perspective while taking cognizance of the offence under Section 500 IPC and passing the consequential summoning order.

In view of the above, the present petitions are allowed and the criminal complaint as also the summoning order are hereby quashed.

(HARNARESH SINGH GILL)
JUDGE

January 13, 2020
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No