

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30950 of 2019
Date of decision: 02.12.2020

Raj Kumar Saini

..... Petitioner

V/s.

Sant Kanwar

..... Respondent

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Vinod Ghai, Senior Advocate, assisted by
Ms. Kanika Ahuja, Advocate, for the petitioner.

None for the respondent.

Sanjay Kumar, J.

By this petition filed under Section 482 Cr.P.C, the petitioner seeks quashing of Complaint No.83 of 2018 dated 18.04.2018, titled '***Sant Kanwar V/s. Raj Kumar Saini***', under Sections 499, 500 and 501 IPC, on the file of the learned Judicial Magistrate First Class, Rohtak, along with all proceedings emanating therefrom, including the order dated 13.06.2018, whereby the petitioner was summoned to face trial.

By order dated 13.09.2019, this Court noted the contention of Mr. Vinod Ghai, learned senior counsel appearing for the petitioner, that Sant Kanwar, the respondent-complainant, had no *locus standi* to maintain the subject complaint and stayed further proceedings pursuant to the summoning order dated 13.06.2018 passed therein.

Despite service of notice, the respondent-complainant did not choose to enter appearance before this Court.

At the outset, it may be noted that the issue of maintainability of this petition under Section 482 Cr.P.C stands settled in favour of the petitioner as the inherent powers of this Court cannot be curtailed by existence of the alternative remedy of revision under Section 397 Cr.P.C [See **Dhariwal Tobacco Products Ltd. and others V/s. State of Maharashtra and another {(2009) 2 SCC 370}**, **Prabhu Chawla V/s. State of Rajasthan and another {(2016) 16 SCC 30}** and **Vijay and another V/s. State of Maharashtra {(2017) 13 SCC 317}**].

Perusal of the complaint filed by the respondent-complainant demonstrates that he claimed to be a follower of late Chaudhary Matu Ram Hooda, an Arya Samajist and freedom fighter. He stated that late Chaudhary Matu Ram Hooda was an inspiration and a guiding light for him. While so, he claimed to have read newspapers on 02.04.2018 and 03.04.2018, wherein it was reported that the petitioner had made several defamatory statements against late Chaudhary Matu Ram Hooda. It is on the strength of these newspaper reports that he filed the subject complaint alleging that the petitioner had committed the offence of defamation.

Having examined the complaint, the complainant and the documents filed by him, the learned Magistrate issued the impugned summoning order dated 13.06.2018 calling upon the petitioner to face trial.

Section 199 Cr.P.C deals with prosecution for defamation. Sub-section 1 thereof states that no Court should take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code, 1860, except upon a complaint made by some person aggrieved by the offence. This provision therefore mandates that the complaint be made by a 'person aggrieved'.

Chapter XXI of the Indian Penal Code, 1860, deals with defamation. Section 499 therein defines defamation and Explanations 1 and 2 appended thereto give an indication as who would be a 'person aggrieved'. Explanation 1 states that imputing anything to a deceased person would amount to defamation, if such imputation would have harmed the reputation of that person had he been living and such imputation is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2 states that it may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

The statutory scheme therefore indicates that the 'person aggrieved' must have an element of personal interest, being either the person defamed himself or in the case of a deceased person, his family member or other near relative. It may also be noted that Section 320 Cr.P.C permits compounding of the offence of defamation but it is only the person who is defamed who can agree to the same. Reference may be made to the Division Bench judgment of the Patna High Court in '**Bhagwan Shree Rajneesh V/s. The State of Bihar and another**' [1986 SCC OnLine Patna 174], wherein it

was observed that though generally, the person aggrieved is only the person defamed, an exception has been made in the case of a deceased person but the 'persons aggrieved' even in such case are limited only to members of his family or his near relatives, whose feelings would be hurt by the defamatory statement, and none else. The Division Bench relied upon the judgment of the Supreme Court in 'G. Narasimhan and others V/s. T.V. Chokkappa' [AIR 1972 SC 2609], wherein it was held that an exception was created to the general rule that a complaint could be filed by anybody, whether he is aggrieved or not, as Section 198 of the old Code of 1898 (presently, Section 199 Cr.P.C) modified that general rule by permitting only an 'aggrieved person' to move the Magistrate in cases pertaining to defamation. The Supreme Court observed that compliance with this Section was mandatory and if a Magistrate took cognizance of the offence of defamation on a complaint made by one who was not an 'aggrieved person', the trial and conviction in such a case would be void and illegal.

In the case on hand, the respondent-complainant does not claim to be a member of the family of late Chaudhary Matu Ram Hooda or his near relative. The summoning order manifests that he contended before the learned Magistrate that he fell within the definition of a 'person aggrieved' as his family was closely 'related' to late Chaudhary Matu Ram Hooda, but this claim seems to have been based more on ideological considerations rather than any actual 'relationship'. There was no averment in the complaint itself indicative of any familial relationship.

However, Explanation 1 to Section 499 IPC makes it amply clear that it is only the 'family members' or 'near relatives' of the deceased person, against whom imputations have been made, who can claim to be 'persons aggrieved'. Therefore, the respondent-complainant, who is not a 'family member' or 'near relative' of late Chaudhary Matu Ram Hooda, cannot unilaterally assume unto himself the status of an 'aggrieved person' under Section 199 Cr.P.C, whereby he can assert that his feelings were hurt and maintain the subject complaint against the petitioner before the learned Magistrate for the alleged offence of defamation. In effect, the complaint was deficient and tainted in its very inception and was, therefore, not maintainable.

In consequence, this petition under Section 482 Cr.P.C is allowed, quashing Complaint No.83 of 2018, titled '***Sant Kanwar V/s. Raj Kumar Saini***', on the file of the learned Judicial Magistrate First Class, Rohtak, and all proceedings arising therefrom, including the summoning order dated 13.06.2018 passed therein.

(SANJAY KUMAR)
JUDGE

02.12.2020

'rakesh'

whether speaking/non speaking	:	Yes
whether reportable/non reportable	:	Yes