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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No. 34667 of 2018 (O&M)

Reserved on: 25.09.2023.

Pronounced on: 19.12.2023

Abhay Singh Chautala

-Petitioner

Versus

Param Vir Rathee

-Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mansur Ali, Advocate, and
 Mr. H.S. Deol, Advocate,
 for the petitioner.

 Mr. P.S. Poonia, Advocate, and
 Mr. Pulkit Dhanda, Advocate,
 for the respondent.

ANOOP CHITKARA, J.

Case no.	Dated	Sections	Court		
Complaint No.556 of 2008	09.08.2008	499, 500, 501 IPC	Additional Magistrate, Gurgaon	Chief Gurgaon	Judicial (now Gurugram)

Criminal Revision No.	Date of Decision	Court		
54 of 2016 CIS No. CRR/285/2016	04-06-2018	Additional Gurugram.	Sessions	Judge,

1. An elected Legislator, aggrieved by the dismissal of the criminal revision petition by the Sessions Court, refusing to quash the summons issued in the above captioned complaint filed for criminal defamation, had come up before this Court by filing the present petition under Section 482 CrPC.
2. As per paragraph no. 2 of the quashing petition, the petitioner declares that at that time, he was an MLA, the leader of the opposition of the State of Haryana, and an office bearer of the Indian National Lok Dal.
3. The petitioner is aggrieved by the issuance of summons and the upholding of the said order by the sessions court in the above-captioned complaint filed by the

respondent, Mr. Param Vir Rathee, IPS, against many journalists and political leaders, in all thirty-four people. The petitioner relies on many grounds including on the issue of cause, jurisdiction, and that even if the complaint is accepted as true, still there is neither any violation of section 499 IPC nor did the petitioner acted with any malice or intention to defame the complainant. The petitioner's counsel submits that during the interregnum of pendency of this petition, the complainant has settled the matter with some of the respondents; however, no such settlement took place with the petitioner.

4. The respondent-complainant has filed reply and opposed the present petition because it was the duty of the petitioner to verify the correctness of the news, and without doing so, he had made defamatory statements, which were published in various newspapers, and has caused irreparable loss/damage to the complainant's reputation and petitioner is liable to be prosecuted and punished under Sections 499 and 500 IPC.

5. In the complaint, Annexure P-1, the complainant alleged that he is an IPS Officer of the 1997 batch and belongs to the Haryana cadre. He has been an honest officer, performing his duties with exemplary devotion and sincerity. His Annual Confidential Reports have rated him as an officer of integrity and honesty. At the time of the alleged defamation and the filing of the complaint, he claimed to be posted as Additional Director General of Police (CID), Haryana and asserted that a person of the highest integrity is posted on such a sensitive post as CID Chief of the State. The complainant further stated that he held a high reputation for honesty and integrity; and for these reasons, he has earned respect in society, amongst his colleagues, and the State.

6. As per paragraph no.5 of the complaint, it has been alleged that on June 17, 2008, the complainant read a news item in Indian Express: "Accused says he bribed ADGP, sought police protection." The complainant further stated that in the news item, it was reported that Dr. Sandeep Sharma, an accused in the criminal case, had confessed before the Central Bureau of Investigation that Param Vir Rathee had recommended Sandeep Sharma's police protection after taking a bribe. In the complaint, the copy of Indian Express dated June 17, 2008, was annexed as Annexure P-1. In paragraph no. 7 of the complaint, the complainant further declares that on verification, he came to know that said CBI had not arrested Sandeep Sharma, and as such, his confessing before CBI was out of the question, and consequently, there was no question of the complainant recommending his police protection. The CBI gave a statement published in the Times of India on June 18, 2008, [C-2], (Annexure P-2

therein), in which CBI clarified this part. In paragraph no. 8, the petitioner mentioned a list of newspapers that had published such news and gave names of eighteen newspapers. In paragraph no. 9 of the complaint, the complainant stated that the imputations contained in the newspapers Annexure P-1, P-3 to P-19 therein showed that the contents were defamatory, which in turn lowered his reputation in the estimation of his friends, colleagues, and public at large, at his place of residence and wherever he served as a police officer. All such reports were factually incorrect because Sandeep Sharma had been provided security keeping in view the threat perception assessed by the District Police, Panchkula, based on the criminal complaint given by Sandeep Sharma wherein he had claimed threats to his life, based on which police registered an FIR. Later, the said FIR was cancelled, and his security was withdrawn. Paragraph no. 9 of the complaint explicitly mentioned that the complainant had neither any role in granting such police protection nor Sandeep Sharma had confessed before the CBI because he was never arrested. Those allegations and imputations published against the complainant were factually incorrect and were intentionally made to lower the complainant's credit as a police officer in the estimation of colleagues, friends, and the public.

7. After filing the complaint, the concerned Additional Chief Judicial Magistrate, Gurgaon (Now Gurugram), conducted a preliminary inquiry by taking evidence from the complainant and his witnesses on oath. The complainant appeared as CW-1 and reiterated the allegations made in the complaint. He examined the Inspector of CBI as CW-3, who testified that Sandeep Sharma was under arrest in another FIR and was lodged in Ambala Jail. He had applied for Sandeep's production warrants on Aug 20, 2008 and interrogated him on Aug 21, 2008, and before that, he had not arrested him. Thus, the complaint was established by leading evidence that on June 17, 2008, when the news items were published, Sandeep Sharma had not been interrogated or arrested by CBI, and thus, the basis for the news items was false and incorrect. CW-4 Superintendent of Police, Panchkula, testified that based on a complaint of a threat made by Sandeep Sharma, Panchkula Police had deputed personal security w.e.f. 14-04-2006 to 20-09-2007. Thus, CW-4 established that Panchkula police provided security during this period based on threat perception and not because of the complainant's intervention. However, the witness did not prove whether, after 20-09-2007, the Haryana Police had provided any personal security to Sandeep Sharma or not. The complainant examined CW-2 & CW-6 to prove that after reading the news in question, the complainant's image and reputation was lowered in their opinion. Vide a detailed

order dated 17-04-2010, the concerned JMIC found a *prima facie* case against the petitioner falling under sections 499, 500, & 501 IPC and ordered the summoning of all the accused persons.

8. The petitioner challenged the summoning order by filing a petition under section 482 CrPC before this court. However, vide order dated 11-05-2016, a co-ordinate bench of this court relegated the petitioner to the court of first revision by observing that they should have availed the remedy of criminal revision before the sessions court and extended the limitation provided the revision is filed within 30 days. After that, the petitioner challenged the summoning order by filing a criminal revision under section 397 CrPC before the Gurgaon sessions court. Vide the impugned judgment dated 04-06-2018, the Additional Sessions Judge, Gurugram, dismissed the revision petition. Feeling aggrieved, the petitioner came up before this court by filing this petition under section 482 CrPC, seeking to quash the summoning order and to set aside the dismissal of criminal revision.

9. Allegations against the present petitioner namely Abhay Singh Chautala read as follows: -

“12. That the respondent accused No.33 Mr. Abhay Singh Chautala has issued defamatory statement to the press against the complainant, which have been published by various newspapers as news items already placed on record as Annexure P-3, P-4, P-6, Annexure P-7, P-8, Annexure P-10 and Annexure P-11. Mr. Abhay Singh Chautala vide his statement, published in the aforesaid news items, has claimed that in CBI inquiry Dr. Sandeep Sharma has levelled allegations against the complainant for taking bribe for providing police protection Mr. Abhay Singh Chautala on the strength of said allegation has demanded complainant’s suspension and registration of a case against him. The said statements of Mr. Abhay Singh Chautala are again apparently defamatory having tendency to malign the image of the complainant besides being factually incorrect. Thus, Mr. Abhay Singh Chautala is liable to be punished for offence under Section 500 IPC”.

10. I have heard counsel for the parties and gone through the record, and its analysis leads to the following outcome.

11. The Complainant-respondent opposed the present petition and filed his detailed reply. In paragraph 3 of the reply, the complainant stated that the newspaper had published a false and defamatory statement by the petitioner. The complainant’s counsel submitted that despite the clarificatory news published in the Times of India,

the petitioner took no corrective measures. The complainant's counsel further submitted that the Magistrate had issued summons after being fully satisfied and following the procedure under Section 202 CrPC. As such, there is no violation of Section 202 CrPC. The Magistrate had examined six witnesses, gone through all the evidence, and, on finding sufficient *prima facie* material, applied his mind and proceeded against the petitioner.

12. The complainant's grievance is that despite a clarification issued by CBI, published in the Times of India on June 18, 2008 [Ext C-2] (Annexure RA/2), the petitioner made a statement against him regarding the allegation of taking bribe for security, which was published on June 19, 2008, in Punjab Kesari (Annexure RA/3); Dainik Tribune (Annexure RA/4); Dainik Lahoo (Annexure RA/5); and Dainik Tribune Chandigarh date line (Annexure RA/6); and Ajit Samachar (Annexure RA/7). Petitioner's counsel, referring to paragraph 7 of the petition, submitted that the complainant did not prove that this newspaper containing clarification was circulated in Mandi Dabwali on June 18, 2008, where the petitioner allegedly made such statements to the public. A perusal of all these news reports points out that the petitioner Abhay Chautala, during political meetings for ensuing elections, had made statements at 'Mandi Dabwali' on June 18, 2008. The clarification of CBI in Times of India was also published on June 18, 2008, in its Chandigarh Edition.

13. On June 17, 2008, the Indian Express, Chandigarh, published the following news report:

Shubham Hospital Case 'Sharma tried to influence officials'
Accused says he bribed ADGP, sought police protection

Varun Chadha
Chandigarh June 16,

Additional Director General of Police (Intelligence), Haryana, P. V Rathee, has come under the Central Bureau of Investigation's (CBI) scanner in the Shubham Hospital case after accused Sandeep Sharma confessed on Monday that he had bribed the officer. In return, Rathee had recommended police protection for the accused and provided him with two gunmen of the Haryana Police.

The Shubham Hospital and Diagnostic Centre in Sector 20 Panchkula, was sealed by the police after Sharma's certificates and documents turned out to be 'fake'. Sharma had claimed to possess an MBBS degree as well as an MS in Ophthalmology. He had also availed loans worth crores from different banks with the forged documents.

The gunmen came in handy when Sharma went to the bank or district administration offices to avail loans or get things done.

He tried to exert influence on the officials by the these tactics," said a CBI Officer.

But Rathee claims he provided the security on the recommendations of district police officials who said Sharma faced "a threat to his life". Sharma confessed to the CBI that his life was not under threat.

Rathee refuted all allegations of receiving money from the accused. "I have never met the person. I don't know why he is leveling such allegations against me," said the ADGP.

On the other hand, SSP Sandeep Khirwar said the police cover was recommended only after Sharma lodged a police complaint against unknown persons threatening him over phone.

Sources claimed no police verification was conducted in the case as a senior police officer had made the recommendations. The accused has named many senior politicians and bureaucrats who used to loan him their official cars when Sharma had to visit the bank. Bank officials also disclosed the names of many senior bureaucrats and politician, who recommended Sharma's name for the loans, to the CBI. In March 2007, Punjab and Sind Bank officials reportedly went to him when they fell short of their annual investment target by Rs.5 Crore. "He called up an IAS officer of Haryana Dairy Development Federation Corporation and ordered him to deposit the money with the bank to oblige the bank officials. The very next day the money was deposited in the bank. Later, the IAS Officer forced the bank officials to pass a loan of the accused," bank officials told the CBI.

CBI officials said they will ask the bureaucrats and politicians named by the accused to join investigations after verifying the facts. "But one thing is certain many politicians and bureaucrats will find themselves in trouble soon." said a senior CBI Officer.

14. On June 18, 2008, the Times of India published a news report containing the following clarification from CBI:

No record of accused bribing ADGP, says CBI

TIMES NEWS NETWORK

Chandigarh: The central bureau of investigation (CBI), on Tuesday, said Dr Sandeep Sharma, accused in the Shubham Hospital case, hadn't given any statement to the investigation agency claiming that he had bribed an additional direction general of police (ADGP) for getting security. "There is nothing on record about the accused bribing any Haryana police official. The accused, Dr. Sandeep Sharma is in Ambala Central Jail and yet to be taken into CBI custody" said a DIG rank official of CBI.

However, sources in the crime branch of Haryana police maintained that the accused had been provided security in 2006 after he lodged an FIR in Sector 20 police station, alleging threat to his life.

According to the FIR, which was registered on the complaint of accused doctor, he had received threat calls from a

Shimla based STD. However, the first information report was later cancelled.

The crime branch official maintained that a report – mentioning how Sharma obtained security – was sent to senior police officials in Haryana police headquarter, sector 6, two months back. Apart from this, Sharma had also filed an application regarding police security in the office of Haryana chief minister.

A senior Haryana police official claimed that during the interrogation Sharma had made several claims like gifting a Scorpio to a senior politician of Punjab and bribing a number of senior medical officials and politicians but had failed to provide any proof.

15. On June 18, 2008, the petitioner had made the alleged defamatory statements at Mandi Dabwali, and such news was published on June 19, 2008 as mentioned above.

16. Thus, the day on which the Times of India had published the news containing CBI's clarification about Sandeep Sharma's arrest and disclosure, the very same day, the petitioner Abhay Chautala while holding public meetings for ensuing elections, had made the alleged defamatory statements against the complainant, and the newspapers, mentioned in the complaint, published the said statements of the petitioner Abhay Chautala on the next day, i.e., June 19, 2008. A perusal of the complaint, as well as the statement made at the time of inquiry for taking preliminary evidence, do not reflect an iota of the assertion that the Times of India, Chandigarh, [Ext C-2] (Annexure RA/2), was also circulated in the town of Mandi Dabwali, because the complaint itself states the clarification news was printed from Chandigarh. The complainant did not examine any person associated with the Times of India to *prima facie* prove that the newspaper containing the CBI clarification news issued from Chandigarh was circulated in the Mandi Dabwali area, which is more than 250 km from Chandigarh. Thus, the complainant did not *prima facie* prove that after the news items published on June 17, 2008, leveling allegations against the complainant, the news published from Chandigarh in the Times of India on June 18, 2008, was circulated in Mandi Dabwali, and the burden to establish the same was upon the complainant, who although examined five witnesses, chose not to examine anyone from the Times of India network to establish the fact of its circulation in Mandi Dabwali, from where the petitioner had allegedly made such references against the complainant. It is not that the concerned Judicial Magistrate disallowed examination of any such witness or restricted the complainant from proving its *prima facie* case in compliance with section 202 CrPC.

17. In **M/s Pepsi Foods Ltd v. Special Judicial Magistrate**, (1998) 5 SCC 749, a three Judges Bench of Hon'ble Supreme Court holds,

[26]. 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 that would 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 scrutinise 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.

[27]. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial...

18. In **S Rangarajan v. P Jagjivan Ram**, (1989) 2 SCC 574, a three-judge bench of Hon'ble Supreme court, holds,

[45]. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19 (2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

19. In the light of judicial precedents and appreciation of the complaint, the

preliminary evidence led by the complainant fails to point out that the petitioner, who had made the alleged defamatory statements on June 18, 2008 from Mandi Dabwali, was aware of the news dated June 18, 2018, published in the Times of India from Chandigarh, because the complainant did not adduce any evidence to establish that the said edition of the Times of India newspaper containing the clarification was also circulated in Mandi Dabwali, from where the petitioner had made the alleged statements on June 18, 2008. The complaint and the complainant do not utter a single word of any prior ill-will of the petitioner against the complainant. The complainant did not plead in the complaint or establish in his testimony in the preliminary evidence any oblique motive, malice, ill-will, *mala fide* intention of the petitioner, or intention to defame him. Given the above, it is a fit case for this court to prevent the abuse of the process of law because the allegations made in the complaint and the preliminary evidence do not point out that the public statements allegedly made by the petitioner were made with any malicious intent against the complainant.

20. In the facts and circumstances peculiar to this case, the court's non-interference would result in a miscarriage of justice, and thus, this Court invokes the inherent jurisdiction under section 482 CrPC and quashes the summons and all subsequent proceedings as well as the judgment passed in the above captioned criminal revision.

Petition is allowed. All pending application(s), if any, stand closed.

December 19, 2023
AK

(ANOOP CHITKARA)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : YES