

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

CRM-M-38557-2014

Date of decision : 01.08.2023

Satya Narayan Sharma

.....Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Rakesh Gupta, Advocate for the petitioner

Mr.Dhruv Sihag, AAG, Haryana

Mr.VK Sheoran, Advocate for respondent Nos.2 to 5

AMAN CHAUDHARY, J.

1. The present petition under Section 482 of CrPC has been filed for setting aside the order dated 30.09.2014, Annexure P-1, passed by learned Additional Sessions Judge, Bhiwani, allowing the revision petition filed against the order dated 24.03.2014, Annexure P-2, vide which learned Judicial Magistrate, 1st Class, Charkhi Dadri had summoned respondent Nos.2 to 5 in a complaint filed under Sections 500 and 120B IPC.

2. Briefly put, the facts as recapitulated from the complaint are that both the parties reside in the same vicinity. An FIR No.200 dated 03.11.2003 was registered under Section 294 IPC against the son of the petitioner, in which he was acquitted by the trial Court. A complaint filed for initiation of proceedings under Section 182 IPC was dismissed vide order dated 13.12.2010 by the learned Illaqa Magistrate on the ground that it was not presented by the competent authority. Thereafter, respondent No.2 lodged an FIR No.174 dated 27.08.2006 under Sections 341/354 IPC against the son of the petitioner, whereby he was convicted

vide judgment dated 20.12.2013. However, the petitioner filed a criminal complaint under Sections 500, 120B IPC against accused-respondent Nos.2 to 5, wherein they were summoned by the trial Court vide order dated 24.03.2014, which was set aside by the Additional Sessions Judge while allowing the revision petition, vide order dated 30.09.2014, challenge to which is laid in the present petition.

3. Learned counsel for the petitioner would contend that the Revisional Court has committed grave error while setting aside the well reasoned order passed by the trial Court, whereby the private respondents were summoned. There were sufficient allegations levelled in the complaint against them regarding the false complaint under Section 354 IPC made against the son of the petitioner, which was written by accused-respondent No.3 Sarup Singh, retired ASI in connivance with other accused, whereas no such incident had taken place, that led to him selling his house and leaving his business. Kalendra filed by the accused-respondents was also dismissed. Thus, he prayed for restoring the order passed by the trial Court by setting aside the order of the Revisional Court.

4. Learned counsel for respondent Nos. 2 to 5 stated that the son of the petitioner had wrongfully restrained the maternal sister of respondent No.2 and caught hold of her hand intending to outrage her modesty, for which the FIR was lodged and he was convicted. The appeal filed against his conviction was also dismissed. Further, it was stated that the Kalendra was infact filed by the police and not by the accused-respondent Nos. 2 to 5, against the petitioner and his son, which was dismissed only on the ground that it was not filed by the competent officer. The present complaint was filed only to create pressure for compromising the matter in the FIR. The petitioner is in the habit of filing complaints, whereby a complaint had also been filed against the respondents as well as their family members, but the learned Magistrate finding no credibility, discharged them vide

order dated 18.01.2016. It was further stated that the petitioner had filed another complaint under Sections 420 and 500 IPC against respondent No.4, which was also dismissed by the SDJM, Charkhi Dadri vide order dated 04.08.2015, finding no substance in it. Thus, prayed for the dismissal of the present petition.

5. Heard and perused.

6. Before proceeding to deliberate upon the abovesaid, a gainful reference would be made to the provisions of Sections 499 and 500 IPC, which read thus:

“499 Defamation– 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 loathsome state, or in a state generally considered as disgraceful.

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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.”

7. In **Sunil Akhya vs. H.M. Jadwet** AIR 1968 Cr.LJ 736, Calcutta High Court observed that the three essential ingredients for the offence of defamation required are (i) making or publishing any imputation concerning any person; (ii) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representation; (iii) such imputation must have been

made with the intention to harm or with the knowledge or having reason to believe that it will harm the reputation of the person concerned. Therefore, the intention to cause harm is a “sine qua non” for the offence under Section 499 IPC.

8. The relevant para of the order of Revisional Court, whereby the summoning order was set aside, reads thus:

“The order of learned Magistrate clearly shows that he had passed the order in routine manner. He nowhere observed that due to registration of the FIR and calendar, complainant was defamed in the eyes of general public. As per law laid down in Pankaj Badlani and others versus M/s Nectar Lifesciences Limited and others, 2013(1) RCR (Criminal) (P&H) 143, criminal law cannot be set into motion as a matter of course. 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 thereto 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. the accused cannot be summoned in a routine manner...”

9. It is apparent from the order passed by the Magistrate that apart from reiterating the averments of complaint, no opinion was formed to issue process for summoning the accused-respondents for an offence punishable under Sections 500/120B IPC. The operative portion of the summoning order reads thus:

“After going through the relevant record on the court file, particularly preliminary record as well as contents of the complaint. I find it a sufficient cause for summoning the accused under Sections 500/120B IPC for facing the trial. Accordingly, all the accused are hereby summoned for facing trial under Sections 500/120-B IPC for 25.04.2014.”

10. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot possibly be set into motion as a matter of course. 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 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, as held by Hon’ble The Supreme Court in the case of **M/s Pepsi Limited vs. Special Judicial Magistrate**, (1998) 5 SCC 749.

11. The Revisional Court has rightly set aside the order passed by the Magistrate. It is settled law that the order of taking cognizance and also summoning of the accused persons is not to be passed by the Magistrate mechanically, just on the asking of the complainant, but after due application of mind.

12. The factual matrix of the case above when considered in the backdrop of the legal principles enumerated, leads this Court to the conclusion that there is no perversity or illegality in the impugned order passed by the Revisional Court, thus, the present petition being devoid of merits is hereby dismissed.

01.08.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:Yes / No
Whether reportable	:Yes / No