

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

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CRM-M-59974-2022

Date of decision: 05.05.2023

PARDEEP KUMAR AND OTHERS**...Petitioners****VERSUS****STATE OF HARYANA AND ANOTHER****...Respondents****CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Deepak Grover, Advocate
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

DEEPAK MANCHANDA, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of impugned judgment dated 18.10.2022 (Annexure P-3) passed by the Additional Sessions Judge, Jhajjar whereby the revision petition against the order dated 14.05.2019 (Annexure P-1) has been allowed while setting aside the same in complaint bearing COMI No.8/2018 dated 15.05.2018 under Sections 500(b), 501, 502 & 506 of IPC filed by respondent No.2 which was dismissed by the Judicial Magistrate First Class, Bahadurgarh.

The factual matrix of the present case is that respondent No.2 filed a complaint under Sections 500 (b), 501, 502 and 506 of IPC being a public servant against the petitioners who claimed themselves to be press correspondents/reporters with assumed designation as Editors, Chief Correspondents etc. and alleged that the petitioners and other co-accused are the extortionists. One FIR No.566 dated 25.08.2016 was also registered

against accused/petitioner No.1 under Sections 384, 385, 386, 387 & 506 of IPC. It is also alleged that petitioners are running newspapers by using fake identities that too in violation of mandatory legal requirements of Press and Registration of Books Act, 1867. It is also alleged that respondent No.2-complainant being victim of the act and conduct of the petitioners-accused who published false news stories against the respondent No.2-complainant but was exonerated by the competent authority and petitioners repeatedly published the false and defamatory news stories just to defame him. Aggrieved by the said act of the petitioners, respondent No.2-complainant filed the complaint before the trial Court, which was dismissed vide order dated 14.05.2019 (Annexure P-1) being not maintainable and thereafter, a revision petition was filed by respondent No.2 and same was accepted, where the trial Court was directed to consider the complaint of respondent No.2 again in accordance with law by passing a fresh order after taking cognizance of the offence. Hence, present petition has been filed against the said impugned judgment dated 18.10.2022 (Annexure P-3).

Learned counsel for the petitioners contends that the judgment dated 18.10.2022 (Annexure P-3) deserves to be set aside as all newspapers even as per the order dated 14.05.2019 (Annexure P-1) as alleged in the complaint were found registered and trial Court rightly dismissed the complaint of respondent No.2 which was filed on the concealed facts just to harass the petitioners. He further contends a bare perusal of 9th Exception in Section 499 IPC reveals that any imputation on the character of another made in good faith for the protection of his or others interest or for “*public good*” does not come under purview of defamation. Moreover, the news item in the newspapers containing allegations of doing corrupt practice by

respondent No.2, he failed to prove that same were made in malafide way by the petitioner and that prima facie imputation made by the petitioners are false and just made to malign the reputation and status of respondent No.2. He also contends that the trial Court after considering the entire preliminary evidences lead by respondent No.2, reached the conclusion that the same was ill-founded and having filed by concealing true and material facts whereas the Additional Sessions Judge, Jhajjar failed to consider that respondent No.2 did not lead any documentary evidence in support of the allegations. Hence, the trial Court was satisfied that no prima facie offence was made out, resultantly, the complaint was dismissed.

Learned State counsel submits that the revision petition has been accepted with the observation that sufficient prima facie evidence is on record to proceed against the petitioners and the trial Court was directed to consider the complaint of respondent No.2 in accordance with law applicable to it and pass a fresh order after taking cognizance of the facts.

Having heard learned counsel for the parties.

The Additional Sessions Judge, Jhajjar while accepting the revision petition has remanded the matter back to the trial Court for passing a fresh speaking order after taking cognizance of the offence in accordance with law.

A reading of the judgment dated 18.10.2022 (Annexure P-3) shows that after considering the facts and material to support its findings, the trial Court has been directed to pass a fresh speaking order and order dated 14.05.2019 (Annexure P-1) has been set aside.

The perusal of the order dated 14.05.2019 shows that while taking cognizance of the offence, as reported in the complaint case, the trial

Court devolved into merits and demerits of the case. Whereas, he was only to see as to whether allegations made in the complaint were prima-facie sufficient to proceed against the accused. The order passed by the trial Court should reflect application of mind but in the present case, the complaint of the petitioner has been disposed of apparently, on merits, after critical analysis of the evidence adduced by him, at preliminary stage.

It is the settled position of law that in determining the question whether any process was to be issued or not against accused, what the trial Court was to be satisfied was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. Whether the evidence was adequate for supporting the conviction, could be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. There is also no requirement imposed on a Magistrate for passing a detailed order while issuing summons. It is impermissible, at the stage of taking cognizance of the offences in a complaint case, to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made were true.

Hence, it is not the province of the Magistrate to enter into a detail discussion of the merits and demerits of the case, as done in the present case by the trial Court, while passing the order dated 14.05.2019 dismissing the complaint. The scope of enquiry under Section 202 of the Cr.P.C. is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of the process. The Section does not say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person

complained against can be legally called upon to answer the acquisition made against him only when a process has issued and he is put on trial. Thus, the scope of enquiry under Section 202 of Cr.P.C. is extremely limited. If the complaint does not appear to be probable out of evidence under Sections 200 & 202 of Cr.P.C. and the complaint is filed by the complainant just to harass his opponent then the judicial process cannot be allowed to be used as an instrument for harassment or oppression of his opponent and such a complaint should be dismissed.

For the aforesaid reasons, there is no illegality in the judgment dated 18.10.2022 (Annexure P-3) passed by the Additional Sessions Judge, Jhajjar. The present criminal petition lacks merit and accordingly, the same is dismissed.

May 05, 2023

Ajay Goswami/Nisha-II

**(DEEPAK MANCHANDA)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No