

CRM-A-3007-2019 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-3007-2019 (O & M)

Date of decision: 16.03.2023

Mohinder Nath Mehta

..... Appellant

V/s

Smt. Gayatri Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Ahluwalia, Amicus Curiae
with Mr. Mohinder Nath Mehta, appellant in person.

Respondent in person.

JASJIT SINGH BEDI, J. (Oral)

The present appeal has been preferred against the judgment dated 02.01.2019 passed by the Judicial Magistrate Ist Class, Faridabad, whereby the respondent/accused has been discharged.

2. The brief facts of the case are that a complaint was filed by the appellant/complainant against the respondent/accused Gayatri Devi for having committed offences punishable under Sections 209 and 193 IPC. The allegations were that Gayatri had filed several cases and complaints against the appellant/complainant but all of them were false.

3. Based on the preliminary evidence led, the respondent/accused was summoned under Section 209 IPC. On her appearance, documents were supplied to her under Section 208 Cr.P.C. In pre-charge evidence, the appellant/complainant examined himself, after which, the pre-charge evidence stood closed.

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4. Thereafter, the respondent-accused came to be discharged from all the charges levelled against her vide judgment dated 02.01.2019. The said judgment has been impugned in the present appeal.

5. Initially, the appellant/complainant was appearing in person. Thereafter, one Ms. Sunita Ojha, Advocate, was appointed as Amicus Curiae. Since she did not appear, subsequently, Mr. P.S. Ahluwalia, Advocate, was appointed as Amicus Curiae to assist this Court on behalf of the appellant.

Today, the appellant in person submits that he wishes to address the Court himself and does not wish to take the assistance of the Amicus Curiae appointed by this Court.

6. While arguing the appeal, the appellant/complainant in person has referred to various documents such as judgments/orders of Courts, complaints made, challan etc., Annexures A-1 to A-26, most of which have been placed on record after filing of the instant appeal. However, a perusal of the said documents would reveal that they have no relevance to the instant controversy. I have examined the impugned order dated 02.01.2019 and had on an earlier occasion heard Mr. P.S. Ahluwalia, Advocate. In the instant case, the appellant/complainant has filed the complaint against the respondent/accused for having committed the offences under Section 209 IPC readwith Section 193 IPC. Based on the preliminary evidence led, the respondent/accused came to be summoned under Section 209 IPC alone. Thereafter, she has been discharged.

7. Before proceeding further, it would be relevant to examine the provisions of Section 195 Cr.P.C. The same is reproduced hereinbelow:-

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“Section 195 Cr.P.C.:-*Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-*

(1) *No Court shall take cognizance-*

(a) *(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*

(ii) *of any abetment of, or attempt to commit, such offence, or*

(iii) *of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such

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order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed”.

8. A perusal of the aforementioned Section 195 Cr.P.C. would show that a complaint at the instance of a private individual is not maintainable in the instant case. The Court which is seized of a proceeding alone would file a complaint in writing himself or may authorize someone

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a party to a lis is, therefore, not maintainable. Therefore, in the instant case, no fault can be found with the impugned judgment discharging the respondent/accused.

9. In view of the above, the present appeal stands dismissed. However, the complainant/appellant would be at liberty to move an appropriate application under Section 195 Cr.P.C. in each of the judicial proceedings either pending or culminated. If the needful is done within a period of 04 weeks from the date of receipt of copy of this order, the concerned Court shall consider condoning the delay in initiation of proceedings sympathetically.

(JASJIT SINGH BEDI)
JUDGE

March 16, 2023

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