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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved On: 6th September, 2023

Pronounced On: 11th December, 2023

+ CRL.M.C. 227/2014

DR SUMAN GUPTA

..... Petitioner

Through: Mr. Ajay Digpaul, Ms. Swati Kwatra,
Ms. Ishita Pathak and Mr. Kamal
Rattan Digpaul, Advocates.

versus

RAVINDER PRATAP & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure ('CrPC') seeks quashing of summoning order dated 29.10.2013, passed by learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, in Complaint Case No.6161/09, P.S. Kashmere Gate.

2. The facts stated in the present petition are as under:

- i. The petitioner was the Director of Centre of Governance, Guru Gobind Singh Indraprastha University ('GGSIPU'), and held the position of Professor and Dean, University School of Law and Legal Studies, GGSIPU for six years, from 03.12.2007 to 03.12.2013.



- ii. The complainant/respondent no.1 ('complainant') was an Assistant Professor of Law at the GGSIPU, Kashmere Gate, since 23.08.2004 and had been engaged in teaching law, research and consultancy for about two decades. The complainant had filed a Public Interest Writ Petition No. 5572/07 titled as 'Ravindra Pratap & Anr. v. Guru Gobind Singh Indraprastha University & Ors.' wherein he had raised issues relating to minimum attendance of students.
- iii. Subsequently, complainant moved an application under the Right to Information ('RTI') Act to the University for providing letters written by the petitioner to the Vice Chancellor of GGSIPU, dated 08.08.2008, 23.09.2008 and 30.06.2008. The said letters were provided to the complainant *vide* letters dated 02.04.2009 and 14.07.2009.
- iv. Thereafter, on the basis of information provided under RTI, complainant filed a complaint before the court of Metropolitan Magistrate, Tis Hazari Court Delhi, under Section 190 of the Cr.P.C against the petitioner for her prosecution under Section 499 read with Section 500 of the Indian Penal Code ('IPC') alleging that the letters dated 08.08.2008 and 23.09.2008 were defamatory in nature and published deliberately with an intention to defame his reputation in the estimation of his colleagues, staff, universities and institution in India and abroad.
- v. Learned Metropolitan Magistrate heard the matter and dismissed the complaint *vide* order dated 27.04.2010 while observing that it is not a case where *prima facie* offence is made out. Consequently, complainant challenged the said order in Criminal Revision No. 35/10 and the



learned Additional Sessions Judge ('ASJ') remanded back the complaint to the learned Trial Court *vide* order dated 10.01.2011, to hear the matter afresh.

- vi. Thereafter, learned Metropolitan Magistrate heard the matter afresh and dismissed the complaint *vide* order dated 10.10.2011, with the observation that there is no ground to proceed further with the complaint. Complainant challenged the said order before the Sessions Court of learned ASJ, Tis Hazari Courts Delhi and the case was again remanded back *vide* order dated 24.08.2012, with the direction that the judgments i.e., M.A Rumugam Vs. Kittu @ Krishnamoorthy AIR 2009 SC 341, Tata Motors Ltd Vs. State Crl. Rev. Petition No. 16/08 Decided on 12.02.2009 and Ved Kumar Gupta & Ors Vs. Ashok Kumar Aggarwal & Ors. Crl. M.C. No. 1925/08 decided on 20.04.2009 were not considered and discussed by learned Trial Court.
 - vii. Subsequently, the learned Trial Court was pleased to take cognizance and summoned the present petitioner to face trial under Section 500 IPC, *vide* order dated 29.10.2013.
3. At the outset, it is noted that in the present petition counsel for the complainant initially entered appearance, but subsequently since 22.07.2022, no one has entered appearance on his behalf. Court notice was issued to the complainant on 13.01.2023 for 16.03.2023, which came back unserved on the address on record as the same was stated to be locked for the last 06-07 years. In view thereof, the complainant was proceeded *ex-parte vide* order dated 12.04.2023 and the matter was heard finally.



4. Learned Counsel appearing on behalf of the petitioner submitted that since the complaint was based on incorrect facts and submissions, therefore the learned Metropolitan Magistrate mechanically, arbitrarily and without application of judicial mind, passed the impugned summoning order directing the petitioner to appear as an accused under Section 500 IPC.

5. It was further submitted that the intention of defaming complainant is not made out in view of the averments of the letters written by the petitioner to the Vice Chancellor of University for taking action against complainant for his misconduct. The learned Magistrate while passing the impugned order has failed to appreciate that the communications made by the petitioner to the Vice Chancellor were under her official capacity, informing about the working of complainant in the University.

6. It is the case of petitioner that the learned Magistrate while passing the impugned order, has failed to appreciate that the communication which is alleged to have defamed complainant was not in public domain. The very essential element for constituting the offence of defamation i.e., "*Publication of a document with a view to defame a person*", is missing in the present case because the communication alleged to have defamed complainant was not in public domain as the said letter was not even given to complainant and was only procured by moving an application under RTI Act. Thus, it was submitted that the learned Metropolitan Magistrate committed a grave error by summoning the respondent accused in this case as *prima facie* no offence of defamation is made out in the present case.

7. Furthermore, the learned Metropolitan Magistrate, in the impugned order, observed that if a case is covered in an exception the said fact is a



defense which an accused has to establish. The averments contained in the subject communications dated 8.08.2008 were not in the public domain and thus not published and moreover the averments were in the nature of a proposal submitted by the petitioner to the Vice Chancellor for taking suitable action against the complainant herein. Additionally, it was submitted that if a summoning order is passed merely on the basis that some authority like the Dean sending a complaint to the Vice Chancellor against some employee of the university, it will open a floodgate of litigation and the courts would be flooded with innumerable complaint cases of defamation. For this reason, the Magistrate exercising the powers to summon an accused has to examine essential ingredients and the basic characteristics of the communication like the official communications which are the subject matter of the present complaint.

8. Learned counsel appearing on behalf of the petitioner submitted that, the learned Magistrate committed grave error on law and facts as neither complaint nor evidence led in support makes out a case as there was "no sufficient grounds of proceedings" on the basis of letters sent by petitioner in her official capacity informing about the development and complaint of the faculty teachers and students to the Vice Chancellor. It is the petitioner's argument that even otherwise, the contents of letters read in entirety and its context clearly show that the same are not defamatory.

9. It is also the case of the petitioner that the learned Magistrate failed to appreciate the fact, that to constitute the offence of defamation as contained in Section 500 IPC, it is essential that the defamatory matter must have been published. Defamation is essentially publication of a statement which tends to



lower a person in the estimation of other members of society generally. Publication is one of the most essential ingredients in defamation for the reason that it is because of publication that others get to hear or come to know about the alleged defamatory imputations. It is an admitted case of complainant that the letters were not publicly communicated and it always remained in the official files of the University. These letters made public only when the complainant sought them under RTI. An information derived under RTI Act regarding official communication cannot be said to be an imputation made in public, therefore the basic requirement of offence of defamation i.e. deliberate intention to the defame in the eyes of all is not satisfied.

10. It was further submitted that the learned Metropolitan Magistrate grossly erred in relying on the statement of the witnesses namely CW2 Vipul Gupta, CW3 Vaibhav Misra and CW4 Prashant Mehra wherein they deposed that they saw the letter dated 08.08.2008 written by petitioner to the Vice Chancellor in the form of a 'Circular' in the University. This is because the said letters were never issued as a circular nor were they intended to be issued in the form of a circular in the University. It was a letter written strictly confidentially by petitioner in her capacity as Dean of the University to the Vice Chancellor. It is admitted fact that these letters were never issued in the form of circular nor did the Vice Chancellor or the administration of the University release the letter in the form of a circular to the students or teachers of the University. Moreover, there was no way for the witnesses CW2, CW3 and CW4 to have known the contents of the letter dated 08.08.2008 in the form of what they describe as a 'CIRCULAR'. It was further submitted that no copy of the alleged circular has been placed on record and



the complainant/respondent has only placed on record the copy of letter/official communications and the very content of the same disclose the official nature of letters. Even on the copy of the said letter dated 8.08.2008 the word 'circular' is not mentioned. Thus, from the very nature of the communication dated 8.08.2008, it is crystal clear that this was strictly official and confidential communication between the Dean (petitioner) and the Vice Chancellor and these letters were never in public domain. Thus, on two earlier occasions different learned Magistrates dealing with the complaint have rightly dismissed the complaint as not maintainable.

11. Learned counsel appearing on behalf of the petitioners relied upon the following judgments:

- i. Pepsi Foods Ltd. v. Special Judicial Magistrate, 1998 CrL LJ 1.
- ii. K. Ramakrishna & Ors v. State of Bihar & Anr., 2001 SCC (CrL) 27.
- iii. State of Haryana v. Bhajan Lal, AIR 1992 SC 604
- iv. R.P. Kapur v. State of Punjab, AIR 1960 SC 866.
- v. State of Karnataka v. L. Muniswamy & Others, (1977) 2 SCC 699.
- vi. Madhu Limaye v. The State of Maharashtra, (1977) 4 SCC 551
- vii. Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others, (1988) 1 SCC 692.
- viii. Rajendra Kumar Sitaram Pande & Ors. v. Uttam & Anr, (1999) 3 Supreme Court Cases 134
- ix. Aroon Purie v. State of NCT of Delhi & Ors., 2022 SCC OnLine SC 1491
- x. Kishore Balkrishna Nand v. State of Maharashtra & Anr., 2023 SCC OnLine SC 927



- xi. R.N. Goel & Anr. v. Nirmal Goel & Anr., 2008 (106) DRJ 714
- xii. Vijay Ganapati v. State & Ors., 2012 SCC OnLine Del 513

12. In the reply filed on behalf of complainant, it was submitted that the impugned order dated 29.10.2013, passed by the learned Metropolitan Magistrate suffers from no infirmities. The learned Metropolitan Magistrate passed the summoning order on the basis of the complaint and corroborative evidence of petitioner's publication to the Deputy Registrar and the Vice Chancellor on 30.6.2008, 08.8.2008 and 23.9.2008, by making knowingly false and per se defamatory imputations of "mischief, "nuisance", "intimidation, "breach of trust", "terror" and "criminal conspiracy" to the reputation of the complainant intending his dismissal. The learned Metropolitan Magistrate has discussed the statements in detail and after examining the records of the case and relevant precedents, the said order was passed, summoning the present petitioner for offences punishable under Sections 499/500 of the IPC. Learned Metropolitan Magistrate while summoning the present petitioner observed as under:

“Therefore keeping in view the above quoted paras of the above quoted judgements, it is clear that the onus is on the accused to bring the case under any of the exception given in IPC under section 499 IPC. In the present case accused has written letters to the Vice Chancellor of the university and those letters have been received by the complainant through RTI Therefore the prima facie it is evident that accused has published the letters containing defamatory contents against the complainant in them. Whether those letters were written by her in good faith or in discharge of her official duty, that fact can be pleaded by her at a later stage. At the stage of summoning the court has to see



whether a prima facie case is made out against the accused or not. The court is not supposed to look into the merits of the case at the stage of summoning. It prima facie case is made out against the accused, court is bound to summon the accused to face trial.”

13. It is the case of the complainant as per the written reply placed on record, that since he had challenged petitioner's arbitrary appointment before this Court in the pending Public Interest Litigation No. 3900/2011, wherein a Hon'ble Division Bench of this Court had asked the petitioner to resign if she was not able to work, therefore, the present petitioner bears malice/ill-will/spite towards the complainant.

14. It was further submitted in the reply, on behalf of complainant, that publication of defamatory imputations under Section 499 read with Section 500 I.P.C. would include communication of defamatory imputations to any person other than the defamed person. Accordingly, *vide* letter dated 30.06.2008 petitioner imputed knowingly false and per se defamatory words "mischief" and "nuisance" for complainant and published them to the Deputy Registrar; *vide* letter dated 08.08.2008 petitioner imputed knowingly false and per se defamatory words and published them to the said Vice Chancellor; and *vide* letter dated 23.09.2008 petitioner imputed knowingly false and per se defamatory words and published it to Vice Chancellor.

15. The complainant, in the reply filed to the present petition on her behalf, relied upon the following judgments:

- i. Indirect Tax Practitioners Association v. R.K. Jain, 2009 SCC OnLine Del 957.
- ii. Harbhajan Singh v. State of Punjab, AIR 1966 SC 97.



- iii. Chaman Lal v. State of Punjab, AIR 1970 SC 1372.
- iv. Chaman Lal v State of Punjab, AIR 1981 SC 1515.
- v. M. N. Damani v. S. K. Sinha and Others, AIR 2001 SC 2037.
- vi. M/s Tata Motors Ltd. v. State, 2015:DHC:1884.
- vii. Ved Kumar Gupta & Ors. v. Ashok Kumar Aggarwal & Ann, 2009 SCC OnLine Del 957
- viii. Sanjay Mishra V. Government of NCT of Delhi & Anr., (2012) 115 AIC 652 (Del)
- ix. R.P. Kapur V. State of Punjab, AIR 1960 SC 866.
- x. State of Haryana V. Bhajan Lal, 1992 Supp. (1) SCC 335.
- xi. Mrs. Rupan Deol Bajaj v. Kanwar Pal Singh GUI, (1995) 6 SCC 194.
- xii. Shatrughna Prasad Sinha v. Rajbhau Surajmai Rathi, (1996) 6 SCC 263.
- xiii. Krishnan & Anr. v. Krishnaveni & Anr., (1997) 4 SCC 241.
- xiv. Medchi Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269.
- xv. M. N. Damanis v. S. K. Sinha and Others, AIR 2001 SC 2037.
- xvi. Zandu Pharmaceutical Works v. Mohd. Sharaful Haque, 2005 (1) SCC 122.
- xvii. Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736.
- xviii. Sonapareddy Maheedhar v. State of Andhra Pradesh, 2007 (14) SCALE
- 16.** Heard learned counsel for the petitioner and perused the record.
- 17.** It is admitted case of the complainant that the alleged defamatory letters were written by the petitioner in her capacity as the Dean of USLLS, Guru Gobind Singh Indraprastha University to the Vice Chancellor of the said



University. It is also the case of the complainant that the said letters were obtained by him by way of RTI. The learned Metropolitan Magistrate while noting the aforesaid circumstances issued summons *qua* the present petitioner by observing that the onus is with the accused to bring the case under any of the exceptions provided under Section 499 of the IPC.

18. The Hon'ble Supreme Court, in **Aroon Purie Vs. State of NCT of Delhi and Others** (*supra*), held as under:

"**19.** We now turn to the question : whether the benefit of any of the exceptions to Section 499 of the IPC can be availed of and on the strength of such exceptions, the proceedings can be quashed at the stage when an application moved under Section 482 of the Code is considered?

20. In *Jawaharlal Darda v. Manoharrao Ganpatrao Kapsikar*, the reporting made by a newspaper about the proceedings in the Legislative Assembly touching upon the issues of misappropriation of Government funds meant for certain projects, was the subject matter of complaint alleging defamation. The decision shows that the article being accurate and true reporting of the proceedings of the House, which was reported in good faith in respect of conduct of public servants entrusted with public funds intended to be used for public good, the protection was extended and the power under Section 482 of the Code was utilised. Paragraph 5 of the decision is as under:—

"5. It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news



items were published for public good. All these aspects have been overlooked by the High Court.”

21. Similarly, in *Rajendra Kumar Sitaram Pande v. Uttam*, a reporting made to a superior officer alleging misconduct on the part of complainant was taken to be completely protected by exception 8 to Section 499 of the IPC and the proceedings were quashed. The relevant portion from paragraph 7 of the reported decision is as under:—

“7. ... Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by Exception 8 to Section 499 of the Penal Code, 1860. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for quashing the order of issuance of process and the proceedings itself. ...”

22. It is thus clear that in a given case, if the facts so justify, the benefit of an exception to Section 499 of the IPC has been extended and it is not taken to be a rigid principle that the benefit of exception can only be afforded at the stage of trial.”

(emphasis supplied)

19. Further, the Hon’ble Supreme Court in *Kishore Balkrishna Nand v. State of Maharashtra and Another (supra)*, held as under:

"Analysis

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the allegations made in the complaint addressed to the SDM make out the offence under Section 500IPC or not?



12. Section 499IPC reads, 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 excepted, to defame that person.”

13. Eighth Exception to Section 499, to which reliance has been placed by the learned counsel, reads as under:

“**Eighth Exception.—Accusation preferred in good faith to authorised person.**—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.”

14. The word “good faith” has been defined in Section 52IPC to mean:

“**52. “Good faith.”**—Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.”

15. We are of the view that no case is made out to put the appellant to trial for the alleged offence. There is no defamation as such.

16. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out.

17. In the overall view of the matter, we are convinced that the appeal deserves to be allowed and is hereby allowed. The impugned order [*Kishor v. State of Maharashtra*, 2010 SCC OnLine Bom 2406] passed by the High Court is hereby set aside. As a consequence of the same, the original order passed by the Magistrate issuing summons, is also hereby quashed and set aside. The criminal proceedings in the form of Criminal Case No. 247 of 2002 pending in the Court of Judicial Magistrate First Class, Worora, Chandrapur, Maharashtra stand terminated.”

(emphasis supplied)



20. In the background of the aforesaid principles, the records are perused. It is evident that no material has been placed on record by the complainant to show that the alleged defamatory letters were ever placed in public domain. A perusal of the record reflects that the alleged defamatory letters were made to the Vice Chancellor of the aforesaid University with regard to the alleged acts of in-subordination, misconduct or intimidation of the complainant. The complainant examined himself and three other witnesses, who stated that they were practicing lawyers and were students of Guru Gobind Singh Indraprastha University and while they had gone to the University in the month of January 2009, they saw the documents which were exhibited by the complainant as Ex. CW-1/3, i.e, the allegedly defamatory letters. The testimony of CW-2, CW-3 and CW-4, who had stated that they had seen the circular is incorrect as no circular has been placed on record. In fact, the said witnesses were referring to one of the alleged letters dated 08.08.2008 which was sent by the present petitioner to the Vice Chancellor of the said University. It is pertinent to note that in the letter dated 08.08.2008, it is recorded that the complainant had sent an e-mail to the petitioner, gist of which of which has been referred to in the said letter, however, the complainant is conspicuously silent about the said e-mail. It is noted that in the said letter, a reference is made to the fact that the complainant had sent the said e-mail on the website of USLLS, Guru Gobind Singh Indraprastha University.

21. As far as the judgments relied upon by the learned Metropolitan Magistrate in **Tata Motors Ltd. v. State, 2015:DHC:1884** and **M.A.**



Rumugam v. Kittu Alias Krishnamoorthy (2009) 1 SCC 101 are concerned, it is noted that in the said cases, the alleged defamatory content had been published in a periodical and a newspaper respectively, and therefore, they do not apply to the facts of the present case.

22. This Court has gone through the content of the alleged defamatory communications and is of the considered opinion that the same cannot be termed as ‘per se defamatory’. The facts of the present case clearly indicate that the petitioner had written the alleged defamatory letters to the Vice Chancellor of the aforesaid University in her capacity as Dean and on basis of e-mail sent by the complainant and various other incident as enumerated in the said letters. In view of the same, this Court is of the opinion that the case would fall within exception 8 to Section 499 of the IPC.

23. Consequently, order dated 29.10.2013, passed by learned Metropolitan Magistrate is set aside and the impugned complaint, i.e., CC No. 6161/2009 is quashed.

24. The petition is allowed and disposed of accordingly.

25. Pending application(s), if any, also stands disposed of.

26. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

27. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
JUDGE**

DECEMBER 11, 2023/sn