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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 27.03.2023
Pronounced on: 29.05.2023

+ **CRL.M.C. 753/2010 & CRL.M.A. 2733/2010**

P C SANGHI

..... Petitioner

Through: Mr. Kanhaiya Singhal,
Advocate

versus

SIDHARTH SANWARIA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), the petitioner seeks quashing of the impugned order dated 20.07.2009, passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi arising out of Criminal Complaint No. 4213/1 of 2008, titled as "*Siddharth Sanwaria v. P.C. Sanghi*", for the offences punishable under Sections 499/500 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, it is the case of the complainant/respondent i.e. Sidharth Sanwaria that on 16.07.2008, the petitioner herein had filed a false complaint against him before the Chairman of Bar Council of



Punjab and Haryana, Chandigarh causing loss and injury to the reputation of respondent/complainant. Subsequently, the Chairman of Bar Council of Punjab and Haryana had forwarded the complaint to the General House of Bar Counsel for taking necessary action, however, no act of misconduct committed by the respondent/complainant was found. Furthermore, it is alleged that on 22.11.2008, the petitioner had made a phone call to one Sh. Ashwani Aggarwal i.e. CW-2, a resident of New Delhi, to help and assist him in order to cancel the complainant's Bar Licence because he had defrauded multiple people in Chandigarh. After the conversation, Sh. Ashwani Aggarwal had contacted the respondent/complainant and had narrated the entire incident to him. Thereafter, on 03.12.2008, CW-2 had written a letter to the respondent seeking clarification on the allegations levelled against him by the petitioner and he had further stated that he would refrain from giving further work to the respondent until proper clarification is provided. As a result, the respondent/complainant had lodged a complaint under Section 200 Cr.P.C. before the learned Trial Court, Delhi in December, 2008, alleging that the petitioner had published defamatory statements defaming the respondent/complainant on various occasions.

3. Learned Magistrate *vide* impugned order dated 20.07.2009 had issued summons against the petitioner. The relevant portion of the summoning order is reproduced as under:

“...The Complainant has examined to witnesses in support of his case. CW-1 Complainant himself and CW-2 is Manager Kotak Mahindra Bank. CW-2 basically deposed that after he spoke and met the respondent who made the



allegation against the complainant he withdraw professional work from the complainant. However, later on after clarifying the matter and relishing that the complaint against the complainant made by the respondent were baseless, the witness restored the work assigned to the complainant. I have carefully gone through the records of the case. In fact on the basis of the evidence and records of the case prima face case of summoning the respondent U/s 499 /500 IPC is made out: Let accused be summoned for 29.10.2009 on filing of PF...”

4. Aggrieved by the aforesaid summoning order, the petitioner is before this Court by way of the present petition.
5. Learned counsel for the petitioner argues that the summoning order passed by the learned Magistrate deserves to be quashed on the grounds that the learned Magistrate failed to appreciate that it lacked the jurisdiction to pass the impugned order against the petitioner. It is submitted that even as per the case of the respondent, the entire cause of action leading to the filing of present complaint arose in Chandigarh which is outside the jurisdiction of the learned Magistrate in Delhi. It is stated that the present case is not maintainable in Delhi, and if at all the respondent was aggrieved, he should have filed an appropriate complaint in Chandigarh where the actual cause of action allegedly arose.
6. The respondent by way of written submissions and reply filed before this Court contents that the petitioner had made defamatory statements against the respondent, his family members, friends and clients. It is also submitted that the petitioner had caused huge loss and injury to the respondent's reputation among the fraternity of the advocates. It is also stated that the learned Magistrate was well within



its jurisdiction to issue summons and to have tried the case. Therefore, the petition be dismissed.

7. The rival contentions of both the parties have been heard and the material on record has been carefully perused.

8. Before considering the present petition on its merits, this Court notes the conduct of respondent herein, who in spite of multiple warnings and opportunities, did not appear before this Court, despite the fact that the matter pertains to the year 2010. In this regard, certain relevant orders are reproduced herein-under for reference.

13.1. The order dated 05.07.2022 reads as under:

“1. None appeared for respondent. Learned counsel for petitioner was requested to contact the learned counsel for respondent. After sometime, learned counsel for petitioner stated that he had spoken to respondent as well as his counsel who state that they are not available today.

2. Perusal of record shows that this is one of the oldest matters pending before this Court and for one or other reason, adjournments have been sought. It is clarified that on the next date of hearing in case the respondent or his counsel remains absent, matter will be decided after hearing the petitioner. More-so, since the petitioner is aged about 88 years, no adjournment will be granted.

3. Be listed on 18.07.2022.

4. Date has been given at the convenience of learned counsel for respondent since he has conveyed his request through counsel for petitioner to be given a date falling on Monday or Friday. Learned counsel for the petitioner may file written arguments before the next date of hearing...”

13.2. The order dated 18.07.2022 reads as under:

“..Despite an order dated 05.07.2022 neither the respondent nor his counsel has appeared today. It was clarified in the said order that on the next date of hearing in case the



respondent or his counsel remains absent, matter will be decided after hearing the learned counsel for the petitioner especially, considering the age of the petitioner as well as the fact that this is one of the oldest cases pending before this Court.

2. It seems that the respondent has little regard for the Court or the judicial process as despite long pendency of this petition before this Court, even today, neither he nor anyone authorized on his behalf has appeared.

3. Learned proxy counsel appearing for the respondent states that he does not have his vakalatnama. He further states that the respondent will file his brief written submissions within the prescribed time as may be fixed by this Court.

4. In the interest of justice, the respondent is given on last opportunity to file his written submissions within the next three days from today with advance copy to learned counsel for the petitioner.

5. Re-notify on 25.07.2022.

6. It is made clear that no further adjournment shall be granted on any ground whatsoever...”

13.3. The order dated 02.08.2022 reads as under:

“...1. None has appeared on behalf of respondent despite the order dated 18.07.2022 by which it was observed that in case the respondent or his counsel does not appear, the matter will be taken up for arguments.

2. As a final opportunity, the matter is adjourned on 13.09.2022 for final disposal.”

13.4. Further, as per the order sheets, no one had appeared on behalf of respondent on 13.09.2022, 07.10.2022, 04.11.2022, 12.12.2022, 07.03.2023, as well as on 27.03.2023 when the matter was reserved for orders.

9. Be that as it may, this Court now proceeds to consider the contentions raised on behalf of both the parties.



10. The petitioner herein has primarily raised the issue of jurisdiction and the competence of the concerned Court in Delhi to adjudicate upon the complaint filed by the respondent. The Hon'ble Apex Court in *Subramanian Swamy v. Union of India* (2016) 7 SCC 221 had made the following observations on aspect of jurisdiction in cases of offence of defamation:

“206. In the course of hearing, it has been argued that the multiple complaints are filed at multiple places and there is abuse of the process of the court. In the absence of any specific provisions to determine the place of proceedings in a case of defamation, it shall be governed by the provisions of Chapter XIII CrPC - Jurisdiction of the Criminal Courts in Inquiries and Trials. A case is ordinarily tried where the offence is committed (Section 177). The expression used in Section 177 is "shall ordinarily be inquired into and tried" by a court within whose jurisdiction it was committed. Whereas shall" brings a mandatory requirement, the word "ordinarily" brings a situational variation which results in an interpretation that the case may be tried as per the further provisions of the Chapter. In case the place of committing the offence is uncertain, the case may also be tried where the offence was partly committed or continues to be committed (Section 178). The case may also be tried where the consequence of the act ensues (Section 179). The other provisions in the Chapter also deal with regard to certain specific circumstances. Section 186 CrPC gives the High Court powers to determine the issue if two or more courts take cognizance of the same offence. If cases are filed in two or more spurts in different jurisdictions, then the jurisdiction to determine the "Case lies with the High Court under whose jurisdiction the first complaint was filed. Upon the decision of the High Court regarding the place of trial, the proceedings in all other places shall be discontinued. Thus, it is again left to the facts and circumstances of each case to determine the right forum for the trial of case of defamation. Thus, CrPC governs the territorial jurisdiction and needless to say, if there is abuse of the said jurisdiction, the person grieved by the issue of summons can take



appropriate steps in accordance with law. But that cannot be a reason for declaring the provision unconstitutional”.

11. In this regard, this Court has taken note of the testimonies of CW-1 and CW-2, the complaint filed by the respondent and the other documents which have been filed along with the complaint.

12. *Firstly*, the offence of defamation alleged to have taken place upon writing of letter to the Bar Council of Punjab and Haryana by the petitioner can only be held to have taken place, if at all, at Chandigarh since the alleged defamatory letter had been directed to the Bar Council of Punjab and Haryana, having its office in Chandigarh, by the petitioner who had also written the same in Chandigarh itself.

13. *Secondly*, a careful perusal of the testimony of CW-2 i.e. Sh. Ashwani Aggarwal, then Manager of Kotak Mahindra Bank, Delhi reveals that the petitioner herein had allegedly met him in Chandigarh and had informed something about the respondent/complainant in Chandigarh itself. Therefore, the defamatory information, if any, was also verbally conveyed to CW-2 in Chandigarh, and not within the territorial jurisdiction of Delhi.

14. *Thirdly*, as stated by CW-2 in his testimony, after the petitioner had met him in Chandigarh and had informed him about the conduct of the respondent, the petitioner had subsequently made phone calls to CW-2. However, no date or time had been specified by CW-2 as to when the petitioner had done so. Moreover, it has also not been stated as to from which location calls were made by the petitioner and as to where CW-2 was located at such point of time. Even otherwise, this incident had taken place subsequent to the alleged information shared



by the petitioner at Chandigarh and, therefore, any phone call made thereafter, in connection with the same information was only a casual reminder of the same.

15. *Fourthly*, CW-2 had written a letter dated 03.12.2008 (Ex.CW-1/C-A) to the respondent seeking clarification of his conduct after the petitioner had allegedly provided some information about the respondent to him. It can be noted that the said letter was addressed to the respondent at his residence/office in Chandigarh, although it has been contended that the respondent has an office/chamber in Delhi. Also, the said letter written by CW-2 seeking clarification from respondent *prima facie* appears to have been written and sent by him in his personal/individual capacity and was received by the respondent at Chandigarh and not in Delhi. The letter has not been circulated in public domain either in Delhi or in Chandigarh to be covered under the definition of defamatory material being published to be covered under Section 499 of IPC. It is not disputed that the letter was written in individual capacity by CW-2 to the respondent in his individual capacity and not public consumption nor it was published publically. Therefore, the letter which was written from Delhi, the conveying of the content, allegedly defamatory, ensued in Chandigarh itself and not in Delhi.

16. *Fifthly*, this Court notes that the respondent i.e. CW-1 in his testimony has specifically mentioned that he had told CW-2 that he would be available for a meeting with him in one of his chambers in Delhi on a specific day. However, it is important to note that this



meeting with CW-2, which was requested by the respondent/complainant himself, does not establish jurisdiction in Delhi.

17. *Sixthly*, the jurisdiction to try this case cannot be premised on an allegation that some of the colleagues of respondent were sitting in his chamber in Delhi when clarification was sought from him by CW-2, as it is not the case of the respondent that it was the petitioner who was present in Delhi in his chamber. Further, the respondent has not disclosed the names of the persons who were allegedly sitting in his chamber and had overheard his conversation with CW-2, nor their testimonies have been recorded for pre-summoning evidence. Moreover, it was the complainant himself who was inviting CW-2 for clarification in his chamber knowing fully well as to what clarification was being sought and what can be spoken against him by CW-2. Thus, such averments are insufficient to create jurisdiction to try this case in Delhi. It is also to be noted that no words were spoken, written or published or heard by the respondent from the petitioner, by the respondent at Delhi.

18. Therefore, the aforesaid discussion would point out that at no point of time, any part of the alleged offence of defamation or any incident took place in Delhi. The alleged act of defamation if it indeed occurred, for which no specific date is mentioned as to when a meeting between CW-2 and the petitioner had taken place in Chandigarh, was during the meeting in Chandigarh where the petitioner informed CW-2 about the misconducts attributed to the respondent/complainant. Therefore, if at all the offence under Section



499/500 IPC was committed, it was committed within the jurisdiction of Chandigarh.

19. In the present case, a bare perusal of the records reveals that the learned Magistrate had passed a very cryptic order, which does not even discuss the point of jurisdiction, nor does the impugned order discuss as to why and how a conclusion was reached that offences punishable under Sections 499/500 of the IPC are even prima facie made out against the present petitioner.

20. However, in view of the foregoing discussion, this Court is of the opinion that the learned Magistrate in Delhi lacked jurisdiction to try and entertain the present complaint and, therefore, the order of summoning is perverse and suffers from infirmity of law.

21. Therefore, impugned summoning order dated 20.07.2009, passed by learned Metropolitan Magistrate, Patiala House Courts, New Delhi arising out of Criminal Complaint no. 4213/1 of 2008 is quashed.

22. Accordingly, the petition stands disposed of.

23. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 29, 2023/kss