

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-612-2024
Date of Decision: 08.01.2024
2024: PHHC:001437

Ishwar Singh Yadav

. . . . Petitioner

Vs.

Maneesh Vashishth

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. H.P.S. Ghuman, Advocate, for the petitioner.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays to quash private complaint bearing No. COMI-152 of 2014 dated 03.12.2014 (Annexure P2) filed under Section 340 CrPC, pending for 08.02.2024 before the Id. CJM, Narnaul and all the subsequent proceedings arising therefrom.

2.1 It is contended by Id. counsel that respondent had published a defamatory article in a Newspaper against petitioner-Ishwar Singh Yadav and BSNL. The competent officer of BSNL filed complaint against the respondent under Sections 500, 501 and 502 IPC, in which the respondent was convicted and sentenced vide judgment/order dated 27/30.03.2015. Copy of the judgement is Annexure P1.

2.2 It is contended further that due to filing of the aforesaid complaint, respondent moved an application under Section 340 CrPC before the trial Court on the ground that petitioner had no authority to file the complaint for defamation and that petitioner had falsely deposed in the

Court by referring to the documents giving him authority for filing the complaint and for establishing his *locus standi*. Copy of the complaint is Annexure P2.

2.3 By referring to decisions of Hon'ble Supreme Court in ***M.S. Ahlawat Vs. State of Haryana and another***, (1999) 4 RCR (Criminal) 718 and ***Sh. Narendra Kumar Srivastava Vs. The State of Bihar and others***, (2019) 5 RCR (Criminal) 501, it is contended by ld. counsel that complaint (Annexure P2) is not maintainable. It is only the competent Court before whom the perjury was allegedly committed, who can file the complaint under Section 195 CrPC as per the procedure provided under Section 340 CrPC.

3. Heard.

4. In the case of ***M.S. Ahlawat (Supra)***, it was held as under: -

“Chapter XI of IPC deals with false evidence and offences against public justice’ and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C, it is open

to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr.P.C. are mandatory and no court can take cognizance of offences referred to therein. It is in respect of such offences the court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.”

Aforesaid legal position was reiterated by Hon’ble Supreme Court in ***Sh. Narendra Kumar Srivastava (Supra)***.

5. However, a perusal of the complaint (Annexure P2) as filed by the respondent against the petitioner would reveal that following relief has been sought by the respondent: -

“Therefore, by presenting this application, in the interest of justice it is necessary that this Hon’ble Court after conducting inquiry as per the procedure prescribed in Section 340 read with Section 195(1) (b) CrPC, the criminal complaint may be filed against Ishwer Singh Yadav and for getting him punished.”

6. It is, thus, clear that by way of the complaint (Annexure P2), respondent has simply prayed the Court concerned to conduct inquiry as per the procedure prescribed under Section 340 read with Section 195(1) (b) CrPC, and to file the complaint against Ishwer Singh Yadav. Thus, respondent has not filed the complaint for prosecuting the petitioner and rather, has prayed the Court to initiate necessary inquiry.

7. In the aforesaid facts and circumstances, the legal position as laid down in the case of ***M.S. Ahlawat (Supra)***, is not applicable to this Case.

8. It is also liable to be noticed that though the complaint (Annexure P2) was filed way back on 03.12.2014, but petitioner has

approached this Court in January 2014 i.e., almost after 10 years, without disclosing about the subsequent proceedings, which have been taken so far before the Court concerned.

9. For all the aforesaid reasons, this Court does not find any merit in this petition. As such, the same is hereby dismissed.

08.01.2024

Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |