

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-97-2020 (O&M)

Decided on 02.09.2024

Bhanti Devi & Ors.

... Petitioners

VS.

Satish Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Jagdish Manchanda, Advocate and
Mr. Nischal Chetanya Manchanda, Advocate for petitioner

None for the respondent

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the impugned judgment dated 14.12.2019 passed by Additional Sessions Judge, Kurukshetra vide which the revision petition filed by the respondent-revisionist/complainant-Satish Kumar was allowed and the order dated 18.03.2019 passed by JMIC, Shahabad was set aside vide which the complaint filed by revisionist/complainant against the petitioner-accused was dismissed.

(2). Learned counsel for the petitioners contends that the respondent was acquitted in FIR No.147 dated 31.10.2013 under Sections 323, 354 and 506 of IPC on 03.07.2015. Thereafter, complaint under Section 499 and 500 IPC came to be filed against the petitioner on 24.01.2017. He submits that the trial court had dismissed the complaint filed by the respondent-complainant whereas the revision petition filed by him has been remanded back to the trial court vide impugned judgment passed by the revisional court.

(3). It is argued that in the offence of defamation, Section 500 IPC is to be tried as per provisions of sub-Section (a) of Section 469 of CrPC, the period of limitation shall commence on the date of offence or (b) where the commission of offence was not known which is not the circumstance in the present case and has been wrongly made applicable to the petitioner by the revisional court. He submits that the limitation to file the complaint is assessed as per Section 468 CrPC in terms whereof if the offence is punishable upto three years or less on lesser side, the limitation of filing the complaint is three years and the limitation shall start from the date of occurrence for filing the complaint under Section 500 IPC as defined in Section 469 CrPC and since the FIR has been lodged on 31.10.2013 and the present respondent was charge-sheet under Section 323/506 IPC but was acquitted on 03.07.2015 and thereafter the complaint was filed on 24.01.2017, the same is barred by limitation. The Court is required to decide question of limitation at the first instance, i.e. at the pre-cognizance stage and the limitation has to be counted from the date of occurrence and the cognizance could be taken within a period of 3 years from the date of occurrence.

(4). Notice of motion was issued on 07.02.2020 and the proceedings of the trial court were stayed. However despite service, as is evident from the order dated 29.03.2022, the respondent throughout chose to remain unrepresented before this Court though ample opportunities were granted to the respondent.

(5). Heard learned counsel for the petitioner and gone through the judgments passed by the courts below.

(6). A criminal complaint under Section 499/500 IPC was filed by the revisionist-complainant (respondent herein) against the petitioner-accused on the ground that on the account of false allegations, FIR No.147/2013 got registered by the petitioner, the revisionist/complainant had faced trial for two years and was defamed and finally acquitted on 03.07.2015 and therefore, he filed complaint under Sections 499 and 500 IPC against the petitioner.

(7). The trial court vide order dated 18.03.2019 dismissed the complaint filed by the revisionist/complainant at the stage of summoning of the petitioner-accused by holding that since the revisionist/complainant was acquitted on account of benefit of doubt, no prima facie case for summoning the petitioner is made out.

(8). It is against this order of the trial court, the respondent filed the revision petition and the same has been allowed by the revisional court by holding that in view of Section 499 IPC, the alleged imputation in the FIR Ex.C12 against the complainant-revisionist/respondent was made prima facie with an intent to harm his reputation and as such, it falls within the definition of 'defamation' and such imputation is not covered under the eight exception attached to Section 499 IPC and therefore, the case was remanded back to the trial court for afresh decision.

(9). The trial court did not find favour with the argument of the complainant that at the stage of summoning only a prima facie case has to be seen. The trial court rightly observed that it is mandatory for the trial Magistrate to discuss as to how the accused is liable and the summoning of the accused in a criminal case should not be done in a mechanical manner merely on the basis of the statements of the witnesses and due application of judicial

mind has to be given. While arriving at such decision, recourse was taken to the decision of this court in Anil Dhawan & Ors. vs. Gurnam Singh 2008(4) RCR (Crl) 376 and Arun Jha and Anr. Vs. State of Haryana &Anr. 2006(1) RCR (Crl) 300 wherein this Court held that it is mandatory for a Magistrate to form an opinion that there is sufficient ground for proceeding against the accused for summoning him.

(10). Either before the trial Court or even before the revisional Court, there is nothing substantial material placed on record on behalf of the complainant/revisionist that the petitioner made or publish, directly or indirectly, any imputation concerning the respondent to harm his reputation in order to defame him or to lower his character in respect of his caste or credit. There is no discussion or appreciation of such evidence or material much less tenable before the revisional court that shows that the act of petitioner fell within the ambit of defamation and in absence of such discussion, the order of revisional court cannot be allowed to withstand.

(11). As regards limitation in filing the complaint, it is well settled that in the complaint of defamation under Section 500 IPC, the limitation to file the complaint will begin from the date of lodging of the FIR and not from the date when the FIR was quashed which is clearly barred under Section 468 CrPC with regard to lodging the complaint beyond the period of limitation. Chapter XXXVI of CrPC, deals with limitation for taking cognizance of certain offences and for purposes of that Chapter, Section 467 defines the expression "period of limitation" to mean the period specified in section 468 for taking cognizance of an offence. The limitation to file the complaint is to be seen from the provisions of Section 468 CrPC which reads as under:-

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be –

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(12). The offence of defamation under Section 500 IPC is to be seen in terms of the provisions of Section 469 CrPC which reads as under:-

469. Commencement of the period of limitation.

(1) The period of limitation, in relation to an offender, shall commence,

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

(13). The section thus not only raises the bar of limitation, but also prescribes the period thereof. It is not in controversy that the period of limitation in the present case would be three years as prescribed in clause (c) of sub-section (1). The question is when the period of limitation could be said to commence for purposes of the present case? That is a matter which falls within the purview of section 469. Clause (a) of sub-section (1) of the section provides

that the period of limitation, in relation to an offender, shall' commence,- "(a) on the date of the offence;".

(14). As per above provision, for offences punishable by three years or less, the limitation period for filing a complaint is three years, commencing from the date of the offence. This is evident from Section 469 of the Cr.P.C., which defines the limitation period for complaints under Section 500 of the IPC, which prescribes a punishment of up to two years' simple imprisonment, fine, or both for defamation and as such the complaint should have been filed within the prescribed limitation period. In this case, the FIR was lodged on October 31, 2013, and the respondent was charge-sheeted under Sections 323 and 506 of the IPC. Although the respondent was acquitted on July 3, 2015, the complaint was filed on January 24, 2017, exceeding the three-year limitation period prescribed under Sections 468 and 469 of the Cr.P.C. The cause of action arose on October 31, 2013, when the FIR was lodged whereas the complaint has been filed on 24.01.2017 i.e. after a period of three years.

(15). Reliance can be placed on **Surinder Mohan Vikal versus Aschari Lal Chopra 1978 AIR SC 986** wherein the Supreme Court held that limitation commences from the date of filing the complaint and not from the date of acquittal. The relevant portion of the said judgment reads as under:-

"...It been stated, sub-section (1) of [section 469](#) of the Code specific provides that the period of limitation prescribed in [section 468](#), relation to an offender, shall commence (inter alia) on the date the offence. It would therefore follow that the date of the offence was March 15, 1972, when the defamatory complaint was filed the Court of the Magistrate, and that was the starting point for purpose of calculating the three years' period of limitation. High Court clearly erred in taking a contrary view.

An attempt was made to argue before us that the respondent was, at any rate, entitled to the exclusion of time under sub-section (1) of [section 470](#) of the Code in computing the period of limitation. The sub-section reads as follows,-

"470 (1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded :

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

It is an essential requirement of the sub-section that the person seeks its benefit should be able to establish that he was "prosecuting" another prosecution in one Court or the other referred to the sub-section. But it is not the case of the respondent that he was prosecuting the appellant in any other prosecution. It is not his case that that prosecution related to the "same facts" within the meaning of the proviso to the sub-section. The provision of sub-section (1) of [section 470](#) cannot therefore avail the respondent, and he is not entitled to the exclusion of any time thereunder. It may be mentioned that the respondent has not sought the benefit of sub-section (1) of [section 473](#) which permits the extension of the period of limitation in certain cases.

It would thus appear that the appellant was entitled to the benefit of sub-section (1) of [section 468](#) which prohibits every Court from taking cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation..."

(16). It is also well settled that the question of limitation is not an identical bar, but can be raised at any stage or before the High Court and be computed and determined by the Court on the basis of a proper explanation of delay or overriding the default if necessary in the interest of justice. It cannot be said that cognizance having once been taken by the trial Court, it would not be open to the accused to raise the issue of limitation thereafter, nor was it

permissible for the Court to determine the same. Unambiguously, there can be no bar to the accused person raising the issue of limitation.

(17). So far as the observation of the revisional court that the alleged imputation in the FIR by the petitioner would fall within the definition of defamation and as such covered under Eighth Exception attached to Section 499 IPC is concerned, it has to be seen that the Section 499 IPC starts with the expression "it is not defamation...". In the present case, FIR was made with good faith believing the allegations to be true. In such cases, it was settled principle of law that exception 8 of Section 499 IPC will apply and they would not attract any accusation, imputation or defamation against the petitioner. Eighth Exception to Section 499 IPC 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.

(18). A perusal of eighth exception would make it manifest that it is not defamation to prefer in good faith an accusation against any person to lawful authority over that person with respect to the subject matter of accusation. 'Good faith' has been defined in Section 52 IPC and says that nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. Even the allegations made to the police regarding commission of offence would be covered in Eighth Exception and would not constitute defamation even if the allegations levelled are taken on their face value.

(19). In the instant case, the petitioner has neither published nor defamed the complainant in public eyes but he made a complaint to the police

and as such, the petitioner would be protected under Eighth Exception appended to Section 499 IPC. The observation of the revisional Court is misplaced and deserves to be rejected as there was no valid or justifiable evidence or substantial material on record, to remand the case back to the trial court.

(20). In view of the above discussion, this petition is allowed and the judgment dated 14.12.2019 passed by Addl. Sessions Judge, Kurukshetra is hereby set aside.

02.09.2024
V.Vishal

- 1. *Whether speaking/reasoned?*
- 2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No