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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.11946 of 2018
Date of decision: 22.10.2024

Gurmail Singh ... Petitioner

Vs.

Preet Inder Singh Bains and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kanwaljeet Singh Derabassi, Advocate,
for the petitioner.

Mr. Dhirinder Chopra, Advocate,
for respondent No.1.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for setting aside the order dated 14.12.2016 passed by the Court of learned Additional Sessions Judge, SAS Nagar, Mohali in Criminal Revision bearing CIS No.CRR 191 of 2013 titled as *Preet Inder Singh Bains v. Gurmail Singh*, whereby the order dated 22.10.2012 as passed by the Court of Judicial Magistrate, 1st Class, Dera Bassi in criminal complaint titled as *Gurmail Singh v. Parwinder Kaur and others*, had been set aside and the revision petition was allowed.

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2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned complaint had been filed by the present petitioner-complainant against the respondent No.1 alleging therein that he was inhabitant of village Dehar and was owning agricultural land in this village. On 07.05.2008, the Panchayat Secretaries (impleaded as respondents No.6 to 7 in the complaint), were auctioning the agricultural land owned by the Gram Panchayat, on lease for agricultural purpose for one year. The petitioner-complainant was also present for bidding. At the time of auctioning of plot No.6, the respondents No.6 and 7 gave gavel in the name of Hans Raj, a co-villager despite the fact that the bid given by the father of the complainant was for the higher amount. The complainant and his father objected to the same and also informed the present respondent who was posted as Block Development and Panchayat Officer of their village, about the entire incident. The respondent No.1 assured to take action in the matter by representing that he will cancel the auction of the plot in question and would re-auction the same. However, on the next day i.e. on 08.05.2005 when the respondent No.1 reached there at spot, he blatantly refused to re-auction the plot. Hot words were exchanged between the complainant and the respondent No.1. The complainant moved an application against the illegal auction of the plot No.6 before Director, Panchayat who cancelled the auction on 14.05.2008. The respondent No.1 had, however, lodged a complaint against him by levelling false allegations. Those

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allegations were found to be false by the police during inquiry and the complaint was filed. The complainant by alleging that the respondent had defamed him in conspiracy with the Panchayat Secretaries i.e. respondents No.6 and 7 in the complaint, prayed for taking action against them.

3. After considering the preliminary evidence, the learned trial Court vide order dated 22.10.2012, summoned the present respondent No.1 along with some other persons to face trial for commission of offences punishable under Sections 499 and 500 of IPC read with Section 120-B of IPC. Aggrieved with the order dated 22.10.2012, the respondent No.1 had preferred a revision petition before the Revisional Court and vide order dated 14.12.2016, the learned Additional Sessions Judge while exercising powers of Revisional Court, allowed the petition and set aside the order of summoning the respondent No.1 as an accused.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as the same suffers from material illegalities and infirmities. The learned Revisional Court wrongly observed that no sanction for prosecution of the respondent had been given by the competent authority though no such sanction was required in the instant case, since the act as committed by the respondent No.1 as against the petitioner was not a part of his official duty and the same had been done due to some personal grudge. It is further argued that there was overwhelming evidence on record to prove that the respondent

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No.1 in connivance with others,had defamed the petitioner thereby lowering his reputation in the estimation and eyes of others. It is argued that the impugned order dated 14.12.2016 is, therefore, liable to be set aside, the petition deserves to be accepted and the respondent is liable to be proceeded with, as an accused in the complaint filed by the petitioner and is liable to face trial. To fortify his argument, learned counsel for the petitioner has relied upon authority cited as **K.C. Narwal, SDO (Operation) H.H.B.V.N. v. Jagdish Chander, proprietor, Friends Poultry Farms, V.P.O. Barwala, Dist. Panchkula, 2009 (2) R.C.R. (Criminal) 103.**

5. Per contra, learned counsel for the respondent No.1 has argued that the impugned order did not suffer from any infirmity or illegality. The findings as given by learned Revisional Court are well reasoned and did not warrant any interference. It is further argued that the learned Revisional Court had rightly observed that the respondent No.1 being a public servant could not be prosecuted for want of any sanction order. He further argued that even otherwise, no case for commission of offence of defamation defined under Section 499 and punishable under Section 500 of IPC was made out. With these broad submissions, it is urged that there is no merit in the petition and it is liable to be dismissed. To fortify his argument, learned counsel for respondent No.1 has relied upon authorities cited as **Goondla Venkateswarlu v. State of A.P. and another, 2008 (4) R.C.R. (Criminal) 678; Rakesh Kumar Mishra v.**

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State of Bihar and others, 2006 (1) R.C.R. (Criminal) 456 & **M/s Pepsi Foods Ltd. v. Special Judicial Magistrate**, 1997 (4) R.C.R. (Criminal) 761.

6. Learned State counsel has not chosen to address any arguments since it is a case relating to a private complaint.

7. I have heard learned counsel for the parties at considerable length and have gone through the record.

8. The respondent had been summoned by the Court of learned Magistrate to face trial for commission of offences under Sections 499 and 500 of IPC read with Section 120-B of IPC. Section 499 of IPC simply defines 'defamation'. Therefore, the respondent could not be summoned under Section 499 of IPC and obviously an error was committed by learned trial Court by issuing process under this section. No doubt, so far as the offence under Section 500 of IPC is concerned, the Magistrate had power to take cognizance of this offence under the provisions of Section 200 of Code of Criminal Procedure. However, it is to be noted that sustainability of exercise of such power to issue process against an accused is to be considered in view of the legal and factual position. The golden standard for summoning an accused in a private complaint case has been laid down by Hon'ble Supreme Court in its decision in **M/s Pepsi Foods Ltd.'s** case (Supra), wherein it was observed that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of ordinary

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course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and the evidence that would also be sufficient for the complainant to succeed in bringing home the charge as against the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

9. As per Section 204 of the Code, if in the opinion of the Magistrate taking cognizance of an offence, there are sufficient grounds for proceeding, he shall issue summons for procuring the attendance of the accused in a summons case or in a warrant case. The sine qua non for exercising the power under Section 204 of Cr.P.C. to issue process, is the subjective satisfaction regarding the existence of sufficient ground for proceeding. In **Mehmood Ul Rehman and others Vs. Khazir Mohammad Tunda and others**, (2015) 12 SCC 420, the Hon'ble

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Supreme Court held thus:-

“22.....The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court.....In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction.....To be called to appear before criminal court as an accused is serious matter affecting one’s dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.”

10. In view of the above discussion, let us now proceed further to consider the question as to whether the impugned order as passed by the learned Revisional Court thereby allowing the revision petition and setting aside the order of issuing process by the Magistrate under Sections 499 and 500 of IPC read with Section 120-B of IPC against the respondent and dismissing the complaint requires interference or not? As already mentioned, the offence of defamation is defined under Section

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499 of IPC. This section reads as under:-

“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 case hereinafter expected, to defame that person.*

Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

11. In support of the allegations levelled in the complaint, the petitioner examined four witnesses including himself during the course of preliminary evidence. Copies of statements of witnesses so recorded during the course of preliminary evidence, have been placed on record by

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the petitioner as Annexures P-4 to P-7 respectively. A perusal of statement of the petitioner (Annexure P-4) reveals that while appearing as CW-1, he deposed that the respondent had given an application on false allegations against him to the police and due to the same, he had been harassed and disturbed and had suffered mental and financial loss. He further stated that he had been insulted in the society due to the act and conduct of the respondent. CW-2 Gian Singh, a co-villager is shown to have stated that due to filing of a complaint against the petitioner, he had been harassed, insulted and humiliated in the village as well as in the society and suffered financial and mental loss and had been mentally disturbed. CW-4 Om Parkash is also shown to have deposed on the same lines. On a careful scrutiny of the statements of the petitioner and the above named witnesses, it is clear that except for the general allegations that the petitioner had been humiliated and insulted in the village and society and he suffered financial loss and was mentally disturbed due to filing of a complaint by the respondent, there is no substance to establish the criminality of the respondent. Neither of the witnesses examined by the petitioner is shown to have stated that the respect of the petitioner had lowered down in their own estimation. They also did not cite the name of any person in whose estimation, the moral and intellectual character or respect of the respondent was lowered down. The testimony of the petitioner himself could not be considered for the purpose of showing that he had been defamed and his reputation had been lowered down. On

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the basis of the statement recorded by the witnesses examined by the petitioner, the ingredients for commission of offence defined under Section 499 and punishable under Section 500 of IPC cannot be stated to have been satisfied. There is nothing on record to show that the complaint which was filed by the respondent as against the petitioner was moved with intent to harm the reputation of the petitioner or by filing the same, the respondent had directly or indirectly lowered the moral and intellectual character of the respondent in the estimation of others. Neither the allegations in the complaint nor the evidence produced by the petitioner can be stated to be prima facie sufficient to prove that the respondent intended to defame the petitioner by filing complaint against him or had actually defamed him.

12. It is well settled proposition of law that anything which lowers the complainant in his own estimation cannot constitute defamation. While determining the person's reputation, his opinion about himself or his profession is irrelevant as distinguished from that of any other's opinion. The reputation has been used to denote the estimation in which the person is held by others, character imputed to him in the community from the society to which he belongs. The evidence of the witnesses examined by the petitioner is lacking on the point that by filing complaint against the petitioner, the respondent intended to lower down his reputation in the estimation of any other person. As such, the learned Revisional Court had rightly observed that the order passed by the

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Magistrate thereby summoning the respondent under Section 500 of IPC showed lack of appreciation of evidence and application of mind and came to be passed in a mechanical manner. In view of the discussion as made above, the findings as recorded by the learned Revisional Court on this point do not deserve to be interfered with.

13. Then so far as the contention that no prior sanction for prosecution of the respondent was required and the learned Revisional Court had wrongly observed so, is concerned, the respondent is admittedly a public servant defined under Section 21 of IPC. Every person in the service or pay of Government for performance of duty by the Government falls within the definition of public servant. Any duty assigned to a public servant either under a statute or by executive order, assumes the character of public duty provided the same is not illegal or against public policy. Section 197 of the Code of Criminal Procedure is an embargo on the power to take cognizance of an offence allegedly committed by a public servant, save by or with the sanction of Government, if he is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. In this case, the respondent had lodged a complaint against the present petitioner alleging that he had tried to interrupt the proceedings of auction process that took place on 07.05.2005 by the respondent. As emerged from the record, after conducting an inquiry against the petitioner, those allegations were not found to be true and had

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been ordered to be filed. It might be so. However, there is nothing on record to show that the respondent had not moved that complaint while acting in discharge of his official duty or had tried to defame or harass the present petitioner. The act of the respondent was protected as done in exercise of his official duty or purported to be done in exercise thereof. It cannot be stated that the act complained of was not part of official duty of the respondent and did not attract the bar under Section 197 of the Code of Criminal Procedure. The fact that the complaint lodged against the petitioner was filed, does not mean that the respondent was not acting or purporting to act in discharge of his duty. Sanction was therefore required as being in employment of the State Government, the respondent certainly enjoyed protection under Section 197 of Cr.P.C. and Court could not take cognizance of the offence alleged to have been committed by him except with the previous sanction of the State Government which had not been so taken. The complaint filed under Section 500 of IPC by the petitioner as such was hit by the provisions of law and could not have been entertained by the learned Magistrate. Similarly the order of the Magistrate thereby issuing process against the respondent under Section 500 of IPC also suffered from the same infirmity. The judicial pronouncement as cited by the petitioner is not applicable to the peculiar facts and circumstances of the case and serves no purpose.

14. In view of the discussion as made above, it is held that no illegality or infirmity is found in the order passed by the learned

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Revisional Court whereby the order of the trial Magistrate qua issuance of process as against the respondent for commission of offences punishable under Sections 499 and 500 of IPC read with Section 120-B of IPC, was set aside. The exercise of revisional jurisdiction by the Court concerned was well within the jurisdiction vested in him and does not warrant any interference. Accordingly, the order passed by the learned Revisional Court is upheld. The present petition is dismissed.

22.10.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No