

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10275-2019

Reserved on : 09.01.2024

Date of Pronouncement : 31.01.2024

Vinod K Gandhi

...PETITIONER

VERSUS

State of Haryana & Anr

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. A.D.S. Jattana, Advocate for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana

Mr. Amit Jhanji, Sr. Advocate with
Ms. Nandita Verma, Advocate for respondent No. 2.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for setting aside the order dated 15.09.2018 passed by the Additional Session Judge, Gurugram (Haryana), whereby the order 07.11.2017 passed by learned JMIC, Gurugram summoning the petitioner in complaint No.COMI-26492/2016 was upheld.
2. Briefly stated facts of the case are that on 20.08.2016, respondent No.2/complainant instituted a criminal complaint seeking summoning of petitioner/accused u/s 499/500 IPC on the allegations that respondent No.2/complainant, being a decorated officer, having won medals while serving in the Indian Army retired in the year 2012

from the post of Deputy Chief of Army Staff. Respondent No.2 / complainant also founded an organization, namely, Indian Ex-Servicemen Movement (IESM) and spearheaded demand for One Rank One Pension (OROP) which was accepted by the government on 17.2.2014. It was further averred in the complaint that respondent No.2 / complainant detected that petitioner / accused, who also happened to be the General Secretary, IESM, alongwith his two accomplices indulged in misappropriation of funds of said organisation and therefore, lodged a complaint with the police and criminal court.

2.1 Respondent No. 2 - complainant further averred that in response, petitioner / accused circulated emails making therein imputations concerning respondent No. 2 / complainant intending to harm his reputation. Brief excerpts from one email, which form part of the record, are as under:-

"Dear Members there was no need to any advise to Kadyan(he does not deserve to be addressed with his rank) as he has shown his real intent that is come what may agitation for OROP must fail.

At this stage he Presumably brought political pressure and the Sessions Judge was forced to order the District Judge to order police to investigate the issue. By this time he had made inroads to New Government which was as it is feeling embarrassed because of ongoing agitation at J.M even after giving

OROP albeit truncated.

Incidentally Kadyan was in charge of commonwealth games flag ceremony along with famous Kalmadi. Kadyan and Kalmadi are buddies from NDA. After leaving CW games he was again given a job as Managing Director of Urban Development Company a job offered by Government as a lolly pop to those who tow government line. He is still working as MD of Urban Development Company. Do i need to write about his extended stay in paris and his case with government subsequently which he lost? I do not wish to make comments on remark of cowardice in his SCR by his superiors. It is surprising that he still made to higher ranks despite such remarks. Does it not speak about his manipulative skills to get promotions by pulling others down?

The fact that Kadyan has been given access to a regional TV channel and some national channels, to air to spread his falsehood and venom, is an indication of patronage given to him by some political powers"

2.2. Respondent No.2 / complainant also alleged that these emails dated 11.2.2016, 12.10.2015, 15.10.2015 and 3.12.2015 were circulated, wherein, imputations were made to the extent that either complainant is a very revengeful man or he was mentally not stable and both conditions were not good for veterans and veterans' family. Being aggrieved from these emails, respondent No.2 / complainant

served a legal notice dated 9.3.2016 upon the accused/ petitioner, but no response was received. Thereafter, respondent No.2 / complainant filed a criminal complaint in the court.

2.3 Ld. Magistrate finding *prima facie* case against the petitioner/ accused, summoned him vide order dated 07.11.2017 for commission of offence of defamation as defined in Section 499 IPC punishable u/s 500 IPC.

Feeling aggrieved against the summoning order, petitioner filed revision petition which was also dismissed vide order dated 15.09.2018 by the Additional Session Judge, Gurugram (Haryana). By way of present petition filed under Section 482 of Cr.P.C., petitioner has challenged the summoning order dated 07.11.2017 as well as the order dated 15.09.2018 passed by the revisional Court.

3. Learned counsel for the petitioner contended that the summoning order was issued by the trial Court against the petitioner without taking into consideration the fact that his case was covered under exceptions 4 and 5 to Section 499 IPC. For ready reference, Exceptions 4 and 5 of Section 499 IPC are reproduced hereinunder:-

“Fourth Exception.— Publication of reports of proceedings of Courts.— It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.— A Justice of the Peace or other officer holding an inquiry in open Court preliminary to

a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.— *Merits of case decided in Court or conduct of witnesses and others concerned.— It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further. ”*

3.1. Delving more into this submission, Id. counsel for the petitioner submitted that the primary grievance of the complainant was that petitioner /accused called him “coward”, however, the same was based on his ACR as recorded by the Hon’ble Apex Court in a case titled as **"Union of India v. Lt. General Rajendra Singh Kadyan"**, reported as 2000 (6) SCC 698, in which complainant was also a party. Relevant part of the judgment of Hon’ble Apex Court is reproduced below:-

“28. Now we come to the last aspect of the matter, namely, the manner in which the Cabinet Secretary examined the service profiles of the two officers in question. For purposes of convenience, we may set out the relevant portion of the note :

"Lt. Gen. R.S. Kadyan :- He was commissioned in the Rajputana rifles regiment of the Infantry in June, 1962 and has held various Command, Staff and Instructional appointments. He picked up the rank of Lt.

Gen. on 24th September, 1997 and started functioning as regular Corps Commander. The General Officer has a balanced exposure in Command, Staff and Instructional appointments. However, his staff experience in senior ranks from Brig. onwards is only limited to that of Military Attache. He has no experience of working in Northern Command and Army Headquarters. Since 1980 he has worked for about 4 years in field areas. It also appears from his records that he did not participate in 1962, 1965 operations. In his report of 1971, when he participated in the operations, there are some advisory remarks both by the IO and RO as below :-

"..... should be bold and aggressive in operation..... Should lead his men personally to difficult objectives." (Remarks by IO).

"..... his performance as a Rifle Coy Commander in the recent operations has been satisfactory though not upto the expected level." (Remarks by RO).

The overall profile of the officer, especially in senior ranks has been clearly above average. All the reporting officers gave him above average ratings with sprinkling of outstanding ratings.

As regards CI operations, the officer has handled the same as IG North, Assam Rifles, but he has not had experience of commanding a regular Army Division. His experience as Corps Commanders is also limited. He is a graduate of Staff College and has also done

higher command courses. He is recipient of Chief's Commendation, VSM and AVSM. He is medical category SHAPE-1." (emphasis supplied)

3.2. He further submitted that in the aforestated context, it was necessary to have a glance at the definition of "coward" as provided in dictionary which is reproduced below:-

"Coward: a person who is contemptibly lacking in the courage to do or endure dangerous or unpleasant things."

The Cambridge University dictionary defines coward: a person who is not brave and is too eager to avoid danger, difficulty or pain."

Drawing attention of the court towards the definition of the word "coward" from the dictionary, Id. counsel pointed out that its characteristics were substantially the same which were recorded in the ACR of respondent No.2 and also in the judgment of Hon'ble the Apex Court. Therefore, it was pleaded that in that view, the case of the petitioner was covered under exceptions 4 and 5 to Section 499, IPC. He also submitted that Trial Court did not specify any reason that how the contents of the emails fell under the scope of Section 499 IPC.

4. On the other hand, learned counsel for respondent no. 2 submitted that a perusal of emails clearly shows that the contents written therein, were *per se* defamatory and at this stage only prima facie view was to be seen by the trial Court and the defence of the

accused/petitioner was to be seen during trial. In support of his submissions learned counsel placed reliance upon following judgments:

- i. **"Central Bureau of Investigation V/s Aryan Singh etc."**, reported as 2023 SCC OnLine SC 379
- ii. **"Kamal Shivaji Pok Arnekar V/s State of Maharashtra and Others"**, reported as 2019 14 SCC 350
- iii. **"State of Gujarat V/s Afroz Mohammed Has Anfatta"**, reported as 2019 20 SCC 539
- iv. **"Shatrughna Prasad Sinha V/s Rajbhau Surajmal Rathi and Others"**, reported as 1996 6 SCC 263
- v. **"Chaman Lal V/s The State of Punjab"**, reported as 1970(1) SCC 590
- vi. **"Varinder Singh V/s Bikram Singh Majithia"**, reported as 2017 SCC OnLine P&H 1388
- vii. **"M.N. Damani V/s S.K. Sinha"**, Criminal Appeal No. 596 of 2001, decided on 02.05.2001. Law Finder ID: 11610

5. I have heard learned counsel for the parties and gone through the paper book, however, I do not find much substance in the submissions made on behalf of the petitioner.

6. It is not the case of the petitioner that he has not written the emails, rather his case is that he is covered under exceptions 4 and 5 of Section 499 IPC. It is also required to be noted that vide order dated 07.11.2017, the accused/petitioner has not been held guilty under Section 499 IPC, rather he has only been summoned by the trial court to face trial. It is settled law that at the stage of summoning only *prima facie* case has to be seen by the trial court

and possible defence of the accused is not required to be looked into.

7. Perusal of the emails brought on record as Annexure P-4 (colly) shows that the accused/petitioner has in so many words called respondent No. 2 before a group of veterans along with insinuation that he is a “coward”, which cannot be said to have been done in good faith. Apart from the word “coward”, in the emails sent by the accused/petitioner, there are other contents as well which does not suit the prestige of a decorated army officer who has served the nation for approximately 40 odd years. Even with respect to the definition of the word “coward”, it is required to be looked into whether the general meaning applicable to an ordinary person, can also be made applicable in the specific context of defence personnel, for whom it could be more insulting.

8. The reference of word “coward” for respondent No.2/complainant is being sought to be justified while relying upon certain observations made by the superiors of the complainant, which find mention in a decision dated 28.07.2000 passed by the Hon’ble Supreme Court in **General Rajendra Singh Kadyan’s case** (supra), relevant extract from which is reproduced hereunder:-

*“*** In his report of 1971, when he participated in the operations, there are some advisory remarks both by the IO and RO as below :-*

"..... should be bold and aggressive in operation..... Should lead his men personally to difficult objectives." (Remarks by IO).

"..... his performance as a Rifle Coy Commander in the recent operations has been satisfactory though not upto the expected level." (Remarks by RO).

*The overall profile of the officer, especially in senior ranks has been clearly above average. All the reporting officers gave him above average ratings with sprinkling of outstanding ratings. ***"*

Without delving into details, yet it may be noticed that the use of words by the seniors like "...should be bold and aggressive in operation", may not always mean in absolute terms that the complainant was designated a "coward". If someone is termed as "not bold or aggressive" might mean that one might not be offensive enough as demanded in war circumstances which could not necessarily mean in all probabilities that the person is coward. Still, this Court purposefully refrain from discussing the merits of the arguments raised by learned counsel for the petitioner in extenso, for the reason that in that case it would be required to touch the complete merits of the case, which would prejudice the trial.

9. On the basis of the complaint made by respondent no. 2, coupled with the testimony of Complainant (CW1) as well as other members of IESM who were Hony. Capt. Naginder Singh (CW2) Ex-Major Jai Singh (CW3), and Hony. Capt Jagvir Singh (CW4), trial Court has rightly relied upon the preliminary evidence led by the petitioner in this case. In the given circumstances, the exercise of going into the details of word "coward" and other alleged defamatory

contents and applicability of the exceptions of Section 499 IPC can be looked into during the trial only.

10. Scope of interference in such cases by the High Court, while exercising its power under Section 482 Cr.P.C., is very limited. Reference in this regard can be made to the judgment in **Kamal Shivaji Pokarnekar's** case (supra), which is also supported by the judgments cited by the learned counsel for respondent No.2, wherein it was observed by Hon'ble Apex Court that if it appears on a reading of the complaint and consideration of the allegations therein that the ingredients of offence are disclosed, there would be no justification for the High Court to interfere in the summoning order and the defences that may be available, or facts/aspects which may be established during the trial, may lead to acquittal, are not the grounds for quashing the complaint at the threshold. Relevant paras from this judgment are reproduced below:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the

exercise to find out whether the materials would lead to a conviction or not Sonu Gupta v. Deepak Gupta and Ors. 2015(2) RCR (Criminal) 32 : 2015 (3) SCC 424.

5. *Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere State of Karnataka v. M. Devendrappa and Anr. 2002(1) RCR (Criminal) 480 : 2002 (3) SCC 89.*

6. *Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not Indian Oil Corporation v. NEPC India Ltd. and Others, 2006(3) RCR (Criminal) 740 : 2006 (6) SCC 736."*

11. Similarly, in **Shatrughna Prasad Sinha's** case (Supra), it was observed by the Hon'ble Apex Court that defences available to

the accused/petitioner can be taken at the stage of framing of charge or any subsequent stage, but it cannot be ground to quash the complaint. Relevant para from this judgment is reproduced below:-

“13. As regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, 1st Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned senior counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500. It is the settled legal position that a Court has to read the complaint as a whole and find out whether allegations disclosed constitute an offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations might come within the definition of defamation' under Section 499 Indian Penal Code and could be taken cognizance of. But these are the facts to be established at the trial. The case set up by the appellant are either

defences open to be taken or other steps of framing a charge at the trial at what-ever stage known to law. Prima facie we think that at this stage it is not a case warranting quashing of the complaint filed in the Court of Judicial Magistrate, 1st Class at Nasik. To that extent, the High Court was right in refusing to quash the complaint under Section 500 Indian Penal Code."

12. Similar observations were made by this Court in **Varinder Singh's** case (Supra) as well. Relevant paras from this judgment are reproduced below:-

"27. From the facts on record it would be highly imaginary to presume that no prima facie offence is made out at this stage. The defence, if any, available to the petitioners in the context of Exceptions to section 499 IPC would be available at an appropriate time. Even the proof of an allegation does not permit a justification under 1st Exception unless it is proved to be in 'Public Good', which is a question of fact that would be proved by leading evidence at relevant stage.

28. The evidentiary value of the statement as referred to in the preceding part of the order would be tested during trial. Apparently these statements were allegedly recorded by the Enforcement Directorate and are the subject matter of appreciation by the competent Court. 'Good Faith' and 'Public Good' are the questions of fact and are dependent upon the evidence and trial would be required in any case."

13. In view of the discussion made above, warranting no interference in the concurrent findings of the Courts below, the present petition is dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

31.01.2024
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned ? Yes
Whether Reportable ? Yes